

Sex Offender Registration and Notification

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Since the 1990s, U.S. jurisdictions have had laws in place requiring that convicted sex offenders, after their release from confinement, provide identifying information to authorities, which is then made available to community residents in the dual hope that they will undertake safety measures and that registrants will be deterred from reoffending. The laws remain popular with the public and political actors alike, but have long been criticized for being predicated on empirical misunderstandings, most notably that sex offenders as a group recidivate at higher rates than other offenders and that most sexual offending involves strangers. Today, moreover, a considerable body of social-science research calls into question whether registration and notification achieve their avowed public-safety goals. This chapter summarizes the research undertaken to date regarding registration and notification and, presuming the laws' continued existence, offers several concrete suggestions for ways in which they might be improved.

INTRODUCTION

Without question, sex offender registration and notification (“SORN”) laws number among the most important criminal justice policy innovations undertaken in the last quarter-century. In a nutshell, SORN laws require that convicted sex offenders provide government authorities a variety of identifying information (e.g., photos, home and work addresses, vehicle descriptions, e-mail or Internet identifiers, and descriptions of identifying body marks, such as scars and tattoos). Individuals must thereafter verify the accuracy of the information on at least an annual basis, for a minimum of 10 years and perhaps their lifetimes, and update it in the event of any changes, facing felony prosecution if they fail to do so.¹ State (and sometimes local) governments

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1. In addition, federal law makes it a crime punishable for up to ten years for state registrants to move out of state or engage in international travel without updating their registry information. 18 U.S.C. § 2250 (2012). The federal International Megan’s Law, moreover, requires that the passports of registrants be stamped in a conspicuous manner with the phrase “sex offender.” International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders, Pub. L. No. 114-119, 130 Stat. 15 (codified at 42 U.S.C. § 16935-16935i and 22 U.S.C. § 212b (2016)).

then provide this information to the public by means of community meetings, informational flyers, newspaper notices, and most commonly today, by public websites, with software often pinpointing the location of registrants. To facilitate access to registry information, the U.S. Department of Justice maintains a National Sex Offender Registry containing registry information from all 50 states and the District of Columbia.²

The primary purpose of SORN laws is straightforward and laudable: the reduction of sex offender recidivism. Proponents claim that registration helps police both monitor convicted sex offenders and facilitate apprehension in the event of re-offense, and instill in them the sense that they are being watched, thereby deterring sexual reoffending. Notification, in turn, provides registry information to community members, allowing them to undertake precautionary measures to avoid victimization by registrants and serve as “co-producers” of public safety.

Critics argue that research has failed to show that SORN achieves its intended public safety purpose and that it actually exacerbates known recidivism risk factors by impeding the ability of registrants to maintain stable social relationships and secure employment and adequate housing. Critics also question the basic empirical underpinnings of the laws, noting that contrary to the understanding of legislatures and courts (including the U.S. Supreme Court),³ sex offenders do not recidivate at higher rates than offender subgroups,⁴ and that the “one size fits all” approach to SORN is at odds with known variations among sex offender population recidivism rates,⁵ especially juveniles.⁶ Critics also assert that SORN fosters a false sense of security because

2. See *Public Registry Sites*, U.S. DEP’T JUSTICE, <https://www.nsopw.gov/en/Registry> (last visited Mar. 21, 2017).

3. See Ira M. Ellman & Tara Ellman, “Frightening and High”: *The Supreme Court’s Crucial Mistake About Sex Crime Statistics*, 30 CONST. COMMENT. 495, 508 (2015).

4. See, e.g., PATRICK A. LANGAN, ERICA L. SCHMITT & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994*, at 1 (2003) (within 3 years of release from prison 5.3% of sex offenders were rearrested for a sex crime and 3.3% of child molesters were rearrested for another sex crime against a child). Public understanding of the sexual re-offense rates among juveniles is likewise mistaken. See Michael Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 197 (2010).

5. Patrick Lussier & Jesse Cale, *Beyond Sexual Recidivism: A Review of Sexual Criminal Career Parameters of Adult Sex Offenders*, 18 AGGRESSION & VIOLENT BEHAV. 445, 455 (2013); Lisa L. Sample & Timothy M. Bray, *Are Sex Offenders Different? An Examination of Rearrest Patterns*, 17 CRIM. JUST. POL’Y REV. 83, 97–98 (2006).

6. For discussion of this distinctiveness, which includes lower rates of sexual re-offense than adults and increased responsiveness to treatment intervention, see Amy E. Halbrook, *Juvenile Pariahs*, 65 HASTINGS L.J. 1, 11–15 (2013).

among other things, contrary to the “stranger danger” premise of the laws, the overwhelming percentage of sexual offenses involve victims and offenders known to one another,⁷ and most sex offenses are committed by first-time offenders (not registrants).⁸

SORN laws have been in effect nationwide for over 20 years, and registries today contain identifying information on almost 900,000 individuals.⁹ Registry populations expand by the day as individuals leave prisons and jails,¹⁰ facing registration periods of at least 10 years and often lifetimes.¹¹ These new registrants augment registry rolls already swollen as a result of the retroactive scope of many laws (often dating back decades), with old and new registrants alike enjoying very little opportunity for early exit.¹²

Over time, governments have spent many hundreds of millions of dollars and a great deal of time and effort to create and maintain registries and enforce

7. See MICHAL PLANTY ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 (2013). Familiarity is especially common with sexual offenses against children: an estimated 93% of minors know their offender. HOWARD SNYDER, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 10 (2000). With respect to child abductions in particular, “only one-hundredth of 1 percent of all missing children” are abducted by strangers or “slight acquaintances.” David Finkelhor, *Five Myths About Missing Children*, WASH. POST (May 10, 2013), https://www.washingtonpost.com/opinions/five-myths-about-missing-children/2013/05/10/efee398c-b8b4-11e2-aa9e-a02b765ff0ea_story.html?utm_term=.4650089f24ed.

8. See, e.g., Jeffrey Sandler et al., *Does a Watched Pot Boil? A Time-Series Analysis of New York's Sex Offender and Notification Law*, 14 PSYCHOL. PUB. POL'Y & L. 284, 296 (2008) (noting that in New York 96% of arrests for sex crimes occurred among those without previous sex crime convictions). See generally Lisa L. Sample & Colleen Kadleck, *Sex Offender Laws: Legislators' Accounts of the Need for Policy*, 19 CRIM. JUST. POL'Y REV. 40 (2008).

9. See *Map of Registered Sex Offenders in the United States*, NAT'L CTR. MISSING & EXPLOITED CHILDREN (2016), http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf. It warrants mention that a significant number of registrants (approximately 12%) do not reside in communities but rather are incarcerated or involuntarily civilly committed. Alissa Ackerman et al., *How Many Sex Offenders Actually Live Among Us? Adjusted Counts and Population Rates in Five U.S. States*, 35 J. CRIME & JUST. 464, 466 (2012).

