

## NOTES

### BATTLING SEX OFFENDERS: IS MEGAN'S LAW AN EFFECTIVE MEANS OF ACHIEVING PUBLIC SAFETY?

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#### I. Introduction

Following the brutal sexual assaults and murders of Amanda Wengert,<sup>1</sup> Divina Genao,<sup>2</sup> and Megan Kanka,<sup>3</sup> New Jersey has attempted to quell the public's outrage through the rapid enactment of Megan's Law.<sup>4</sup> Megan's Law establishes a three-tiered system that mandates advance notice to the community when convicted

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<sup>1</sup> Ivette Mendez, *'Megan's Law' Sex Offender Bills Go to Governor*, STAR-LEDGER, Oct. 4, 1994, at 1. Six-year-old Amanda Wengert was kidnapped from her Manalapan home, sexually assaulted, and murdered by her neighbor, who had a history of sexual offenses, on March 6, 1994. *Id.*

<sup>2</sup> Michelle Ruess, *Sex Crimes' Tragic Legacy Never-Ending For Families of the Victims, Grief and Loss Last a Lifetime*, SUNDAY RECORD (Northern N.J.), Sept. 18, 1994, at A1. Divina Genao was allegedly killed by Conrad Jeffrey, "a parolee and career criminal with a history of violence and mental illness." *Id.* Jeffrey allegedly lured the seven-year-old to his rooming house in Passaic, where he raped and murdered her. *Id.*

<sup>3</sup> *Id.* Megan Kanka of Mercer County was raped and murdered by twice-convicted pedophile Jesse K. Timmendequas on July 29, 1994. James Popkin et. al, *Natural Born Predators*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 65-66. *See also* Mendez, *supra* note 1, at 1. Mr. Timmendequas lured the seven-year-old into his home, located across the street from Megan's house in Hamilton Township, New Jersey. Popkin, *supra*, at 66. When she resisted his advances, he sexually assaulted her and strangled her to death with a belt. *Id.* The Hamilton Township neighborhood had been unaware that Timmendequas and two other convicted child molesters had moved in across the street from the Kanka residence. *Id.* Timmendequas had been released from New Jersey's Adult Diagnostic Treatment Center at Avenel after a completed term for two sexual offense convictions. Russ Bleemer, *Assembly to Senate: You Figure Out the Tough Parts*, 138 N.J.L.J. 93, Sept. 5, 1994, at 5. Timmendequas was subsequently convicted of Megan's murder on October 19, 1994. *Convicted Sex Offender Indicted in Death of Girl*, N.Y. TIMES, Oct. 20, 1994, at Region News §.

<sup>4</sup> Act of Oct. 31, 1994, ch. 133, 1994 N.J. Sess. Law Serv. 538 (codified at N.J. STAT. ANN. § 2C:7-1 to 7-5 (West 1994)); Act of Oct. 31, 1994, ch. 128, 1994 N.J. Sess. Law Serv. 526 (codified at N.J. STAT. ANN. § 2C:7-6 to -11 (West 1994)); *see also* Jerry Gray, *Sex Offender Legislation Passes in the Senate*, N.Y. TIMES, Oct. 4, 1994, at B6.

sex offenders<sup>5</sup> are released into the community. It also requires offenders, regardless of when convicted, to register with law enforcement authorities either upon their release from prison or, if free, by February 27, 1995.<sup>6</sup>

This note will examine sex offender registration and notification legislation and its potential effect on the legal and law enforce-

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<sup>5</sup> Judith Becker, *Offenders: Characteristics and Treatment*, 4:2 THE FUTURE OF CHILDREN, SEXUAL ABUSE OF CHILDREN 176 (1994). In this note, "sex offender" will refer to "those who offend against adult victims, child victims, or both." *Id.*

<sup>6</sup> Kathy Barrett Carter, *Retroactive Sex Crime Law Raises Thorny Issue*, STAR-LEDGER, Jan. 15, 1995, at 1. In addition to the registration and notification provisions, the package of sex offender legislation signed into law on October 31, 1994:

1) "Require[s] convicted sex offenders to provide samples for a state DNA database" for future investigations which will be linked to a national system. Sponsors were Senator Nicholas Sacco (D-Hudson), Assemblywoman Joan Quigley (D-Hudson), and Assemblyman Nicholas Felice (R-Bergen). Ivette Mendez, *Sex Offender Bills Enacted by Whitman*, STAR-LEDGER, Nov. 1, 1994, at 10; Joseph Sullivan, *Whitman Approves Stringent Restrictions on Sex Criminals*, N.Y. TIMES, Nov. 1, 1994, at B1, B6.

2) Establishes extended prison terms for violent sex offenders where their victims are under the age of 16, including the possibility of life without parole. Sponsors were Senate President Donald DiFrancesco (R-Union), Senator Robert Martin (R-Morris), Assembly Minority Leader Joseph Doria (D-Hudson), and Assemblyman Steven Cordodemus (R-Monmouth). *See Mendez, supra*, at 10.

3) Eliminates reductions in prison sentences for inmates who refuse treatment at New Jersey's treatment center for sex offenders, the Adult Diagnostic and Treatment Center at Avenel. Sponsors are Senators Andrew Ciesla (R-Ocean) and Jack Sinagra (R-Middlesex), Assemblyman Paul DiGaetano (R-Passaic), and Assemblywoman Joanna Gregory-Scocchi (R-Middlesex). *Id.*

4) "Require[s] lifetime supervision of convicted sex offenders." Sponsors are Senators John Girgenti (D-Passaic) and Louis Kosco (R-Bergen), Assemblyman Lee Soloman (R-Camden), and Assemblywoman Barbara Wright (R-Middlesex). *Id.*

5) Requires the victim be notified prior to an offender's release from prison. Sponsors are Senators Henry McNamara (R-Bergen) and John Casey (D-Burlington), Assemblymen Patrick Roma (R-Bergen) and Gary Stuhltrager (R-Gloucester). *Id.*

6) "Make[s] the murder of a child under 14 an aggravating factor" justifying the death penalty. Sponsors are Senators John Scott (R-Bergen) and James Cafiero (R-Cape May), Assemblywoman Marion Crecco (R-Essex), and former Assemblyman Frank Catania (R-Passaic). *Id.*

7) Expands the powers of the Attorney General's Office to seek civil commitment for sex offenders who are about to be released from prison and are considered dangerous and mentally ill. Sponsors are Senator Kosco and Assemblymen Roma and Stuhltrager. *Id.*

8) In addition, the joint legislative task force to study the Adult Diagnostic and Treatment Center at Avenel was sponsored by Senator Lou Bassano (R-Union) and will be co-chaired by Assemblyman Steve Mikulak (R-Middlesex). It did not require the Governor's signature and it took effect immediately on October 3, 1994. *See Mendez, supra* note 1, at 22.

ment community's ability to monitor sex offenders.<sup>7</sup> The note will first provide an overview of the problem of sex crimes against children, then discuss the state<sup>8</sup> and federal statutes<sup>9</sup> upon which New Jersey has modeled its law. The note will then analyze Megan's Law by scrutinizing the legislative history and the law in its enacted form. In addition, potential inadequacies and problems since the law's enactment will be discussed. Recent constitutional challenges to the registration and notification provisions will follow. Finally, recommendations for additional measures will be offered to address the grave concern that the enactment of Megan's Law is simply too little too late.<sup>10</sup>

## II. Background Information

### A. Society's Response to Sex Offenders

There are few human crimes that elicit more fear, anger, and distaste than sexual crimes against children.<sup>11</sup> Currently, there is a

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<sup>7</sup> See Popkin, *supra* note 3, at 65-73. According to state child protective services, there were nationally 139,000 cases of child sexual abuse in 1992. *Id.* at 67. In some states, approximately one-third of prisoners are sex offenders. See Becker, *supra* note 5, at 176.

<sup>8</sup> WASH. REV. CODE ANN. § 9A.44.130 and 9A.44.140 (West Supp. 1995). See also *infra* notes 40-73 for a discussion of Washington State's Community Protection Act requiring sex offenders to register and allowing for the disclosure of the information to the public in limited circumstances.

<sup>9</sup> Violent Crime Control & Law Enforcement Act of 1994, Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 1994 U.S.C.C.A.N. (108 Stat.) 1796, 2038 [hereinafter Violent Crime Control Act]. See also *infra* notes 74-78 and accompanying text.

<sup>10</sup> Bleemer, *supra* note 3, at 5. Sen. Kosco stated that he believed none of the bills introduced on August 15, 1994 would have prevented Megan Kanka's death. *Id.* at 38.

<sup>11</sup> Erica Goode, *Battling Deviant Behavior*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 74. Sex offenders are "at the bottom of the social totem pole." *Id.* "[T]he general public views [sex offenders] as unfathomable. They can't understand this behavior that looks so bizarre, so they just think people are being bad," commented Dr. Gene Abel, director of the Behavioral Medical Institute of Atlanta. *Id.* Scott Murphy presents an example of a typical pedophile. Pedophiles display certain sexual patterns involving exclusive sexual arousal to prepubescent children. L.M. Lothstein, *Can a Sexually Addicted Priest Return to Ministry After Treatment? Psychological Issues and Possible Forensic Solutions*, 34 CATH. LAW. 89, 90 (1991). Mr. Murphy is a 31-year-old real estate professional who moved to Alexandria after his third prison sentence for molesting children. Popkin, *supra* note 3, at 65. He boasted to a reporter that he could look out his window located on a busy street and "within five minutes I could do something with a boy. . . . It's that easy." *Id.* Murphy molested more than 200 young boys over the past 18 years in Florida, Ohio, Maryland, England, and Mexico. His behavior ranged from paying 12 and 13-year-olds to undress while he watched, to

national outcry over such offenses.<sup>12</sup> Research shows that the general public overwhelmingly favors keeping sex offenders incarcerated.<sup>13</sup> Additionally, people are willing to pay higher taxes to fund measures which will stem the rising tide of sex crimes against children. However, the majority of these individuals are opposed to paying for treatment.<sup>14</sup>

### B. Sex Offender Profile

It is difficult to discern who is or will become a sex offender<sup>15</sup> because such a person lacks a solid profile.<sup>16</sup> However, there does appear to be some common characteristics among sex offenders. For example, many sex offenders grew up in sexually strict, repres-

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hundreds of encounters which led to oral sex. He used to look for boys at malls and go-cart tracks. Mr. Murphy admits he may never be cured and will always be attracted to young boys, but now tries to steer clear of them. He commented, "I went from constantly living my whole life to molest kids to now living my whole life to not molest kids." *Id.* at 67. To avoid falling back into criminal behavior, he does not leave work when children might be walking to or from school and does not watch television in order to avoid images of young boys. *Id.*

<sup>12</sup> Popkin, *supra* note 3, at 66. For example, California Governor Pete Wilson recently signed a bill that could sentence first-time violent sex offenders to a minimum of 25 years to life imprisonment. *Id.* There is similar rage and fear toward sex offenders in New Jersey. It is the opinion of one New Jersey resident that "child molesters merit the ultimate punishment and rehabilitation is a pathetic joke." Marion Sauter, Letter to the Editor, *How to Protect Society From Sex Offenders*, THE RECORD (Northern N.J.), Aug. 28, 1994, at A25. Moreover, Edison Mayor George Spadaro commented, "I strongly believe that residents should be able to possess information on people who live in their neighborhood who have a propensity to commit sexual offenses." *Sex Offender Registry Close to Approval*, THE RECORD (Northern N.J.), Aug. 26, 1994, at A4.

<sup>13</sup> Mary Ann Kircher, *Registration of Sexual Offenders: Would Washington's Scarlet Letter Approach Benefit Minnesota?*, 13 HAMLINE J. PUB. L. & POL'Y 163 (1992) (citing STAR TRIBUNE/KSTP TV Minnesota Poll, MINNEAPOLIS STAR TRIB., Nov. 12, 1991, at A12-A13). In Minnesota, a poll of 1,101 adults nationwide and 1,041 in Minnesota between August 5-26, 1991 reported that "64% of Minnesotans favor[ed] keeping sexual offenders locked up, and over 50% would either castrate sexual offenders or subject them to impotence drugs such as Depo-provera." *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Ralph Siegel, *Are Sex Offense Bills Too Rushed? Simplistic Laws May Do No Good*, THE RECORD (Northern N.J.), Aug. 18, 1994, at A20. Therapy experts claim sex offenders often do not exhibit deviant behavior on the outside but instead hide perverse fantasies. *Id.*

<sup>16</sup> Popkin, *supra* note 3, at 67. Sex offenders come from all socioeconomic backgrounds. *Id.* Some are single and others are married with children. Siegel, *supra* note 15, at A20. Moreover, contrary to popular misconception, pedophiles are rarely homosexuals. *Id.*

sive environments.<sup>17</sup> In addition, approximately one third were abused as children.<sup>18</sup> Moreover, the stereotype of the sex offender as stranger is inaccurate because most child molesters know their victims.<sup>19</sup>

### C. Sex Offender Treatment

The public outrage over sex crimes has hindered scientists' efforts aimed at better understanding sexual disorders<sup>20</sup> and limited funding has been allotted to sex offender research.<sup>21</sup> As a result, there are few reliable statistics on whether treatment is effective and worthwhile.<sup>22</sup> Studies that have examined whether or not treatment works have been criticized as sloppy and inconsistent.<sup>23</sup> Such strong criticism has triggered more sophisticated, controlled studies,<sup>24</sup> some of which have resulted in optimism about treatment effectiveness.<sup>25</sup> In addition, various approaches to treatment

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<sup>17</sup> Popkin, *supra* note 3, at 67.

<sup>18</sup> *Id.*; see also Becker, *supra* note 5, at 179. According to one study, the average sex offender is male, begins sexually molesting children by age 15, is involved in a variety of deviant behavior, and molests approximately 117 children on average. Ernie Allen, *Missing Children: A Fearful Epidemic*, USA TODAY (Magazine), July 1994, at 46, 48. The study was conducted by Dr. Gene Abel for the National Institute of Mental Health. *Id.*

<sup>19</sup> Popkin, *supra* note 3, at 67. "The child is at greatest risk inside the home," commented Ernie Allen, president of the National Center for Missing and Exploited Children. *Id.* Most child victims are molested by friends and relatives. *Id.*

<sup>20</sup> Goode, *supra* note 11, at 74. Due to the "intensity of the public's moral outrage over sex crimes," some argue that scientists' efforts to gain a better understanding of sexual disorders and to develop effective treatment for them have been impeded. *Id.* Moreover, treatment programs are not popular among the public, which largely favors longer prison time. Finally, although states have implemented treatment programs, often the public demands they be discontinued and replaced with stricter sex offender laws. *Id.*

<sup>21</sup> See Goode, *supra* note 11, at 74. Because government funding agencies are uncomfortable about sexual abnormality research, they have allotted little funding to it as compared to money spent on depression, substance abuse, and anxiety disorders. *Id.* For example, in 1993, the National Institute of Mental Health spent \$1.2 million on sex offender research as compared to \$125.3 million spent on depression. *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* In a 1989 review of sex offender research by psychologist Lita Furby, Ms. Furby concluded that the research was so bad that there was no convincing evidence that treatment was effective. *Id.* See also Becker, *supra* note 5, at 184. Ms. Furby advised, "It is time that we give this issue the resources and attention it deserves." Goode, *supra* note 11, at 74. Moreover, the number of sex offenders enrolled in treatment programs is low; as of 1993, only 13% (11,200 of 85,000 sex offenders) were participating in treatment. *Id.*

<sup>24</sup> Goode, *supra* note 11, at 76.

<sup>25</sup> Becker, *supra* note 5, at 185 (citing J. Marques et al., *Effects of Cognitive-Behavioral*

have been evolving in recent years.<sup>26</sup>

New Jersey's efforts towards treating sex offenders began in 1967 at the Rahway State Prison.<sup>27</sup> In 1976, the Adult Diagnostic and Treatment Center at Avenel (hereinafter "Avenel") opened next to the Rahway State Prison.<sup>28</sup> In 1990, Avenel expanded its number of inmates by two hundred. This expansion reduced the wait for admission from one and one half years to approximately four months.<sup>29</sup> There are, on average, fifty convicted sex offenders on the waiting list and one therapist for every forty-four inmates.<sup>30</sup>

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*Treatment on Sex Offender Recidivism: Preliminary Results of a Longitudinal Study*, 21 CRIM. JUST. & BEHAV. 28 (1994)); Charles Borduin et al., *Multi-Systemic Treatment of Adolescent Sexual Offenders*, 34 INT'L. J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY 105 (1990).

Scott Murphy attends group therapy once a week at the National Institute for the Study, Prevention and Treatment of Sexual Trauma in Baltimore. See Popkin, *supra* note 3, at 67. In addition, he checks in with therapists by telephone during the week. Because he is a recovering alcoholic, he voluntarily submits to urinalysis and is on Depo Lupron, a drug which lowers his testosterone level. Mr. Murphy's therapist believes that he has done well with the combination of drug therapy and psychotherapy and that he presents minimal risk to the community. *Id.*

<sup>26</sup> Goode, *supra* note 11, at 76. Traditional forms of treatment include individual and group therapy, behavior modification, and stress reduction therapy. Individual and group therapy help sex offenders learn to understand their problems. "Behavior modification techniques attempt to shape sexual arousal by association: In 'aversion' therapy, 'deviant' images that the offender finds stimulating . . . are paired with an unpleasant stimulus like ammonia salts." *Id.* In addition, to help sex offenders better adapt to society, therapists conduct training sessions to improve assertiveness and to reduce stress. More recent techniques include relapse prevention therapy where "therapists assist the child molester in identifying the molester's cognitive and behavioral patterns that are precursors to sexual abuse." Becker, *supra* note 5, at 188. Relapse prevention helps the offender learn self-management skills and combines this with assistance and supervision from members of the community, such as probation officers and family members. *Id.*

<sup>27</sup> Jeffrey Gold, *Lawmakers Tour Avenel Center For Sex Offenders, New State Task Force Will Study Treatment*, THE RECORD (Northern, N.J.), Aug. 26, 1994, at A4.