10. In Texas, for instance, the registry grew over 35% in size over a five-year period (as of June 1, 2016 numbering almost 88,000 individuals). Eric Dexheimer, *Program to Corral Ballooning Sex Offender Registry Failing*, AUSTIN AMERICAN-STATESMAN (July 14, 2016), <http://www.mystatesman.com/news/state--regional/program-coral-ballooning-sex-offender-registry-failing/z4ltoUh7g2A8KSxI64vv5I/>.

11. See *id.* (“[T]he [Texas] registry is like a cemetery: Because many offenders are placed on it for a lifetime, or at least decades, it only expands in size. Over the past five years, Texas has added new names to the list at a rate of nearly a dozen every day.”).

12. Wayne A. Logan, *Database Infamia: Exit from the Sex Offender Registries*, 2015 WIS. L. REV. 219, 227.

SORN laws. Remarkably, however, SORN has been largely immune to critical re-examination. Unlike other penal policies also originating in the “punitive 1990s,” which have experienced a wind down of late—such as “three strikes” laws,¹³ mandatory minimum sentences,¹⁴ and other collateral consequences of conviction (e.g., loss of the right to vote)¹⁵—SORN has not only endured, it has flourished. Indeed, registration is often combined with other social-control strategies such as laws denying registrants the ability to live, work, or visit areas near places where minors congregate, such as schools and playgrounds (sometimes even when their crime of conviction did not involve a minor).¹⁶

A variety of reasons account for the laws’ staying power and growth. Perhaps foremost, few political leaders relish being seen as “soft” on criminal offenders, especially sex offenders, arguably the most feared and disdained criminal subpopulation.¹⁷ At the same time, it is often the case that SORN laws are explicitly named after particular victims, typically children, naturally militating against political challenge. Nor can it be ignored that the laws help satisfy a widespread visceral desire to publicly shame convicted sex offenders.¹⁸

Although perhaps understandable, the lack of critical scrutiny of SORN laws is curious. One would be hard-pressed to identify a governmental undertaking of similar cost and magnitude, especially one so explicitly predicated on empirical understandings, that has similarly eluded scrutiny.¹⁹

13. See, e.g., *California’s Three Strikes Sentencing Law*, CALIFORNIA COURTS, <http://www.courts.ca.gov/20142.htm> (last visited Mar. 21, 2017).

14. See *Recent State-Level Reforms to Mandatory Minimum Laws*, FAMM (June 1, 2016), <http://fammm.org/wp-content/uploads/2013/08/Recent-State-Reforms-June-2016.pdf>. See generally Erik Luna, “Mandatory Minimums,” in the present Volume.

15. See Wayne A. Logan, *Informal Collateral Consequences*, 88 WASH. L. REV. 1103 (2013). For further discussion of collateral consequences, see Gabriel J. Chin, “Collateral Consequences,” in the present Volume.

16. See Wayne A. Logan, *Constitutional Collectivism and Ex-Offender Residence Exclusion Laws*, 92 IOWA L. REV. 1, 6–8 (2006).

17. Andrew J. Harris & Kelly M. Socia, *What’s in a Name? Evaluating the Effects of the “Sex Offender” Label on Public Opinions and Beliefs*, 28 SEXUAL ABUSE: J. RES. & TREATMENT 660, 673, 675 (2016).

18. For more on the social and political forces behind this staying power, see WAYNE A. LOGAN, *KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA* 85–108 (2009).

19. Indeed, not until 2006, twelve years after requiring states enact registration laws and a decade after requiring them to enact notification did Congress direct the Department of Justice to assess the “efficiency,” “effectiveness,” and resource consequences of SORN. See Wayne A. Logan, *Megan’s Laws as a Case Study in Political Stasis*, 61 SYRACUSE L. REV. 371, 401 (2011).

Of late, however, there have been some signs of change. Courts, long averse to questioning the constitutionality of SORN laws,²⁰ are showing receptivity to challenges to more recent laws marked by increasing severity.²¹ Moreover, while states since the 1990s have usually submitted to federal pressure to expand the onerousness and reach of their SORN laws, several have refused to comply with the most recent, more expansive requirements contained in the 2006 Adam Walsh Act and thereby forfeited federal funds, citing policy disagreements (e.g., subjecting juveniles to registration) and the significant costs associated with compliance.²² A few states have even taken modest steps to limit their SORN laws (e.g., discontinuing registration of “Romeo and Juliet” underage offenders).²³ Finally, governmental bodies have recently urged changes to

20. Most notably, in 2003 the U.S. Supreme Court rejected two challenges to SORN laws. See *Smith v. Doe*, 538 U.S. 84, 84 (2003) (rejecting Ex Post Facto Clause challenge asserting that Alaska’s law constituted retroactive punishment); *Conn. Dep’t Pub. Safety v. Doe*, 538 U.S. 1 (2003) (denying procedural due process challenge to Connecticut’s SORN law that subjected individuals to SORN on the basis of conviction alone, without individualized risk assessment).

21. See, e.g., *Does #1-5 v. Snyder*, 834 F.3d 696, 706 (6th Cir. 2016) (invalidating Michigan’s SORN law, which also imposed geographic limits on where registrants can work, “loiter,” and live, on federal ex post facto grounds), *cert. denied*, 2017 WL 4339925 (Oct. 2, 2017); *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009) (invalidating state law on ex post facto grounds); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009) (same); *In re C.P.*, 967 N.E.2d 729, 749 (Ohio 2012) (holding that lifetime registration of juveniles constituted cruel and unusual punishment); *State v. Williams*, 952 N.E.2d 1108, 1113 (Ohio 2011) (same); *In re J.B.*, 107 A.3d 1, 20 (Pa. 2014) (finding that irrebuttable presumption that specified juveniles pose a high risk of reoffending, resulting in registration for 25 years, violated due process).

22. See Wayne A. Logan, *The Adam Walsh Act and the Failed Promise of Administrative Federalism*, 78 GEO. WASH. L. REV. 993, 1009 n.96 (2010). As of late January 2017, nineteen states have “substantially implemented” AWA requirements. *SORNA Implementation Status*, U.S. DEP’T JUSTICE, <https://www.smart.gov/sorna-map.htm> (last visited Mar. 21, 2017).

23. Also warranting mention, in a few states legislatures tried unsuccessfully to trim back SORN laws but were stymied by gubernatorial vetoes. Mary Katherine Huffman, *Moral Panic and the Politics of Fear: The Dubious Logic Underling Sex Offender Registration Statutes and Proposals for Restoring Measures of Judicial Discretion to Sex Offender Management*, 4 VA. J. CRIM. L. 241, 290–91 (2016) (noting experience in Missouri where legislature sought to discontinue registration of juveniles and in Nevada where legislature sought to repeal use of conviction-based registrant classification system).

SORN,²⁴ as have entities such as the Council of State Governments,²⁵ the Center for Sex Offender Management,²⁶ and even the American Law Institute.²⁷ Recently as well, Patty Wetterling, mother of Jacob Wetterling and long a major advocate of SORN laws, has publicly urged their re-examination.²⁸

These developments highlight a modest yet important shift, providing a potential window of opportunity for re-evaluation of SORN laws. SORN will not likely disappear anytime soon. It is hard to imagine a scenario where the political will would exist for such a major change; moreover, SORN's relative low cost compared to brick-and-mortar incapacitation and capacity to complement other community-based social-control strategies (such as GPS monitoring) make it unlikely that cost-conscious reform groups such as "Right on Crime" will advocate its demise.