<sup>28</sup> *Id.*

<sup>29</sup> See Gold, *supra* note 27, at A4. The state believed the expansion was necessary due to the growing waiting list. Interview with Edward Martone, American Civil Liberties Union of New Jersey, Newark, N.J. (Feb. 27, 1994). Avenel has an annual budget set at \$21 million. See Gold, *supra* note 27, at A4. The facility houses over 700 men. *Id.* In addition, the state incarcerates three females at Edna Mahan Prison in Clinton, and up to 18 male juvenile offenders at the Pinelands Residential Group Center in Chatsworth, Burlington County. *Id.*

<sup>30</sup> Gold, *supra* note 27, at A4. The state has approved funding for 16 therapists instead of the mandated number of 22. On an August tour of Avenel, Senate President DiFrancesco commented that the facility was in "fine" shape but overcrowded. *Id.*

In addition, three to four percent of inmates at Avenel refuse treatment. Telephone Interview with Patricia Mulcahy, Public Information Officer, N.J. Department

Despite attempts to cure deviant behavior at Avenel, there is some evidence that, upon release, sex offenders re-commit sex crimes.<sup>31</sup>

#### D. Youthful Sex Offenders

Juvenile sex offenders comprise a large percentage of sex offenders,<sup>32</sup> yet they are largely ignored and have few treatment opportunities available to them.<sup>33</sup> Kevin Aquino was one juvenile not accepted into the state's only residential treatment facility for

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of Corrections, Office of Public Information, Newark, N.J. (Mar. 7, 1995). The man who was convicted of murdering Megan Kanka, Jesse Timmendequas, declined to participate in treatment while at Avenel. Michelle Ruess, *Sex-Crime Bills Stir Fear: Homes, Jobs in Jeopardy*, THE RECORD (Northern N.J.), Aug. 30, 1994, at A5.

<sup>31</sup> See Gold, *supra* note 27, at A4. A study of sex offenders treated at Avenel found that 18% were later convicted for another offense. *Id.* However, this is low when compared to other serious offenses in New Jersey. Other than murder, sex offenders have the lowest rate of recidivism. See RELEASE OUTCOME - 1984, A FOLLOW-UP STUDY (N.J. Dept. of Corrections' Office of Policy and Planning In Conjunction With the N.J. Criminal Disposition Commission's Data Committee (1992)); Mulcahy Interview, *supra* note 30.

Moreover, a survey conducted in 1991 of "406 pedophiles and 111 exhibitionists treated at Johns Hopkins Sexual Disorder Clinic in Baltimore showed that about seven percent of the pedophiles had been charged with or convicted of another sexual offense after five years." See Popkin, *supra* note 3, at 66. Some believe this study is scientific evidence that treatment works. See Steven Fromm, *False Security, Megan's Law Misses the Point*, N.J. REP., Nov./Dec. 1994, at 17, 20.

<sup>32</sup> See Becker, *supra* note 5, at 179. One study reports that 60% to 80% of adult offenders committed their first deviant offense as teenagers. *Id.* (citing A. Nicholas Groth et al., *Undetected Recidivism Among Rapists and Child Molesters*, 28 CRIME & DELINQUENCY 450 (1982)). As a result, more programs nationally are focusing on youthful offenders in the hope that future deviant behavior as adults will be prevented. Goode, *supra* note 11, at 76.

<sup>33</sup> Ivette Mendez, *Untreated Juvenile Sex Offenders At Risk of Becoming Adult Criminals*, STAR-LEDGER, Aug. 21, 1994, at 1. In New Jersey, there were 711 juvenile arrests in 1993 for sexual offenses. *Id.* There are, however, only 18 sex offender beds operated by the Division of Juvenile Services at Pinelands Residential Group Center in Burlington County, the state's only residential facility for treating youthful sex offenders. In addition, there are 45 placements in private New Jersey programs. *Megan's Law: Hearings on S.14 and A.84 Before the New Jersey Senate Law and Public Safety Committee*, (1994) (Statement of Julie Turner, New Jersey Ass'n of Children's Residential Facilities). This means that a mere ten percent of juvenile sex offenders are actively receiving residential treatment. *Id.*

Governor Whitman acknowledged the problems of juvenile crime shortly after taking office. Mendez, *supra*, at 17. After directing New Jersey's Advisory Council in Juvenile Justice to develop a plan by the end of 1994, she commented that "[t]he next step is clearly [addressing] the sex offenders." *Id.* In reference to treatment for juvenile sex offenders, Whitman acknowledged, "that's where the emphasis on juvenile intervention becomes much more important." *Id.*

youthful sex offenders for lack of room.<sup>34</sup> Mr. Aquino had formerly been convicted of three sex offenses as a juvenile, spent no time in jail, and subsequently raped and murdered Amanda Wengert.<sup>35</sup>

In response to the juvenile sex offender crisis in New Jersey, policymakers have discussed the possibility of establishing a long-term residential program for youthful offenders.<sup>36</sup> Advocates argue that the state additionally needs to establish facilities for those youths who have been charged with less serious sexual crimes.<sup>37</sup> Although the mental health profession has made progress in developing treatment programs for juveniles on a national level,<sup>38</sup> the wider justice system has done little to educate the community regarding how to respond to and treat youthful sex offenders.<sup>39</sup> Yet, the overall problem of sexual offenses against children has come to the attention of both state and federal government, as is discussed in detail in the following section.

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<sup>34</sup> *Helping Sex Offenders and Protecting the Public*, THE RECORD (Northern N.J.), Mar. 16, 1994, at B6.

<sup>35</sup> *Id.* Aquino was sentenced to one year of probation and counseling after conviction for molesting three children. *Id.* Mr. Aquino's sentence is typical for a youthful sex offender. See Becker, *supra* note 5, at 185. One survey in 1987 reported that 80% of convicted child sex offenders receive sentences of probation and never spend a day in prison. *Id.* (citing B. Smith et al., THE PROBATION RESPONSE TO CHILD SEXUAL ABUSE OFFENDERS: HOW IS IT WORKING? (Chicago, American Bar Association (1990))).

<sup>36</sup> Mendez, *supra* note 33, at 17. These efforts have been spearheaded by prosecutors John O'Reilly and Dennis O'Leary in Warren and Sussex Counties. *Id.* These individuals have held discussions with mental health professionals, lawmakers, and the Attorney General's Office. *Id.* The proposed program would be located at the Warren Acres Detention Center in Mansfield Township, which currently houses 23 juveniles awaiting disposition of their cases or serving their sentences. *Id.*

<sup>37</sup> *Id.* Herbert Whelan, director of the Pinelands Residential Group Center in Burlington County, appears to be one of those advocating for more facilities. *Id.* In addition, Superior Court Judge Harold Hollenbeck of Essex County commented that "[t]he need is [great], we don't know what to do with the offenders." Mendez, *supra* note 33, at 17. Also, Joseph Romesser, a psychologist and director of the Family Guidance Center of Warren County in Washington Township, believes that treatment should be mandatory, should begin immediately, and should be in a residential setting. *Id.*

<sup>38</sup> Becker, *supra* note 5, at 191. Cognitive-behavioral treatment focuses on helping the juvenile offender decrease deviant thoughts, change "maladaptive belief systems," understand the consequences of his behavior, and improve social skills. Multisystemic therapy "helps the offender improve his functioning in a variety of milieus, with emphasis on cognitive processes (changing maladaptive beliefs), family relations, peer relations, and school performance." *Id.*

<sup>39</sup> *Id.* at 192.



### III. Sex Offender Legislation

#### A. Washington State's Response to Sex Offenders

The brutal sexual assault upon a young boy in Washington<sup>40</sup> prompted that state to develop a law addressing sexual predators.<sup>41</sup> Shortly after the attack, the distraught community was further shocked when it learned that the boy's attacker had been released from incarceration even though authorities knew he was still potentially dangerous.<sup>42</sup> In fact, the offender had confided to his cellmate that he continued to fantasize about sexually molesting and murdering children.<sup>43</sup>

In response to the heinous crime, Washington Governor Booth Gardner established a task force to study the issue of protecting the community from future acts of violence by convicted sex offenders.<sup>44</sup> As a result, Washington State passed the Community Protection Act,<sup>45</sup> which requires sex offenders to register with law enforcement officials. In addition, subject to limitation, the state may disclose the information to the public.<sup>46</sup> The Community Protection Act's registration and community notification pro-

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<sup>40</sup> Popkin, *supra* note 3, at 66. Earl Shriner, a released sexual offender, forced a seven year-old boy from his bike. *Id.* Mr. Shriner then raped him, stabbed him, and cut off the boy's penis. *Id.* The boy survived and was able to identify his attacker, who was later convicted of the crime. *Id.*

<sup>41</sup> WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1995). The Community Protection Act requires sex offenders to register and allows for public disclosure in limited circumstances. *Id.*

<sup>42</sup> Popkin, *supra* note 3, at 66.

<sup>43</sup> *Id.*

<sup>44</sup> Jim Simon, *Predator Bill: The Victim's Lobby Wins—A Mother's Outrage Brings Shakeup to Justice System*, SEATTLE TIMES, Feb. 6, 1990, at A1. The Governor's Task Force on Community Protection was headed by King County Prosecutor Norm Maleng and also consisted of crime victims and crime victims' families. *Id.*

<sup>45</sup> WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1995).

<sup>46</sup> *Id.* The legislative history of the Community Protection Act states:

The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW § 9A.44.130.

visions have served as a model for New Jersey's Megan's Law.<sup>47</sup>

More specifically, under the Community Protection Act incarcerated sex offenders must register with law enforcement officials<sup>48</sup> in the county they intend to reside within twenty-four hours of being released.<sup>49</sup> Sex offenders who are not in custody but are under state or local jurisdiction must register within ten days of July 28, 1991.<sup>50</sup> Offenders must provide their name, address, employment address, crime of which they were convicted, aliases used, and social security number.<sup>51</sup>

For those sex offenders moving into Washington State, they must register within thirty days of establishing domicile.<sup>52</sup> If a sex offender changes domicile within Washington, he or she must notify law enforcement within ten days of establishing the new residence.<sup>53</sup> To fulfill the notice requirement, offenders must be notified of their duty to register upon release.<sup>54</sup> Moreover, those convicted sex offenders moving to Washington from outside the

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<sup>47</sup> See Carter, *supra* note 6, at 1, 14. New Jersey's Megan's Law has become one of the most stringent laws in the nation for monitoring convicted sex offenders. *Id.*

<sup>48</sup> WASH. REV. CODE ANN. § 9A.44.130(1) (West Supp. 1995). "Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence." *Id.*

<sup>49</sup> *Id.* § 9A.44.130(3)(a)(i) (West Supp. 1995). This provision applies to "[s]ex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody." *Id.*

<sup>50</sup> *Id.* § 9A.44.130(3)(a)(ii) (West Supp. 1995). This section is entitled, "Sex Offenders Not in Custody but under State or Local Jurisdiction," and states as follows:

Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after Feb. 28, 1990, must register within ten days of July 28, 1991. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the offender of the duty to register or to reregister following a change in residence.

*Id.*

<sup>51</sup> WASH. REV. CODE ANN. § 9A.44.130(2) (West Supp. 1995).

<sup>52</sup> *Id.* § 9A.44.130(3)(a)(iv).

<sup>53</sup> *Id.* § 9A.44.130(4).

<sup>54</sup> *Id.* § 70.48.470. The notice requirement "is entrenched in our concept of due process." Kircher, *supra* note 13, at 170. Washington requires actual knowledge of the duty to register, along with a failure to comply, before a penalty can be imposed. *Id.* (citing *Lambert v. California*, 355 U.S. 225, 229 (1957)).

state must also be notified of the duty to register.<sup>55</sup>

Those convicted of a class A sexual felony<sup>56</sup> may file a petition with the Superior Court to relieve his or her duty to register.<sup>57</sup> The court will relieve such a person of the duty to register only upon a showing by clear and convincing evidence that continued registration will not serve the purposes of the law.<sup>58</sup> For class B sexual felons,<sup>59</sup> the duty to register is relieved if the person has not had any new convictions for fifteen consecutive years after release from confinement.<sup>60</sup> The time period is reduced to ten years for those convicted of a class C felony.<sup>61</sup>

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<sup>55</sup> See WASH. REV. CODE ANN. § 72.09.330(2) (West Supp. 1995), which states as follows:

The department shall provide written notification to an individual convicted of a sex offense from another state of the registration requirements of RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270.

*Id.* "To provide notice to those who may not be under legal authority when they decide to establish residence in Washington from out of state, each individual who renews or applies for a driver's license or identification card is provided with written information regarding the registration of sex offender requirements." Kircher, *supra* note 13, at 170 (citing RCW. 46.20.187.)

<sup>56</sup> Kircher, *supra* note 13, at 169 n.61. Examples of class A felonies are first degree murder, first degree rape, and first degree kidnapping. *Id.*

<sup>57</sup> WASH. REV. CODE ANN. § 9A.44.140(2) to (3) (West Supp. 1995).

<sup>58</sup> *Id.* § 9A.44.140(2) (West Supp. 1995), stating that

[a]ny person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston County. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (3) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

*Id.*

<sup>59</sup> Kircher, *supra* note 13, at 171 n.72. Examples of Washington class B felonies are first degree incest, second degree rape, and second degree statutory rape. *Id.*

<sup>60</sup> WASH. REV. CODE ANN. § 9A.44.140(1)(b) (West Supp. 1995).

<sup>61</sup> WASH. REV. CODE ANN. § 9A.44.140(1)(c) (West Supp. 1995). Examples of Washington class C felonies are: third degree rape, second degree incest, and statutory rape. Kircher, *supra* note 13, at 171 n.73.

One significant difference between Washington's and New Jersey's sex laws is

In addition to the registration provisions, Washington allows the release of the information to the public when necessary.<sup>62</sup> Once a sex offender registers, the determination regarding whether or not to notify the community is governed by individual department policy.<sup>63</sup> Most police departments, however, follow the proposed policy guidelines of the Washington Association of Sheriffs and Police Chiefs to make the determination.<sup>64</sup> The guidelines provide three levels of notification that determine who in the community should be notified about a sex offender's release.<sup>65</sup> The determination is based upon the likelihood that the offender will commit another crime.<sup>66</sup> At the first level, where there is little likelihood an offender will commit another offense, only the police are notified.<sup>67</sup> At the second level, where there is a serious likelihood of re-offense, community groups and school districts are notified.<sup>68</sup> At the third level, where there is the strongest likelihood of re-offense, the public is notified.<sup>69</sup>

Because each agency sets its own policy, approaches to implementing the Community Protection Act have been varied.<sup>70</sup> For example, in Auburn, Washington, the police station directory of sex offenders includes an offender's name, address, and mug shot, and is open to the public.<sup>71</sup> Therefore, the information is accessible to both the media and the public.<sup>72</sup> Other police departments,

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that Washington's law does not have an address verification provision. In contrast, New Jersey has an additional deterrent requiring sex offenders to check in annually and every 90 days in high risk cases. See *infra* notes 119-21 for a discussion of New Jersey's verification provisions.

<sup>62</sup> Kircher, *supra* note 13, at 171 (citing WASH. REV. CODE ANN. § 4.24.550 (West Supp. 1995)).

<sup>63</sup> Kircher, *supra* note 13, at 171; see also Christy Scattarella, *Release of Sex-Offender Data Varies by Jurisdiction*, SEATTLE TIMES, Feb. 20, 1991, at F1.

<sup>64</sup> Jolayne Houtz, *When Do You Unmask A Sexual Predator?* SEATTLE TIMES, Aug. 30, 1990, at B2.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Scattarella, *supra* note 63, at F2. These are the offenders that pose the least threat to the public such as first-time, nonviolent offenders. *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* Usually, level three offenders have a violent history of sex offense and have threatened to strike again. *Id.*

<sup>70</sup> Scattarella, *supra* note 63, at F1.

<sup>71</sup> *Id.* at F2. Similarly, the Mountlake Terrace Police Department in Washington posts sex offender registration information in the station. *Id.*

<sup>72</sup> Kircher, *supra* note 13, at 172; see also Houtz, *supra* note 64, at B2. Mountlake Terrace Police Chief John Turner believes that the policy gives the media "a feeling of

however, have been more conservative and do not allow the community to access the directory.<sup>73</sup>

B. *The Violent Crime Control and Law Enforcement Act of 1994, Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act*

In addition to state initiatives, the federal government has responded to the national outcry against child sex offenders.<sup>74</sup> The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act<sup>75</sup> (hereinafter "Violent Crime Control Act") is part of the thirty million dollar omnibus crime package signed by President Clinton on September 13, 1994.<sup>76</sup> The Violent Crime Control Act requires strict, nationwide registration requirements<sup>77</sup> and allows for release of the information to the commu-

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ownership." Houtz, *supra* note 64, at B2. Also, he believes it protects the department from public criticism where the police do not consider an offender dangerous enough to release the registration information and the offender later commits another sexual offense. *Id.*

<sup>73</sup> Kircher, *supra* note 13, at 172. In Federal Way, Washington, citizens are not allowed to access the information. See Scattarella, *supra* note 63, at F1.

<sup>74</sup> Bleemer, *supra* note 3, at 38.

<sup>75</sup> See Violent Crime Control Act, *supra* note 9, at 2038. See *infra* notes 132-47 and accompanying text for discussion of Megan's Law's compliance with the Violent Crime Control Act.

<sup>76</sup> Carolyn Skorneck, *Crime Law 'Cannot Do the Job Alone'—President Asks Americans to Help*, THE RECORD (Northern N.J.), Sept. 14, 1994, at A1. The crime bill, in addition to the sex offender legislation, bans assault-type weapons, increases the number of federal crimes that are eligible for the death penalty, and provides money to build more prisons and to hire more law enforcement officials. *Id.* Clinton advised that it alone would not be the solution to widespread violence in America. *Id.* At the signing-in ceremony, President Clinton commented that "[o]ur country will not be truly safe again until all Americans take personal responsibility for themselves, their families, and their communities." *Id.*

Under the crime bill, New Jersey will receive \$101 million in prison grants and could receive another \$101 million "if it requires second time violent offenders to serve at least 85% of their sentences." *Id.* at A17. Opponents complained that the crime bill, as a whole, is wasteful. Skorneck, *supra*, at A17. Senate Republican Leader Bob Dole (R-Kansas), an opponent of the crime bill, proposed cutting social programs and enacting tougher criminal penalties instead. Dole commented that "[m]ost Americans understand we didn't just buy a little pork, we bought the whole hog when this bill passed." *Id.* However, Representative Mike Castle, (R-Delaware) is "[a]n absolute believer that in the long run, we are going to prevent crime in the United States." *Id.*

<sup>77</sup> Violent Crime Control Act, *supra* note 9, at 2038. The bill requires the U.S. Attorney General to provide guidelines for registering sex offenders for ten years following their release. Bleemer, *supra* note 3, at 38.

nity when necessary to protect the public.<sup>78</sup> Despite the existence of this federal act, New Jersey legislators were faced with the need to act on their own. Thus, a piece of legislation known as "Megan's Law" was produced.