A now substantial body of social-science research, however, raises serious question over the utility of SORN. This chapter surveys the work conducted to date, highlighting the ways in which SORN laws can be modified to better secure public safety.

24. See, e.g., CAL. SEX OFFENDER MGMT. BD., *A BETTER PATH TO COMMUNITY SAFETY: SEX OFFENDER REGISTRATION IN CALIFORNIA* 5 (2014), <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf> (concluding that "the registry has, in some ways, become counterproductive to improving public safety" and urging an "overhaul" of the system designed to differentiate individuals based on recidivism risk); TEX. SENATE CRIMINAL JUSTICE COMM., *INTERIM REPORT 4* (Dec. 15, 2010), <http://www.senate.state.tx.us/cmtes/81/c590/c590.InterimReport81.pdf> (concluding that "it is clear registries do not provide the public safety" and urging that "all registered sex offenders have risk assessments done").

25. COUNCIL STATE GOV'TS, *SEX OFFENDER MANAGEMENT POLICY IN THE STATES: STRENGTHENING POLICY & PRACTICE, FINAL REPORT 6* (2010), <http://www.csg.org/policy/documents/SOMFinalReport-FINAL.pdf> (noting that "common myths about sex offenders continue to influence laws" and concluding that "there is little empirical proof that sex offender registries and notification make communities safer").

26. CTR. SEX OFFENDER MGMT., U.S. DEP'T JUSTICE, *THE COMPREHENSIVE APPROACH TO SEX OFFENDER MANAGEMENT* 4–5 (2008) (advocating shift away from expansive SORN policies toward schemes that focus instead on individuals posing the greatest risk to the public).

27. See MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES § 213.11 (Prelim. Draft No. 5, Sept. 8, 2015), <https://www.ali.org/projects/show/sexual-assault-and-related-offenses/> (urging in preliminary draft significantly less expansive registration approach and eschewal of notification).

28. Jennifer Blyer, *Patty Wetterling Questions Sex Offender Laws*, CITY PAGES (Mar. 20, 2013), <http://www.citypages.com/news/patty-wetterling-questions-sex-offender-laws-6766534>.

I. SORN LAWS: THEIR ORIGINS AND EVOLUTION

Requiring convicted criminal offenders to register with government authorities first took root in the U.S. in the 1930s.²⁹ Initially, registration laws were enacted by municipalities and typically targeted felons as a class.³⁰ In ensuing decades, a handful of states enacted laws but registration attracted little legislative attention in general.³¹

So things stood until the late 1980s and early 1990s when, after a series of widely reported child victimizations, registration caught the attention of state legislators. The abduction and disappearance of 11-year-old Jacob Wetterling in Minnesota (October 1989), and the abduction, sexual assault, and murder of 7-year-old Megan Kanka in New Jersey (July 1994) by a convicted sex offender living nearby, in particular, catalyzed legislative action. In rapid-fire succession and often without much debate, legislatures enacted new-era registration laws, this time targeting sex offenders and a cluster of offenses thought often tied to sexual victimization (e.g., kidnapping).

The new laws differed, moreover, in another important respect: registry information was no longer monopolized by law enforcement. Following a law enacted by Washington state in 1990, prompted by the sexual abuse of a boy by a recently released sex offender, registrants' information was made available to community members. Voicing a sentiment that would come to define modern SORN laws, the mother of Megan Kanka asserted that "if [we] had known there was a pedophile living on our street, [Megan] would be alive today."³²

In 1994, Congress, concerned that states were slow in embracing registration and wishing greater uniformity in registration laws, passed the Jacob Wetterling Act, which threatened to withhold from states 10% of their allocated federal crime-fighting funds if they did not adopt registration laws satisfying the federal "floor" of requirements. Two years later, in 1996, Congress passed Megan's Law, which threatened similar loss of federal funds if states did not

29. For discussion of targeted concern over sex offenders in particular, dating back to the early twentieth century, and the complex constellation of social and political catalysts driving such concern, see generally Deborah W. Denno, *Life Before the Modern Sex Offender Statutes*, 92 Nw. U. L. REV. 1317 (1998).

30. LOGAN, *supra* note 18, at 22–28.

31. *Id.* In 1947, California enacted the first-state wide registry focusing exclusively on sex offenders. *Id.* at 30.

32. Michelle Reuss, *A Mother's Plea: Pass Megan's Bill—Panel Oks Compromise*, RECORD (N.J.), Sept. 27, 1994, at A1.

require that registry information be disseminated to community members. By 1999, SORN laws were in place in all 50 states and the District of Columbia, as well as U.S. territories and many tribal jurisdictions.

Today, registration is triggered by a broad array of sex-related offenses, including serious felonious misconduct such as aggravated sexual assault and child sexual assault, but also less serious offenses (e.g., peeping, voyeurism, and indecent exposure), possession of child pornography, and misconduct that might not involve a sexual purpose (e.g., kidnapping and false imprisonment). In addition to enumerated offenses, several jurisdictions allow courts to require registration if an offense was “sexually motivated.” The scope of conviction coverage can date back many years, at a minimum encompassing those occurring after the enactment of a state’s SORN laws (the early to mid-1990s) but often decades before.

Registration periods vary, ranging from 10 years to several decades to life, with at least three states (Alabama, Florida, and South Carolina) requiring lifetime registration of all registrants. Registrants must verify their information at least once a year (sometimes every three months), and must notify authorities when their identification information changes (e.g., they move, change jobs, or grow a beard). As a rule, state laws afford very little opportunity for individuals to exit registries before their registration period ends.³³

In most states, all registrants are subject to notification, based solely on offense of conviction, with registry websites only occasionally stating that individuals have not been evaluated for risk of re-offense. In South Carolina, for instance, all registrants convicted of specified offenses must register for their lifetimes and appear on the state’s community notification website. In a few states, such as Massachusetts and New York, notification is limited: only information on registrants determined to pose medium or high risk is made publicly available. In Minnesota, only registrants assessed as having a high likelihood of re-offense are subject to notification.

Juveniles, who have been adjudicated delinquent by a court on the basis of a registration-eligible offense,³⁴ increasingly have been subject to SORN. This is especially so after the federal Adam Walsh Act (AWA) threatened states with loss of federal funds if they did not (among other things) require certain adjudicated juveniles to register. Today, 38 states require at least some adjudicated juveniles

33. Logan, *Database Infamia*, *supra* note 12, at 225–29.

34. This population is distinct from juveniles who have been transferred to the adult criminal justice system, convicted and sentenced; they have been subject to SORN from the outset.

to register (in North Carolina, the minimum age is 11).³⁵ States vary in how they determine eligibility, with many (especially those compliant with the AWA) mandating registration of juveniles adjudicated of specified offenses, and others allowing judges latitude to determine whether registration is warranted. Jurisdictions also differ in the duration of registration: in some states the duty terminates at a particular age (e.g., 21), while in others it is a term of years or lifetime. In several states, juveniles enjoy a broadened opportunity to petition for removal. Finally, of the 38 states registering juveniles, 23 limit access to juvenile registrants' information, for instance to law enforcement and school authorities. The remaining 15 jurisdictions make information on adjudicated juvenile registrants freely available to the public, via websites, alongside adult registrants.