#### IV. *New Jersey's Megan's Law*<sup>79</sup>

##### A. *Legislative History*

In response to the July, 1994 murder of Megan Kanka, New Jersey lawmakers introduced a half-dozen measures on August 15, 1994 to deal more harshly with sex offenders.<sup>80</sup> New Jersey Assembly Bills 84 and 85 (hereinafter A.84 and A.85), calling for mandatory registration of sex offenders and advance notification to the community upon their release, respectively, were among those proposals.<sup>81</sup> Due to mounting public pressure, New Jersey Assembly Speaker Garabed "Chuck" Haytaian (R-Warren) declared a legislative emergency, thereby moving the bills directly to the New Jersey Assembly floor without first going to legislative committees for scrutiny.<sup>82</sup> Haytaian was criticized by many for circumventing the required political process.<sup>83</sup>

New Jersey Assembly Bill 84 was sponsored by New Jersey State Assemblywoman Joanna Gregory-Scocchi (R-Middlesex), Joan Quigley (D-Hudson), and Assemblyman E. Scott Garrett (R-Sussex). Similar to Washington State's legislation and the federal Vio-

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<sup>78</sup> Violent Crime Control Act, *supra* note 9, at 2042.

<sup>79</sup> Act of Oct. 31, 1994, ch. 128, 1995 N.J. Sess. Law Serv. 526 (*codified at* N.J. STAT. ANN. § 2C:7-6 to 7-11 (West 1994)); Act of Oct. 31, 1994, ch. 133, 1995 N.J. Sess. Law Serv. 538 (*codified at* N.J. STAT. ANN. § 2C:7-1 to 7-5 (West 1994)).

<sup>80</sup> Michelle Ruess, *Megan's Law Moving Fast in Assembly*, THE RECORD (Northern N.J.), Aug. 16, 1994, at A1. The laws were intended to "deal more harshly with sex offenders." *Id.* at A1.

<sup>81</sup> *See id.* The additional proposals included, among others, "minimum mandatory sentences for repeat sex offenders whose victims were 16 or younger," legislation to clarify civil commitment procedures, and the establishment of a commission to study Avenel. *Id.* at A6. *See also supra* note 6 for a description of the package of bills signed into law on October 31, 1994.

<sup>82</sup> Ruess, *supra* note 80, at A6. The introduction of the package did not come until the evening because the Assembly and the Governor spent several hours negotiating specific legislative language. *Id.*

<sup>83</sup> Bleemer, *supra* note 3, at 5. Critics argued that the bills were constitutionally inadequate. *Id.* Specifically, there was concern that the bills were violative of the right to due process and the guarantee against cruel and unusual punishment. *Id.* In addition, critics questioned whether the bills would provide concrete, long-term solutions. *Id.*

lent Crime Control Act, the New Jersey bill provides for the registration of sex offenders.<sup>84</sup> An identical bill, New Jersey Senate Bill 13 (hereinafter S.13), was introduced on September 12, 1994 and was referred to the Senate Law and Public Safety Committee.<sup>85</sup> The bills were subsequently amended on September 26, 1994 by the Senate Law and Public Safety Committee<sup>86</sup> after public hearings.<sup>87</sup> On October 3, 1994, S.13 was substituted by A.84. The Assembly passed A.84 on October 20, 1994 by a vote of 68-0<sup>88</sup> and Governor Whitman signed the bill into law on October 31, 1994.<sup>89</sup>

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<sup>84</sup> A.84 Summary, 206th N.J. Leg., 1st Reg. Sess. (1994) [hereinafter *A.84 Summary*]. The Assembly unanimously passed the bill by a vote of 69-0 on August 29, 1994. Michelle Ruess, *Assembly Approves Megan's Law; Foes Cite 'Public Relations Show,'* THE RECORD (Northern N.J.), Aug. 30, 1994, at A1. On September 12, 1994 the bill was referred to the Senate Law and Public Safety Committee. See *A.84 Summary, supra*, at 1.

<sup>85</sup> S.13 Summary, 206th N.J. Leg., 1st Reg. Sess. (1994) [hereinafter *S.13 Summary*]. S.13 was sponsored by New Jersey State Senators John Matheussen (R-Gloucester) and Richard LaRossa (R-Mercer). *Id.*

<sup>86</sup> See *N.J. Senate Law and Public Safety Committee Substitute to A.84*, 206th N.J. Leg., 1st Reg. Sess. (1994) [hereinafter *A.84 Committee Substitute*]. The essential difference between A.84 as passed by the Assembly and A.84 as released by the Senate Law and Public Safety Committee on Sept. 26, 1994 was the addition of detailed registration provisions. Compare *A.84 Summary with A.84 Committee Substitute*. In the amended version, the Committee expanded the definition of sex offender to conform with the Violent Crime Control Act and include "criminal sexual contact pursuant to N.J.S. 2C:14-3b if the victim is a minor; kidnapping pursuant to N.J.S. 2C:13-1, criminal restraint pursuant to N.J.S. 2C:13-2, or false imprisonment pursuant to N.J.S. 2C:13-3 if the victim is a minor and the offender is not the parent of the victim." *A.84 Committee Substitute*, at 2. In addition, the amended version clarifies who needs to register by adding that a person who is required to register is one "who is under supervision in the community on probation; parole, furlough, work release, or similar program." *Id.*

<sup>87</sup> Interview with Ann Stefane, Senior Counsel, N.J. Senate Law and Public Safety Committee, in Trenton, N.J. (Oct. 3, 1994) [hereinafter *Stefane Interview*]. Those who testified or submitted written testimony in favor of A.84 included Bill Thomas, grandfather of Amanda Wengert; Jane Grall, Assistant Attorney General, New Jersey Office of the Attorney General; Barry Lefkowitz and Howard O'Neill, New Jersey State Lodge FOP; Greg Delozier, New Jersey Association of Realtors; and Lorraine Kalick, New Jersey Police Chiefs. Those in opposition included Richard S. Lehrich, Association of Criminal Defense Lawyers; Edward Martone, American Civil Liberties Union of New Jersey; and Karen Spinner, New Jersey Association of Corrections. The *A.84 Committee Substitute* passed the Senate by a vote of 40-0 on October 3, 1994. See Gray, *supra* note 4, at B6. Senate President DiFrancesco commented that "[t]hese initiatives are designed to close the deficiencies and the leniency in our laws that allow dangerous, even deadly, sexual offenders to threaten our neighborhoods and harm our children." *Id.*

<sup>88</sup> Ivette Mendez, *Sex Offender Measures Go to Governor*, STAR-LEDGER, Oct. 21, 1994, at 1. Some lawmakers abstained rather than cast a negative vote. *Id.* at 1, 18.

<sup>89</sup> Sullivan, *supra* note 6, at B1. As she signed the bills, the governor stated: "It

New Jersey Assembly Bill 85 (hereinafter A.85) was also introduced on August 15, 1994.<sup>90</sup> Like A.84, it moved directly to the Assembly floor without first undergoing committee scrutiny.<sup>91</sup> The bill established community notification provisions concerning the release of sex offenders.<sup>92</sup>

Senators Peter Inverso (R-Mercer) and Gerald Cardinale (R-Bergen) introduced an identical version of the bill, New Jersey Senate Bill 14 (hereinafter S.14), in the Senate on September 12, 1994 and it was immediately referred to the Senate Law and Public Safety Committee.<sup>93</sup> The bills were combined and subsequently amended and released by the Senate Law and Public Safety Committee after public comments<sup>94</sup> on September 26, 1994.<sup>95</sup> S.14

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would be hollow justice if we wrote laws to protect families and communities only to have those laws struck down in the courts. I am confident this package will pass constitutional muster." *Id.*

<sup>90</sup> A.85 Summary, 206th N.J. Leg., 1st Reg. Sess. (1994) [hereinafter A.85 Summary]. See also Ruess, *supra* note 80, at A1. The bill was sponsored by New Jersey State Assemblymen Paul Kramer (R-Mercer) and Michael Arnone (R-Monmouth).

<sup>91</sup> Bleemer, *supra* note 3, at 5.

<sup>92</sup> A.85 Summary, *supra* note 90, at 1. On August 29, 1994, the Assembly unanimously passed the bill by a vote of 71-0. Ruess, *supra* note 80, at A1. The Senate Law and Public Safety Committee began its review of the bill on September 12, 1994. *Id.*

<sup>93</sup> S.14 Summary, 206th N.J. Leg., 1st Reg. Sess. (1994) [hereinafter S.14 Summary].

<sup>94</sup> Stefane Interview, *supra* note 87. The same individuals who testified in favor of and in opposition to A.84 also testified regarding A.85/S.14. *Id.*

<sup>95</sup> See N.J. Senate Law and Public Safety Committee Substitute to S.14, 206th Leg., 1st Reg. Sess. (1994) [hereinafter S.14 Committee Substitute]. The essential difference between A.85 as passed by the Assembly and S.14 as amended and released by the Senate Law and Public Safety Committee is the addition of a three-tiered notification approach patterned after the Community Protection Act in Washington State. Compare A.85 Summary with S.14 Committee Substitute. The S.14 Committee Substitute provides factors that are relevant to the risk of re-offense and creates three levels of notification that are dependant upon the likelihood that the offender will re-offend. The S.14 Committee Substitute also established a notification advisory council to provide recommendations to the Attorney General concerning the notification procedures. S.14 Committee Substitute, *supra*, at 3. S.14, the lead bill, passed the Senate by a vote of 40-0 on October 3, 1994. *Id.*

Two additional pieces of legislation similar to A.84 and S.14 were not enacted into law. They were introduced on August 29, 1994. The first, New Jersey Assembly Bill A.2015, was sponsored by New Jersey State Assemblywoman Turner and Assemblyman Yuhas. A.2015 Summary, 206th N.J. Leg., 1st Reg. Sess. (1994). At the time of its introduction to the Assembly Judiciary, Law and Public Safety Committee, the bill required "public notification upon the release of a sex offender." *Id.* It also required the superintendent of the corrections institution to provide notice to an offender ten days prior to an offender's release, as well as notice to community officials. *Id.*

The second bill introduced on August 29, 1994 was A.2032. A. 2032 Summary, 206th N.J. Leg., 1st Reg. Sess. (1994). The bill was sponsored by New Jersey State



passed the Assembly on October 20, 1994 by a vote of 68-0<sup>96</sup> and Governor Whitman signed that bill into law on October 31, 1994.<sup>97</sup>

### B. *Legislative Intent of Megan's Law*

The outrage that followed the deaths of Megan Kanka, Amanda Wengert,<sup>98</sup> and Divina Genao<sup>99</sup> prompted New Jersey legislators to propose Megan's Law.<sup>100</sup> By declaring a legislative emergency and moving the proposals immediately to the floor, the New Jersey legislature acknowledged that there was an urgent need for more stringent sex offender laws to protect New Jersey's children.<sup>101</sup>

Cognizant of the possibility of passing constitutionally inadequate bills, Governor Christine Todd Whitman asked the New Jersey legislature to proceed with caution.<sup>102</sup> Additionally, Governor Whitman, illustrating her commitment to the new sex offender

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Assemblyman Joseph Malone (R-Burlington/Monmouth/Ocean) and it was introduced to the Assembly Committee on the Judiciary, Law and Public Safety on the same day. The bill required all convicted sex offenders "whose victims were seventeen years of age or under" to register with a central registry. *Id.* at 1. In addition, the bill required the police in the municipality in which the offender resided to notify all persons who lived within one-half mile of the offender. *Id.* at 2.

<sup>96</sup> Mendez, *supra* note 88, at 1.

<sup>97</sup> Sullivan, *supra* note 6, at B1. Ms. Whitman commented, "Let these bills remind us that our work is just beginning. . . . We have to make Megan's Law work. And we must honor the spirit of this legislation by getting to the root causes of the problem—by stressing prevention and early intervention and pursuing education and treatment before tragedy strikes." *Id.* at B6.

<sup>98</sup> See *supra* note 1 discussing Amanda Wengert's death.

<sup>99</sup> See *supra* note 2 discussing Divina Genao's death.

<sup>100</sup> See Gray, *supra* note 4, at B6. Members of Megan's family initiated a statewide campaign for the notification law in particular. Dunstan McNichol, *Whitman Urges Limits on Megan's Law*, THE RECORD (Northern N.J.), Aug. 24, 1994, at A1, A8. Donald Kanka, Megan's uncle, commented, "If the police should know they're there [referring to sex offenders], why shouldn't the parents know?" *Id.* at A8. He continued: "If the perpetrator's in the neighborhood, the parents should have the right to know they're there and to tell their kids." *Id.*

<sup>101</sup> Henry Stern, *Clinton Gets GOP Praise on "Megan's Law"*, THE RECORD (Northern N.J.), Aug. 18, 1994, at A3. Congressman Richard Zimmer (R-12th District) commented: "If Megan Kanka's parents or Amanda Wengert's parents knew, they would have protected their children." *Id.*

<sup>102</sup> Bleemer, *supra* note 3, at 5. Whitman commented that the community should be warned only if the inmate is "really at risk of committing these kinds of offenses again." McNichol, *supra* note 100, at A1. Donald Kanka, however, expressed concern that the notification decision would not be the community's: "Let's not leave it to someone's judgment or opinion." *Id.* at A8.

measures, developed interim procedures in conjunction with the Attorney General's Office prior to the enactment of Megan's Law.<sup>103</sup> The interim procedures, which took effect August 26, 1994, required that county prosecutors be warned ninety days prior to a violent sex offender's release from prison.<sup>104</sup> Critics, however, voiced concern that the legislature had ignored the bills' constitutional and logistical problems because of the attempts to get the measures signed into law quickly.<sup>105</sup>

Ultimately, the notification and registration laws attempted to increase public safety by ensuring that violent sex offenders who are released into the community and who may pose a substantial threat to area children are tracked, and that neighbors will know of their presence.<sup>106</sup> In short, the laws attempt to create a safer environment for children.<sup>107</sup>

### C. *Analysis of Megan's Law*

Megan's Law was modeled after the sex offender registration

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<sup>103</sup> Bleemer, *supra* note 3, at 5. See also Michelle Ruess, *Warning Due on Sex Offenders' Release; State Announces Guidelines*, THE RECORD (Northern N.J.), Aug. 27, 1994, at A1. Governor Whitman, however, warned that the procedures would not ensure neighborhood safety. *Id.* at A6. "Children must be taught not to accept rides or gifts or travel from strangers. Parents, educators, church officials, community leaders, and law enforcement officials must constantly reinforce these messages." *Id.*

<sup>104</sup> Ruess, *supra* note 103, at A1. In addition, under the interim procedures, prosecutors in the county where the sex crime was committed receive a psychological profile of the sex offender and that information is also sent to the prosecutor where the sex offender plans to live. *Id.* at A6.

<sup>105</sup> Bleemer, *supra* note 3, at 5. Critics alleged that the law violated both due process rights and guarantees against cruel and unusual punishment. *Id.* Sen. Kosco, Chairman of the Senate Law and Public Safety Committee, rebuffed such accusations stating that, "I am looking into each piece of legislation as it comes down, not with the intention of how fast we can get it through, or so we can pass it to satisfy the press [and the public]. . . . We want to get them through and to pass constitutional muster and be effective tools." *Id.* Some have criticized the quick passage as being a public relations show. See Ruess, *supra* note 84, at A1. Approximately 12 Assembly members, including Assemblyman Charles Zisa (D-Hackensack) and Assemblywoman Loretta Weinberg (D-Teaneck), declined to vote because of their concerns that the bills were problematic. *Id.* at A5. Assemblyman Zisa observed that "[t]his is a complex problem, and we didn't do it justice." *Id.*

<sup>106</sup> See generally Ruess, *supra* note 84, at A1.

<sup>107</sup> *Id.* Assemblyman Paul R. Kramer (R-Mercer) commented that the effort would let sex offenders know "they're being watched." *Id.* Moreover, Senate President DiFrancesco commented that "[t]hese initiatives are designed to close the deficiencies and the leniency in our laws that allow dangerous, even deadly, sexual offenders to threaten our neighborhoods and harm our children." See Gray, *supra* note 4, at B6.

laws in Washington State.<sup>108</sup> Since its enactment, Megan's Law has become one of the most stringent sex offender laws in the country.<sup>109</sup> The law's registration provision requires an offender who has completed a sentence on certain designated offenses to register with law enforcement.<sup>110</sup> The notification provision authorizes law enforcement to release information when necessary to protect the public.<sup>111</sup> The provisions apply to any person convicted of a sex offense.<sup>112</sup>

The first main provision, the registration requirement, stipu-

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<sup>108</sup> *Id.* See also *supra* notes 40-73 for a discussion of Washington State's laws.

<sup>109</sup> Gray, *supra* note 4, at B6. The law is considered one of the toughest laws in the nation for overseeing sex offenders, primarily because it is retroactive and notification extends to the public anytime authorities believe a sex offender poses a threat to the public. See Carter, *supra* note 6, at 1, 14.

<sup>110</sup> Act of Oct. 31, 1994, ch. 133, 1994 N.J. Sess. Law Serv. 538 (codified at N.J. STAT. ANN. § 2C:7-1 to 7-5 (West 1994)).

<sup>111</sup> Act of Oct. 31, 1994, ch. 128, 1994 N.J. Sess. Law Serv. 526 (codified at N.J. STAT. ANN. § 2C:7-6 to 7-11 (West 1994)).