II. EMPIRICAL WORK REGARDING SORN

Today, extensive social-science research exists regarding SORN. As noted earlier, it has long been known that many of the empirical premises of the laws, such as that sex offenders as a group are especially prone to recidivism and that most sexual offenses are committed by strangers, lack empirical support. This section summarizes other key areas of empirical work done to date.

A. REDUCING SEXUAL OFFENDING

Little research supports the conclusion that SORN reduces sexual offending.³⁶ In perhaps the most rigorous study conducted to date, researchers utilizing a multistate longitudinal dataset, numbering over 300,000 offenses, found that registration had a positive impact of reducing sexual reoffending (at least against victims known to the offender, such as neighbors), a result believed to stem from law enforcement's awareness of registrants.³⁷ The impact of notification, however, was decidedly more mixed: it had an apparent deterrent effect among *non-registrants*, but seemed to foster recidivism among

35. Rebecca Beitsch, *States Slowly Scale Back Juvenile Sex Offender Registries*, HUFFINGTON POST (Nov. 19, 2015), http://www.huffingtonpost.com/entry/juvenile-sex-offender-registries_us_564de825e4b031745cf0015f. As of July 2011, Delaware had an individual who was 9-years-old when placed on the registry. NICOLE PITTMAN & QUYEN NGUYEN, A SNAPSHOT OF JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS: A SURVEY OF THE UNITED STATES 12 (2011).

36. It is worth noting that recidivism assessments must be interpreted in light of the reality that sex offenses often go unreported. MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION, 2007 (2008). Moreover, work must be interpreted mindful of at least two other considerations: first, that studies comparing pre-and-post SORN implementation can present difficulty in parsing causality due to the possible impact of other factors (e.g., an overall change in sexual offending rates); second, significant variations in state approaches to SORN, which can limit generalizability.

37. See generally J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Community Notification Laws Affect Criminal Behavior?*, 54 J.L. & ECON. 161 (2011).

registrants.³⁸ Interpreting the results, the study's authors concluded that "states should employ narrow notification regimes in which all or most sex offenders are required to register but only a small subset are subjected to notification."³⁹

Over time, the overwhelming number of studies conducted have failed to find a crime-reduction effect of SORN.⁴⁰ A few, however, show some positive effect. It is important to note, however, that two of the studies concerned jurisdictions employing a comparatively circumscribed, tier-based system in which only higher-risk registrants were subject to notification.⁴¹ A third study, examining South Carolina's offense-based classification system, found a reduction in sexual offending among first-time offenders (i.e., non-registrants), but this positive effect was not evident in the years following the state's implementation of website notification.⁴²

Research, moreover, raises concern that, instead of reducing sexual victimization, the consequences of notification in particular for registrants might foster recidivism. Studies highlight the many significant negative personal consequences of notification for registrants, ranging from personal or property harm as a result of vigilantism, loss of employment and housing, as well as stress, hopelessness, and loss of social and familial support.⁴³ Consequences

38. *Id.* at 181.

39. *Id.* at 182.

40. See, e.g., Alissa Ackerman et al., *Legislation Targeting Sex Offenders: Are Recent Policies Effective in Reducing Rape?*, 29 JUST. Q. 858, 878 (2012); Amanda Agan, *Sex Offender Registries: Fear without Function?*, 54 J. L. & ECON. 207, 207 (2011); Richard Tewksbury & Wesley G. Jennings, *A Longitudinal Examination of Sex Offender Recidivism Prior to and Following the Implementation of SORN*, 30 BEHAV. SCI. & L. 308, 308 (2012); Bob Edward Vásquez et al., *The Influence of Sex Offender and Registration and Notification Laws in the United States: A Time-Series Analysis*, 54 CRIME & DELINQ. 175, 175 (2008); Kristen M. Zgoba et al., *The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems*, 28 SEXUAL ABUSE: J. OF RES. & TREATMENT 722, 722 (2015); Kristen Zgoba et al., *An Analysis of the Effectiveness of Community Notification and Registration: Do the Best Intentions Predict the Best Practices?*, 27 JUST. Q. 667, 688–89 (2010).

41. See ROBERT BARNOSKI, WASH. STATE INST. PUB. POLICY, SEX OFFENDER SENTENCING IN WASHINGTON STATE: NOTIFICATION LEVELS AND RECIDIVISM (2005); Grant Duwe & William Donnay, *The Impact of Megan's Law on Sex Offender Recidivism: The Minnesota Experience*, 46 CRIMINOLOGY 411 (2008).

42. Elizabeth Letourneau et al., *Effects of South Carolina's Sex Offender Registration and Notification Policy on Deterrence of Adult Sex Crimes*, 37 CRIM. JUST. & BEHAV. 537, 550 (2010).

43. See, e.g., Keri B. Burchfield & William Mingus, *Not in My Neighborhood: Assessing Registered Sex Offenders' Experiences with Local Social Capital and Social Control*, 35 CRIM. JUST. & BEHAV. 356, 364 (2008); Jill S. Levenson et al., *Megan's Law and Its Impact on Community Re-entry for Sex Offenders*, 25 BEHAV. SCI. & L. 587, 587 (2007); Richard Tewksbury & Matthew B. Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 SOC. SPECTRUM 309, 334 (2006); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. CONTEMP. CRIM. JUST. 67, 67 (2005).

such as these are known to impede social and economic reintegration and aggravate the risk of reoffending.⁴⁴

Registrants' family members also experience negative effects, with children experiencing ridicule, teasing, depression, anxiety, and fear.⁴⁵ In one survey of 589 registrant family members,⁴⁶ 82% reported experiencing financial hardship, 44% harassment, and 7% being physically injured as the result of their association with a registrant. Among children, 80% experienced anger, 77% suffered from depression, 65% experienced social isolation from their peers, and 47% experienced harassment.⁴⁷

It warrants mention that surveys of registrants indicate that many find registration to be of some public-safety benefit,⁴⁸ but object to notification (the posting on websites of photos and addresses in particular) because they find it counterproductive and "unfair."⁴⁹ A survey of Virginia registrants found that less than 3% believed that being publicly labeled as a sex offender motivated them to remain law-abiding.⁵⁰ While of course registrants should not be expected

44. Jennifer Schulenberg, *Predicting Noncompliant Behavior: Disparities in the Social Locations of Male and Female Probationers*, 9 JUST. RES. & POL'Y 25 (2007); Gwenda M. Willis & Randolph C. Grace, *Assessment of Community Reintegration Planning for Convicted Sex Offenders: Poor Planning Predicts Recidivism*, 36 CRIM. JUST. & BEHAV. 494, 510 (2009).

45. See, e.g., Mary Ann Farkas & Gale Miller, *Reentry and Reintegration: Challenges Faced by the Families of Convicted Sex Offenders*, 20 FED. SENT'G REP. 88, 89 (2007); Erika Frenzel, *Understanding Collateral Consequences of Registry Laws*, 11 JUST. POL'Y J. 1 (2014); Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 AM. J. CRIM. JUST. 54 (2009).

46. Richard Tewksbury & Jill Levenson, *Stress Experiences of Family Members of Registered Sex Offenders*, 27 BEHAV. SCI. & L. 611 (2009).

47. See generally Michael Lasher & Robert J. McGrath, *The Impact of Community Notification on Sex Offender Reintegration: A Quantitative Review of the Research Literature*, 56 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 6 (2012).

48. Yolanda Brannon et al., *Attitudes About Community Notification: A Comparison of Sexual Offenders and the Non-offending Public*, 19 SEXUAL ABUSE: J. RES. & TREATMENT 369, 376 (2007); Richard Tewksbury & Matthew B. Lees, *Perceptions of Punishment: How Registered Sex Offenders View Registries*, 53 CRIME & DELINQ. 380, 380 (2007).

49. Jill S. Levenson & Leo P. Cotter, *The Effects of Megan's Laws on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49, 59 (2005); VT. CTR. PREVENTION & TREATMENT OF SEXUAL ABUSE, *IMPACT OF COMMUNITY NOTIFICATION ON SEX OFFENDER REINTEGRATION BEFORE AND AFTER PASSAGE OF A MEGAN'S LAW* (2009); Cynthia Calkins Mercado et al., *The Impact of Specialized Sex Offender Legislation on Community Reentry*, 20 SEXUAL ABUSE: J. RES. & TREATMENT 188, 188 (2008).

50. Monica L. Robbers, *Lifers on the Outside: Sex Offenders and Disintegrative Shaming*, 53 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 5, 5 (2009); see also Richard Tewksbury & Matthew B. Lees, *Perceptions of Punishment: How Registered Sex Offenders View Registries*, 53 CRIME & DELINQ. 380 (2007); Richard Tewksbury & Matthew B. Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 SOC. SPECTRUM 309 (2006).

to embrace SORN with open arms, such findings are significant in light of the extensive procedural justice literature suggesting that individuals persuaded of the fairness of laws and procedures are more likely to follow them.⁵¹

Reflecting on work conducted to date, University of Michigan Law School Professor J.J. Prescott, one of the authors of the study noted at the outset, recently wrote that “the idea that notification regimes may make registered offenders more dangerous is consistent with the fact that notification causes these individuals significant financial, social, and psychological harm.”⁵² According to Professor Prescott:

[T]he greater the number of released offenders that states actually subject to notification, the higher the relative frequency of sex offenses. In other words, the punitive aspects of notification may have unintended perverse consequences. ... Notification laws appear most attractive when they apply only to small numbers of offenders, presumably the worst of the worst.⁵³

Viewed in this light, legislative efforts to expand the range of coverage of SORN, such as by the AWA's conviction-based regime,⁵⁴ would appear ill-advised.

Finally, a growing body of research on sexual re-offending sheds important light on the duration of registration. In one study, researchers conducted a meta-analysis of 21 samples of convicted sex offenders, assigning risk levels to the almost 8,000 subjects evaluated.⁵⁵ Using a well-established actuarial risk-measurement tool, individuals were classified by risk level. The impact of the passage of time on desistance from sexual reoffending was most notable among high-risk subjects: 22% committed (defined as charged or convicted) a new sex offense within five years of release. Over the next five years (i.e., the 6- to 10-year monitoring period), the recidivism rate decreased to 7%, and no high-

51. See Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 286 (2003).

52. J.J. Prescott, *Do Sex Offender Registries Make Us Less Safe?*, 35 REG. 48, 50 (2012).

53. *Id.* at 54.

54. See Andrew J. Harris & Christopher Lobanov-Rostovsky, *Implementing the Adam Walsh Act's Sex Offender Registration and Notification Provisions: A Survey of the States*, 21 CRIM. JUST. POL'Y REV. 202, 202 (2010); Andrew J. Harris et al., *Widening the Net: The Effects of Transitioning to the Adam Walsh Act's Federally Mandated Sex Offender Classification System*, 37 CRIM. JUST. & BEHAV. 503, 503 (2010). In Wyoming, for instance, the state's initial risk-based registry grew from 125 to 1,450 registrants following conversion to the AWA's conviction-based approach. Emanuella Grinberg, *5 Years Later, States Struggle to Comply with Federal Sex Offender Law*, CNN (July 28, 2011), <http://www.cnn.com/2011/CRIME/07/28/sex.offender.adam.walsh.act/>.

55. R. Karl Hanson et al., *High-Risk Sex Offenders May Not Be High Risk Forever*, 29 J. INTERPERSONAL VIOLENCE 2792, 2792 (2014).

risk offender recidivated after 16 years. With low-risk offenders, 97.5% were offense-free after five years, and approximately 95% were offense-free after 15 years. Summarizing their results, the authors concluded that “intervention and monitoring resources should be concentrated in the first few years after release, with diminishing attention and concern for individuals who remain offense-free for substantial periods of time.”⁵⁶

B. TARGETING JUVENILES

Research on the lack of positive effects of SORN is even more apparent among juveniles. Studies show that registered juveniles have the same likelihood of sexual offending as their non-registered offender peers.⁵⁷ Focusing on the AWA’s regime in particular, which requires that juveniles age 14 and over who have been adjudicated of an “aggravated sexual assault” (which includes engaging in a sexual act with a person under age 12) register for 25 years to life, without regard for individual risk, researchers concluded juveniles subject to the AWA did not reoffend (sexually or non-sexually) at a significantly higher rate than those not meeting AWA criteria.⁵⁸

Research suggests that notification has an especially negative impact on juveniles.⁵⁹ As one study reported, “[t]o the degree that the release of juvenile information further isolates youthful sex offenders, prevents them from

56. *Id.* at 2807–08.

57. Michael F. Caldwell & Casey Dickinson, *Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders*, 27 *BEHAV. SCI. & L.* 941, 941 (2009); Elizabeth Letourneau et al., *The Influence of Sex Offender on Juvenile Sexual Recidivism*, 20 *CRIM. JUST.* 136 (2009); Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *SEXUAL ABUSE: J. RES. & TREATMENT* 393 (2008). For a discussion of juvenile offenders, see Barry C. Feld, “Juvenile Justice,” in Volume 1 of the present Report.

58. Ashley Batastini et al., *Federal Standards for Community Registration of Juvenile Sex Offenders: An Evaluation of Risk Prediction and Future Implications*, 17 *PSYCHOL. PUB. POL’Y & L.* 451 (2011). See also Michael Caldwell et al., *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 *PSYCHOL. PUB. POL’Y. & L.* 89, 104 (2008).