<sup>112</sup> Act of Oct. 31, 1994, ch. 133, 1994 N.J. Sess. Law Serv. 538-39 (codified at N.J. STAT. ANN. § 2C:7-2(a) (West 1994)). The definitions of sex offenses are enumerated in N.J. STAT. ANN. § 2C: 7-2(b) (West 1994):

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph 2 of subsection c. of N.J.S. 2C:13-1 or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S. 2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S. 2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S. 2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c. 291 (C. 2C:13-6); criminal sexual contact pursuant to N.J.S. 2C:14-3b if the victim is a minor; kidnapping pursuant to N.J.S. 2C:13-1, criminal restraint pursuant to N.J.S. 2C:13-2, or false imprisonment pursuant to N.J.S. 2C:13-3 if the victim is a minor and the offender is not the parent of the victim; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in

lates that any person who is on "probation, parole, furlough, or work release, or other similar program"<sup>113</sup> must register with their local law enforcement agency at the time they are placed under supervision or within 120 days of the effective date of the Act.<sup>114</sup> Those confined in a detention facility must register prior to release.<sup>115</sup> Those moving into New Jersey must register within 120 days of the effective date of the Act or within the first seventy days of residing in the state.<sup>116</sup> Furthermore, if an offender moves within New Jersey, the individual must re-register with law enforcement in the new municipality.<sup>117</sup> The sex offender must give his or

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paragraph (1) of this subsection entered or imposed under the laws of the United States, this state or another state.

*Id.* at 538-39.

<sup>113</sup> *Id.* at 539 (*codified at* N.J. STAT. ANN. § 2C:7-2(c)(1) (West 1994)).

<sup>114</sup> *Id.* (*codified at* N.J. STAT. ANN. § 2C:7-2(c)(1) (West 1994)). N.J. STAT. ANN. § 2C:7-2(c)(1) states that:

A person who is required to register and who is under supervision in the community . . . shall register at the time the person is placed under supervision or no later than 120 days after the effective date of this act, whichever is later, in accordance with procedures established by the Department of Corrections, the Department of Human Services or the Administrative Office of the Courts, whichever is responsible for supervision.

*Id.*

<sup>115</sup> *Id.* at 539 (*codified at* N.J. STAT. ANN. § 2C:7-2(c)(2) (West 1994)). N.J. STAT. ANN. § 2C:7-2(c)(2) states that: "A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release in accordance with procedures established by the Department of Corrections or the Department of Human Services, . . ." *Id.*

<sup>116</sup> Act of Oct. 31, 1994, ch. 133, 1994 N.J. Sess. Law Serv. 539 (*codified at* N.J. STAT. ANN. § 2C:7-2(c)(3) (West 1994)). N.J. STAT. ANN. § 2C:7-2(c)(3) states:

A person moving to or returning to this State from another jurisdiction shall register with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police within 120 days of the effective date of this act or 70 days of first residing in or returning to a municipality in this State, whichever is later.

*Id.*

<sup>117</sup> *Id.* (*codified at* N.J. STAT. ANN. § 2C:7-2(d) (West 1994)). N.J. STAT. ANN. § 2C:7-2(d) states that "[u]pon a change of address, a person shall notify the law enforcement agency with which the person is registered and must re-register with the appropriate law enforcement agency no less than 10 days before he intends to first reside at his new address." *Id.*

The registration provision further stipulates that courts must notify the offender of the obligation to register after sentencing. *Id.* at 540 (*codified at* N.J. STAT. ANN. § 2C:7-3 (West 1994)). See also *Lambert v. California*, 355 U.S. 225, 229 (1957). "Actual knowledge of a duty to register, along with the subsequent failure to comply is necessary before a penalty for non-registration can be imposed." *Id.*

her "name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, address of any current temporary residence, [and] date and place of employment."<sup>118</sup>

With regard to address verification, those offenders whose conduct is "characterized by a pattern of repetitive, compulsive behavior"<sup>119</sup> must verify their addresses every ninety days.<sup>120</sup> All other offenders must verify their addresses annually.<sup>121</sup> Offenders can petition the court to terminate the registration requirement upon a showing that they have not committed another offense within fifteen years following release.<sup>122</sup>

After registration, the registering agency forwards the information to the County Prosecutor in the County where the sex offender was prosecuted. The Prosecutor then forwards it to the Superintendent of State Police to be included in a central regis-

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Moreover, the Department of Corrections, the Administrative Office of the Courts, and the Department of Human Services must establish procedures to notify offenders under their supervision of the duty to register. Act of Oct. 31, 1994, ch. 133, N.J. Sess. Law Serv. 540 (*codified at* N.J. STAT. ANN. § 2C:7-3(2) (West 1994)). The Division of Motor Vehicles will provide notice of the registration requirement to any person applying for a driver's license or an identification card. *Id.* (*codified at* N.J. STAT. ANN. § 2C:7-3(3) (West 1994)).

<sup>118</sup> *Id.* at 540 (*codified at* N.J. STAT. ANN. § 2C:7-4 (b)(1) (West 1994)).

<sup>119</sup> *Id.* at 538 (*codified at* N.J. STAT. ANN. § 2C:7-2(b)(1) (West 1994)).

<sup>120</sup> *Id.* at 539 (*codified at* N.J. STAT. ANN. § 2C:7-2(e) (West 1994)). N.J. STAT. ANN. § 2C:7-2(e) states: "A person required to register under paragraph (1) of subsection b. of this section or under paragraph (3) of subsection b. due to a sentence imposed on the basis of criteria similar to the criteria set forth in paragraph (1) of subsection b. shall verify his address with the appropriate law enforcement agency every 90 days in a manner prescribed by the Attorney General." *Id.*

<sup>121</sup> See Act of Oct. 31, 1994, ch. 133, N.J. Sess. Law Serv. 539 (*codified at* N.J. STAT. ANN. § 2C:7-2(e) (West 1994)). N.J. STAT. ANN. § 2C:7-2(e) states: "A person required to register under paragraph (2) of subsection b. of this section or under paragraph (3) of subsection b. on the basis of a conviction for an offense similar to an offense enumerated in paragraph (2) of subsection b. shall verify his address annually in a manner prescribed by the Attorney General." *Id.*

<sup>122</sup> *Id.* at 539-40 (*codified at* N.J. STAT. ANN. § 2C:7-2(f) (West 1994)). N.J. STAT. ANN. § 2C:7-2(f) states that:

A person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

*Id.*

try.<sup>123</sup> The Prosecutor also forwards the information to the County Prosecutor of the county in which the offender intends to reside if different from the place of prosecution.<sup>124</sup> Lastly, the Superintendent transmits the information to the Federal Bureau of Investigation.<sup>125</sup>

Finally, because the notification provision set forth in the community notification statute allows for release of necessary and relevant information to the public, the registration statute provides immunity for public officials and the general public from civil liability for failure to release information that is later found to have been "relevant and necessary."<sup>126</sup> However, this immunity does not apply to officials who are found to have acted "with gross negligence or in bad faith."<sup>127</sup>

The second main provision of Megan's Law establishes a system for community notification. Under the system, the Prosecutor of the county in which the sex offender intends to reside, in consultation with the Prosecutor of the county in which the sex offender was convicted, must consider the registration information and determine whether the sex offender poses a threat of re-offense.<sup>128</sup> Specifically, the two offices make a determination as to whether the sex offender poses a low, moderate, or high risk of

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<sup>123</sup> *Id.* at 540 (*codified at* N.J. STAT. ANN. § 2C:7-4(c)-(d) (West 1994)). N.J. STAT. ANN. § 2C:7-4(c) (West 1994) states:

Within three days of receipt of a registration pursuant to subsection c. of section 2 of this act, the registering agency shall forward the statement and any other required information to the prosecutor who shall, as soon as practicable, transmit the form of registration to the Superintendent of State Police, and, if the registrant will reside in a different county, to the prosecutor of the county in which the person will reside. The prosecutor of the county in which the person will reside shall transmit the form of registration to the law enforcement agency responsible for the municipality in which the person will reside and other appropriate law enforcement agencies.

Act of Oct. 31, 1994, ch. 133, N.J. Sess. Law Serv. 540 (*codified at* N.J. Stat. Ann. § 2C:7-4(d) (West 1994)). N.J. STAT. ANN. § 2C:7-4(d) states: "The Superintendent of State Police shall maintain a central registry of registrations provided pursuant to this act." *Id.*

<sup>124</sup> *Id.* (*codified at* N.J. STAT. ANN. § 2C:7-4(c) (West 1994)).

<sup>125</sup> *Id.* (*codified at* N.J. STAT. ANN. § 2C:7-4(c) (West 1994)). "The superintendent shall promptly transmit the conviction data and fingerprints to the Federal Bureau of Investigation." *Id.*

<sup>126</sup> *Id.* at 541 (*codified at* N.J. STAT. ANN. § 2C:7-5(b) (West 1994)).

<sup>127</sup> *Id.* (*codified at* N.J. STAT. ANN. § 2C:7-5(b) (West 1994)).

<sup>128</sup> Act of October 31, 1994, ch. 128, 1994 N.J. Sess. Law Serv. 526 (*codified at* N.J.

committing another crime.<sup>129</sup>

The Prosecutors must consider statutory factors in making their determination, as well as factors listed in the Attorney General's guidelines.<sup>130</sup> Each of the levels has a different notification provision. If the risk of re-offense is low, the prosecutor must notify police officials who are likely to encounter the sex offender; if the risk of re-offense is moderate, the Prosecutor and police must notify child care centers, schools, summer camps, and groups which work with children and battered women; and if the risk of re-offense is high, law enforcement must notify members of the public who are likely to encounter the sex offender.<sup>131</sup>

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STAT. ANN. § 2C:7-6 to 7-11 (West 1994)). N.J. STAT. ANN. § 2C:7-6(1) (West 1994) states:

Within 45 days after receiving notification . . . that an inmate convicted of or adjudicated delinquent for a sex offense . . . is to be released from incarceration and after receipt of registration as required therein, the chief law enforcement officer of the municipality where the inmate intends to reside shall provide notification in accordance with the provisions of section 3 of this act of that inmate's release to the community. If the municipality does not have a police force, the Superintendent of State Police shall provide notification.