59. Elizabeth J. Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *SEXUAL ABUSE: J. RES. & TREATMENT* 393 (2008); Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 *SEXUAL ABUSE: J. RES. & TREATMENT* 293 (2005). See generally HUMAN RIGHTS WATCH, *RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE U.S.* 50–72 (2013) (providing extensive anecdotal evidence of negative effects of notification).

creating positive social networks, inhibits their ability to receive an education, or prevents them from maintaining contact with family and friends,” notification can exacerbate juveniles’ propensity for future offending.⁶⁰

Juvenile SORN can also have other unintended, negative consequences. One is that the prospect of subjecting juveniles to SORN can affect judicial outcomes. In South Carolina, for instance, where juveniles are registered on the basis of offense alone, requiring lifetime registration (with twice-per-year verification) and notification on a website registry, local prosecutors at times either dismissed juvenile sex cases outright or reduced initial charges to facilitate pleas to non-registration eligible charges.⁶¹ As a consequence, the study’s authors concluded, “[j]uveniles who have actually committed sexual offenses ... might not receive appropriate clinical services or supervision.”⁶² Equally problematic, concern exists that subjecting juveniles to the hardships of SORN might discourage intra-familial reporting of sexual abuse.⁶³

C. COMMUNITY USE OF REGISTRIES

A chief posited benefit of SORN is that public safety will be enhanced because community members will (1) avail themselves of publicly available registrant information and (2) use it to take protective measures regarding themselves and/or others. Research, however, does not afford much basis to conclude that these goals are being met. While community members might be aware, in the abstract, of the existence of website registries, relatively few actually consult them.⁶⁴ In one study, for example, roughly a third of respondents said they were aware of their state registry, yet of those only 39% reported that they had even

60. Mary Evans et al., *Sex Offender Registration and Community Notification*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 149–50 (Richard G. Wright ed., 2009).

61. Elizabeth J. Letourneau et al., *Sex Offender Registration and Notification Policy Increases Juvenile Plea Bargains*, 25 *SEXUAL ABUSE: J. RES. & TREATMENT* 189, 203 (2012).

62. *Id.* at 203. A similar effect has been observed among adult defendants. Naomi Freeman et al., *A Time-Series Analysis on the Impact of Sex Offender Registration and Community Notification on Plea Bargaining Rates*, 22 *CRIM. JUST. STUD.* 153 (2009).

63. See LOGAN, *supra* note 18, at 132.

64. See, e.g., Keri B. Burchfield, *Assessing Community Residents’ Perceptions of Local Registered Sex Offenders: Result from a Pilot Study*, 33 *DEVIANT BEHAV.* 241, 244 (2012) (Illinois survey indicating that 60% of survey respondents were aware of website registry but 61% were unaware of registrants residing in their neighborhood). The knowledge deficit, it should be emphasized, can be aggravated among “tech have nots,” who often reside in poorer neighborhoods. See, e.g., Lynette Kvansy & Mark Keil, *The Challenges of Redressing the Digital Divide: A Tale of Two U.S. Cities*, 16 *INFO. SYS. J.* 23 (2006).

viewed it.⁶⁵ Most research, moreover, has failed to show a statistically significant relationship between community members' awareness of registrants residing in their neighborhoods and undertaking precautionary measures.⁶⁶ Finally, research suggests that proactive notification methods (e.g., meetings and flyers) can result in greater awareness compared to passive methods (website registries in particular).⁶⁷

For notification to be effective, however, the information contained in registries must be up-to-date and accurate. Here again, however, the logic of SORN does not always align with empirical reality. Research consistently shows the existence of widespread inaccuracies in registries, regarding key matters such as registrants' home addresses.⁶⁸ This perhaps should not come as a surprise inasmuch as SORN is essentially an honor-based system (backed by threat of felony prosecution for failure to comply), with compliance

65. Lydia Saad, *Sex Offender Registries Are Underutilized by the Public*, GALLUP (June 5, 2005), <http://www.gallup.com/poll/16705/sex-offender-registries-underutilized-public.aspx> (2005). See, e.g., Amy Anderson & Lisa Sample, *Public Awareness and Action Resulting from Sex Offender Community Notification Laws*, 19 CRIM. JUST. POL'Y REV. 371 (2008); Douglas Boyle et al., *Public Knowledge and Use of Sexual Offender Internet Registries: Results from a Random Digit Dialing Telephone Survey*, 29 J. INTERPERSONAL VIOLENCE 1914 (2014); Andrew J. Harris & Rebecca Cudmore, *Community Experience with Public Sex Offender Registries in the United States: A National Survey*, CRIM. JUST. POL'Y REV. 1 (2016); Poco Kernsmith et al., *The Relationship Between Sex Offender Registry Utilization and Awareness*, 21 SEXUAL ABUSE 181 (2009).

66. Two studies, however, which focused on community samples subject to "active" notification (e.g., written notification from police, community meetings with police), found that while awareness of the presence of a registrant's presence did not result in *self*-protection, it did result in protective measures being undertaken by parents vis-à-vis their children. Rachel Bandy, *Measuring the Impact of Sex Offender Notification on Community Adoption of Protective Behaviors*, 10 CRIMINOLOGY & PUB. POL'Y 237 (2011); Victoria Beck et al., *Community Response to Sex Offenders*, 32 J. PSYCHIATRY & L. 141 (2004).

67. See Harris & Cudmore, *supra* note 65, at 20 (concluding that "systems relying on citizens proactively seeking out sex offender information (i.e., 'passive notification'), may be far less efficacious than targeted communication strategies, perhaps emanating from law enforcement, that focus on the selective dissemination of information about particularly high-risk individuals living in the community."). See Victoria Simpson Beck & Lawrence F. Travis III, *Sex Offender Notification: An Exploratory Assessment of State Variation in Notification Processes*, 34 J. CRIM. JUST. 51 (2006).

68. See, e.g., THOMAS M. SALMON, SEX OFFENDER REGISTRY: REPORT OF THE VERMONT STATE AUDITOR 3 (2010) (finding significant data errors in three-quarters of Vermont registry sample); Richard Tewksbury, *Validity and Reliability of the Kentucky Sex Offender Registry*, 66 FED. PROB. 21, 25 (2002) (approximately 25% of Kentucky registrant addresses invalid); ERICA TURLEY & LAURA HUTZEL, W. VA. CRIM. JUST. STATISTICAL ANALYSIS CTR., WEST VIRGINIA SEX OFFENDER STUDY (2001) (almost 40% of registrant addresses invalid in West Virginia).

triggering hardships such as public scorn, homelessness, and harassment.⁶⁹ Nevertheless, the data deficiencies, along with the reality that most sexual offending is not perpetrated by strangers (but rather friends, family members and acquaintances), fuels concern that SORN promotes a false sense of security among community members.

Finally, research has highlighted another, more structural way in which SORN might foster a false sense of community safety. The concern is most evident with offense-based classification regimes, used in most states and urged by the federal government in the Adam Walsh Act (2006). In a recent study, registrants in New York, which classifies registrants in terms of individual risk, were instead classified under the AWA's offense-based approach. Researchers discovered that registrants classified as low-risk under the AWA actually sexually offended at higher rates than those classified as moderate- or high-risk under New York's regime.⁷⁰ Summarizing their results, the authors stated that the offense-based approach:

may give community members a false sense of security. That is, community members may believe they are safe if no Tier 3 offenders are residing in their neighborhood when, in fact, Tier 3 offenders are not at increased risk to reoffend. As such, [the AWA] appears unable to accurately identify high-risk offenders and, therefore, increase public safety.⁷¹

D. COSTS

While less expensive than prison or jail, SORN is not cost-free. Governments must pay for maintenance of the registries (often contracted out to private software vendors), and employ staff to collect and verify registrants' information,

69. Cf. *Ontario Sex Offender Registry*, ONT. MINISTRY COMMUNITY SAFETY & CORRECTIONAL SERVS., http://www.mcscs.jus.gov.on.ca/english/police_serv/sor/sor.html (last updated Feb. 8, 2016) ("The public does not have access to the [registry]. This contributes to a consistently high offender compliance rate resulting in increased accuracy and integrity of the data on the [registry]. This enhances public safety for Ontarians by providing police with the ability to have more accurate information about registered offenders.")

70. Naomi J. Freeman & Jeffrey C. Sandler, *The Adam Walsh Act: A False Sense of Security or an Effective Policy Initiative?*, 21 CRIM. JUST. POL'Y REV. 31, 43 (2010).

71. *Id.* at 43; see also *id.* at 45 ("the use of any empirically based risk factor would yield more accurate predictions than the [AWA] tier level, which is based solely on crime of conviction.... [T]he results of the current study indicate that [the AWA's approach] is almost completely ineffective at categorizing sex offenders based on risk of sexual recidivism."). For studies reporting similar results see Sandler et al., *supra* note 8; Zgoba et al., *Adam Walsh Act, supra* note 40.

which requires considerable resources and distracts from other duties.⁷² The cost associated with maintaining registries can be such that it results in system breakdown. In Oregon, for instance, budget cuts and insufficient staff for data entry and verification caused a two-year backlog, resulting in the registry being disregarded by law enforcement.⁷³ SORN has also been shown to have a subtle but important fiscal effect: it can negatively affect housing values, which decreases tax revenue.⁷⁴

RECOMMENDATIONS

SORN laws have expanded dramatically over time, with research showing strong support among members of the public⁷⁵ and policymakers alike,⁷⁶ independent of their public-safety utility. In contrast to other government policies, where a high-profile failure might prompt calls for change, SORN has avoided critical re-examination, with instances such as the 18-year-long captivity and sexual abuse of Jaycee Dugard by registrant Phillip Garrido (who was fully compliant with California law) being met with disinterest by policymakers.⁷⁷

As noted at the outset, however, of late there have been calls for reforms to SORN, a shift coinciding with increasing interest in evidenced-based policy

72. JUSTICE POLICY INST., REGISTERING HARM: A BRIEFING BOOK ON THE ADAM WALSH ACT (2009) (estimating cost associated with a state becoming compliant with Adam Walsh Act to be \$18 million up front and slightly lower amount for maintenance in later years); CAL. SEX OFFENDER MGMT. BD., *supra* note 24, at 6 (estimating that “the statewide costs of registration by local agencies alone is about \$24,000,000 per year. This estimate did not include the cost of enforcement and compliance efforts by law enforcement agencies.”).

73. Maxine Bernstein, *Sex Offenders in Oregon: State Fails to Track Hundreds*, OREGONIAN (Oct. 2, 2013), <http://www.oregonlive.com/sexoffenders/special-presentation/>.

74. Leigh Linden & Jonah E. Rockoff, *Estimates of the Impact of Crime Risk on Property Values from Megan’s Law*, 98 AM. ECON. REV. 1103, 1121 (2008).

75. Jill S. Levenson et al., *Public Perceptions and Community Protection Policies*, 7 ANALYSES SOC. ISSUES & PUB. POL’Y 137 (2007); Stacey Katz Schiavone & Elizabeth L. Jeglic, *Public Perception of Sex Offender Social Policies and the Impact on Sex Offenders*, 53 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 679 (2009).

76. Vásquez et al., *supra* note 40, at 76 (noting that in a survey of 35 Illinois legislators only 4 were confident that SORN promoted public safety yet almost all agreed that SORN satisfied a public demand for action).

77. Marisol Bello, *Questions Arise on Monitoring of Sex Offenders*, USA TODAY, Sept. 2, 2009, at A3.

in general and vis-à-vis sexual offending in particular.⁷⁸ Simply because a criminal justice policy “feels right” or is supported by “common sense” does not mean that it actually delivers its sought-after benefits.⁷⁹ On the basis of empirical work done to date, several important changes can and should be made to SORN law and practice.

1. **Limit the scope of SORN laws.** With respect to registration, rather than a purely offense-based system, jurisdictions should adopt policies that better reflect the recidivism risk of individuals. Conviction for an enumerated registration-eligible offense should be an important but not exclusive factor in determining the duration and requirements of registration. A tiered approach should be taken, turning on the seriousness of offense and individuals’ assessed risk level of sexual-offense recidivism,⁸⁰ based on empirically validated actuarial risk-assessment tools employing static and dynamic risk factors.⁸¹ Tier 1 (lowest risk) would require a 10-year registration period, and Tier 2 (medium risk) and Tier 3 (highest risk) would each be subject to registration for 20 years. In addition:

- Tier 1 registrants would be required to verify their registration information annually in person and update it in the event of any

78. See, e.g., CTR. SEX OFFENDER MGMT., TWENTY STRATEGIES FOR ADVANCING SEX OFFENDER MANAGEMENT IN YOUR JURISDICTION 44 (Dec. 2008), http://csom.org/pubs/twenty_strategies.pdf (listing among its suggestions “Engage Legislators to Promote Informed Policies”); COUNCIL STATE GOV’TS, *supra* note 25, at 17 (“Sex offender management ... continues to pose enormous challenges for state policymakers, who struggle to identify and implement effective and evidence based policies and programs that are not merely reactions to individual tragic events.”); *Sex Offender Management Assessment and Planning Initiative Management and Planning*, U.S. DEP’T JUSTICE, https://www.smart.gov/SOMAPI/sec1/ch8_strategies.html (last visited Mar. 8, 2017) (“[T]here is little question that both public safety and the efficient use of public resources would be enhanced if sex offender management strategies were based on evidence of effectiveness rather than other factors.”).

79. See FRANKLIN ZIMRING ET AL., PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU’RE OUT IN CALIFORNIA 221 (2001); see also DANIEL P. MEARS, AMERICAN CRIMINAL JUSTICE POLICY: AN EVALUATION APPROACH TO INCREASING ACCOUNTABILITY AND EFFECTIVENESS 33–34 (2010).

80. A jurisdiction could of course elect to subject all statutorily eligible individuals to risk assessment, resulting in the exemption of some individuals from registration altogether, an approach now sometimes taken with juveniles. In addition to securing broader benefits associated with reducing the overall size of registries, such an approach would mitigate the specter noted earlier of SORN affecting guilty pleas and convictions. Thanks to Professors Michael O’Hear and Gary Wells for making this point.

81. On the superiority of one such approach, known as the Static-99R, see Zgoba et al., *Adam Walsh Act*, *supra* note 40.

change. Their registry information would be made available only to law enforcement and victims and witnesses connected to the registration-triggering offense.

- Tier 2 registrants would be required to verify their registration information twice a year in person, and update it in the event of any change. Their registry information would be made available to law enforcement, victims and witnesses, and any entities near the registrant's home that might serve a population likely at risk of victimization (e.g., if the registrant assaulted a child, day-care centers would be notified).
- Tier 3 registrants would be required to verify their registration information in person three times a year and update it in the event of any change. Their information would be made available in like manner to Tier 2 registrants but their registry information would also be available to the public at-large. Notification methods should include a publicly accessible website as well as more "active" methods such as community meetings with law-enforcement officials, which will help ensure that high-risk registrants' information is actually received by community members.

Importantly, moreover, with Tier 2 and Tier 3 registrant populations especially, resources should be dedicated to providing specialized treatment, which has been shown to reduce the propensity of sex offenders to recidivate.⁸²

Adopting such a scheme will serve several important goals. First, it will draw upon the apparent benefits of registration as a tool to reduce recidivism risk, tying duration and the extent of registration requirements to research showing the significantly diminished likelihood of recidivism risk over time. Second, it will reflect what the California Sex Offender Management Board terms the "risk principle": "that the most effective approach is to identify each offender's level of risk and then devote the greatest amount of resources to managing those who are at higher risk to commit a repeat offense."⁸³ Finally, by significantly narrowing the class of registrants subject to notification, the scope of those experiencing its possibly criminogenic consequences will be lessened, and cost savings will accrue, freeing up

82. See, e.g., Frederich Losel & Martin Schmucker, *The Effects of Sexual Offender Treatment on Recidivism: An International Meta-Analysis of Sound Quality Evaluations, Sexual Offenders: A Comprehensive Meta-Analysis*, 11 J. EXPERIMENTAL CRIMINOLOGY 597, 617 (2015).

83. CAL. SEX OFFENDER MGMT. BD., YEAR END REPORT 2015, at 10 (2016).

resources for police monitoring of riskier registrants. Even more important, public attention will be focused on individuals posing greatest risk.⁸⁴ As Supreme Court Justice Potter Stewart observed in another context, “when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless.”⁸⁵

2. **Provide registrants a way to exit registries.** To date, jurisdictions have allowed only very limited opportunity for registrants to be relieved of SORN; they typically are subject to decades or lifelong SORN regardless of their law-abidingness and risk of sexual re-offense. Providing registrants a way to exit registries, after a prescribed period of time and satisfaction of specified criteria, can avoid the many negative unintended consequences of SORN and provide incentive for successful reintegration into law-abiding society.⁸⁶ Doing so will also winnow the population of registries, which absent reductions (sometimes not even when registrants die—as in Florida) grow exponentially by the year, which distracts from needed focus on risky individuals and misallocates scarce resources.
3. **Limit registration of juveniles.** Knowledge of the distinctiveness of juvenile sexual offending, and research showing the lack of efficacy of SORN in reducing juvenile sexual reoffending, counsel for a very restrained approach regarding juveniles.⁸⁷ Registration should be limited to those 14 years of age and over and depend on individual risk determinations of judges (or other system actors) based on empirically validated actuarial assessment tools, not the single fact of an adjudication for a particular offense.⁸⁸ Registration of juveniles as a rule should be limited in duration, for instance to age 18 or 21, and information regarding registered juveniles

84. CAL. SEX OFFENDER MGMT. BD., *supra* note 24, at 6 (concluding that “[t]he public would be better served if a good portion of [the] cost was used to monitor higher risk offenders, instead of simply doing paperwork for all levels of offenders without having the resources to check on the accuracy of their registered addresses.”).

85. *New York Times Co. v. United States*, 403 U.S. 713, 729 (1971) (Stewart, J., concurring); *see also* CAL. SEX OFFENDER MGMT. BD., *supra* note 24, at 6 (“When everyone is viewed as posing a significant risk, the ability for law enforcement and the community to differentiate between who is truly high risk and more likely to reoffend becomes impossible.”).

86. *See Smith v. Doe*, 538 U.S. 84, 117 (2003) (Ginsburg, J., dissenting) (expressing concern that law challenged made “no provision whatsoever for the possibility of rehabilitation. Offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation.”).

87. For discussion of the adverse impact of SORN on juveniles in particular, in light of their developmental stage in life, *see In re C.P.*, 967 N.E.2d 729, 740–42 (Ohio 2012).

88. *See* Elizabeth J. Letourneau et al., *The Influence of Sex Offender Registration on Juvenile Sexual Recidivism*, 20 CRIM. JUST. POL’Y REV. 136, 150 (2009).

should be made available only to law enforcement. Despite the shortened duration of registration for juveniles, consideration should be given to affording a basis for exit, after a prescribed period of years of lawfulness and fulfillment of any eligibility criteria, for reasons similar to those outlined above regarding adult registrants.

CONCLUSION

The political resolve needed to modify SORN laws should not be underestimated. As the Council of State Governments has observed, lawmakers seeking a more effective, evidence-based approach “face an arduous task.”⁸⁹ In the past, the very idea of requiring that individuals register with government authorities prompted concern, with the Supreme Court in 1941 emphasizing that “champions of freedom for the individual have always vigorously opposed burdensome registration systems.”⁹⁰ In 1947, when California was contemplating creating the nation’s first state sex offender registry, the director of the Department of Corrections wrote to Gov. Earl Warren that while sexual offending was “revolting,” there was a “principle involved which should not be disregarded. It has never been the practice in America to require citizens to register with the police, except while actually serving a sentence under the Probation or Parole laws.”⁹¹

Times have certainly changed, however. Since the 1990s, registration, combined with the far more consequential impact of notification, has enjoyed enormous public and political support. While a handful of other countries have gravitated to registration in some shape or form, the U.S. stands alone with regard to its ambitious use of notification.⁹² Going forward, policymakers need to ask whether subjecting broad swaths of individuals to lifelong or decades-long registration and notification, without the possibility of relief, is actually promoting public safety in a cost-effective manner. While crafting more-effective SORN laws will not be easy, more than 20 years after SORN first began to sweep the nation, it is past time for the work to begin.

89. COUNCIL STATE GOV'TS, *supra* note 25, at 14.

90. *Hines v. Davidowitz*, 312 U.S. 52, 70 (1941).

91. LOGAN, *supra* note 18, at 38–39.

92. See U.S. DEP'T OF JUSTICE, SMART SUMMARY: GLOBAL SURVEY OF SEX OFFENDER REGISTRATION AND NOTIFICATION SYSTEMS (2016), <https://smart.gov/pdfs/global-survey-2016-final.pdf>.