*Id.*

<sup>129</sup> *Id.* at 527 (codified at N.J. STAT. ANN. § 2C:7-8(c) (West 1994)). The three-tiered system was modeled after the Washington Association of Sheriffs and Police Chiefs proposed policy guidelines. See generally Houtz, *supra* note 64, at B2.

<sup>130</sup> Act of Oct. 31, 1994, ch. 128, 1994 N.J. Sess. Law Serv. 526-527 (codified at N.J. STAT. ANN. § 2C:7-8(3) (West 1994)). N.J. STAT. ANN. § 2C:7-8(3) lists the factors which are relevant to risk of re-offense. The factors include release conditions which minimize the chance of re-offense, such as whether the offender is receiving therapy, is on probation or parole, or is living in a home with supervision. *Id.* Also, physical conditions that minimize the risk of re-offense such as age or illness are considered. Criminal history factors that would indicate high risk of re-offense include both a history of compulsive, repetitive behavior and committing an offense against a child. *Id.* Other factors include the use of a weapon, the relationship between the victim and the offender, the risk of recidivism based upon psychiatric profiles, response to treatment, and recent threats made or an intent to commit more crime. *Id.*

<sup>131</sup> *Id.* at 527 (codified at N.J. STAT. ANN. § 2C:7-8(c) (1) to (3)). See also New Jersey Office of the Attorney General, *Attorney General's Guidelines for Law Enforcement for Notification to Local Officials and/or the Community of the Entry of a Sex Offender into the Community*. When the risk of re-offense is moderate or high, the notification form must include the sex offender's name, description, offense, address, place of employment, and vehicle and license plate number. *Id.* at 12. Also, all notifications must include a warning as to criminal sanctions which will be imposed for any acts of vigilantism. *Id.* at 12-13.

The New Jersey Office of the Attorney General was required to develop guidelines and procedures by the end of 1994 after consultation with an advisory council. Act of Oct. 31, 1994, ch. 128, 1994 N.J. Sess. Law. Serv. at 527 (codified at N.J. STAT.

### E. Does Megan's Law Comply with the Violent Crime Control Act?

All state programs must comply with the Violent Crime Control Act,<sup>132</sup> or the federal government will withhold a share of the state's federal law enforcement funds.<sup>133</sup> On its face, Megan's Law does comply with the provisions of the Violent Crime Control Act.<sup>134</sup> The Violent Crime Control Act requires sex offenders released from prison or placed under supervision to register with a designated law enforcement agency.<sup>135</sup> It places the burden to in-

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ANN. § 2C:7-11 (West 1994)). The advisory council was to include "12 persons, who by experience or training, have a personal interest or professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole, public education or community relations." *Id.* Megan Kanka's mother and Amanda Wengert's mother were chosen for the panel. Ivette Mendez, *Megan's Law Panel Begins Work on Rules*, STAR-LEDGER, Nov. 29, 1994, at 1.

<sup>132</sup> See Violent Crime Control Act, *supra* note 9, at 2038. The Violent Crime Control Act applies to: 1) sex offenders who commit crimes against minors or who have been convicted of a sexually violent offense; and 2) to sexually violent predators. *Id.* Committing a crime against a minor consists of

- (i) [k]idnapping of a minor, except by a parent;
- (ii) false imprisonment of a minor, except by a parent;
- (iii) criminal sexual conduct towards a minor;
- (iv) solicitation of a minor to engage in sexual conduct;
- (v) use of a minor in a sexual performance;
- (vi) solicitation of a minor to practice prostitution;
- (vii) any conduct that by its nature is a sexual offense against a minor; or
- (viii) an attempt to commit an offense described in any of the clauses (i) through (vii).

*Id.* at 2039.

A "sexually violent offense" consists of

[a]ny criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State Criminal Code).

*Id.* at 2039. A "sexually violent predator" is a person "who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses." *Id.*

<sup>133</sup> J. Scott Orr, *Justice Department Files Brief Defending Constitutionality of Megan's Law*, STAR-LEDGER, Feb. 17, 1995, at 15.

<sup>134</sup> Stefane Interview, *supra* note 87. New Jersey Assistant Attorney General Jane Grall, an instrumental figure in the drafting of the sex offender legislation, testified during the Senate Law and Public Safety Committee hearings on September 26, 1994 that the New Jersey bills were in compliance with the federal legislation. *Id.*

<sup>135</sup> See Violent Crime Control Act, *supra* note 9, at 2038. The statute requires:

- (A) A person who is convicted of a criminal offense against a victim who is



form offenders of their duty to register on the court or on prison officials.<sup>136</sup> Officials must collect "the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person."<sup>137</sup> A state must collect fingerprints and pictures of registrants.<sup>138</sup> The information is then transferred to the appropriate state law enforcement agency designated for central filing and to the Federal Bureau of Investigation.<sup>139</sup> This transfer of information requirement is similar to that found in Megan's Law.<sup>140</sup>

The Violent Crime Control Act, like Megan's Law, requires most sex offenders to verify their addresses annually, and more dangerous sex offenders must do so every ninety days.<sup>141</sup> Under the Violent Crime Control Act, those convicted of a criminal offense against a victim who is a minor or those convicted of a second violent offense must comply with the registration requirements for ten years.<sup>142</sup> For sexually violent predators, the registration re-

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a minor or who is convicted of a sexually violent offense to register a current address with a designated State law enforcement agency for the time period specified in subparagraph (A) of subsection (b)(6); and (B) a person who is a sexually violent predator to register a current address with a designated State law enforcement agency unless such requirement is terminated under subparagraph (b) of subsection (b)(6).

*Id.* See *supra* notes 105-07 for similar requirements in Megan's Law.

<sup>136</sup> See Violent Crime Control Act, *supra* note 9, at 2040.

<sup>137</sup> *Id.* at 2040.

<sup>138</sup> *Id.* Megan's Law does not require a photograph of the offender upon registration. See *supra* note 117 for full list of information which must be provided upon registration.

<sup>139</sup> See Violent Crime Control Act, *supra* note 9, at 2040, which states in part as follows:

The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

*Id.*

<sup>140</sup> See *supra* notes 122-25 for the equivalent requirements in Megan's Law.

<sup>141</sup> See Violent Crime Control Act, *supra* note 9, at 2040. See *supra* notes 119-21 and accompanying text for description of Megan's Law verification requirements.

<sup>142</sup> See Violent Crime Control Act, *supra* note 9, at 2041.

quirement terminates upon a determination that the offender no longer suffers from a personality disorder.<sup>143</sup> Offenders who fail to register will be subject to criminal sanctions under both the Violent Crime Control Act and Megan's Law.<sup>144</sup>

The bills differ somewhat, however, with respect to their approach to notification. On the one hand, the Violent Crime Control Act permits the release of information that is necessary to protect the public.<sup>145</sup> On the other hand, Megan's Law does the same, but additionally adopts a three-tiered system to determine whether an offender is at risk for re-committing a crime.<sup>146</sup> Therefore, the federal legislation does not provide as much guidance as Megan's Law regarding when to notify the community.<sup>147</sup>

## V. Criticism of Sex Offender Measures

Critics argue that sex offender registration and notification

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<sup>143</sup> *Id.* A sexually violent predator must register until there is a showing that "the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense." *Id.* In New Jersey, offenders may apply to the court for termination of their duty to register upon a showing that they have not committed another offense within 15 years of their release. See *supra* note 122 and accompanying text for a discussion of New Jersey's termination provisions.

<sup>144</sup> See Violent Crime Control Act, *supra* note 9, at 2041; Act of Oct. 31, 1994, ch. 133, 1994 N.J. Sess. Law Serv. 538 (codified at N.J. STAT. ANN. § 2c:7-2(1) (West 1994)).

<sup>145</sup> See Violent Crime and Control Act, *supra* note 9, at 2042, stating:  
[T]he designated state law enforcement agency and any local law enforcement agency authorized by the State agency may release information that is necessary to protect the public concerning a specified person required to register under this section. . . .

*Id.*

<sup>146</sup> See Act of Oct. 31, 1994, ch. 128, 1994 N.J. Sess. Laws 526 (codified in N.J. STAT. ANN. § 2C:7-8(3) (West 1994)).

<sup>147</sup> See McNichol, *supra* note 100, at A8. Governor Whitman was initially critical of the federal legislation for this reason. *Id.* Whitman was an advocate for placing some limits on public notification and strongly favored the notification provisions found in Washington's Community Protection Act. *Id.* at A1. Whitman commented: "It becomes much more complicated than just saying any kind of sexual offender is going to be subject to this kind of notification. . . . What kind of definition can you put in that will enable you to pinpoint the people who are really at risk of committing these kinds of offenses again?" *Id.* at A8. Whitman was also concerned that notifying the community of the release of a sex offender might force sex offenders to become transient and more difficult to track. *Id.* Additionally, she was concerned that notifying the community about every person would cause vigilante violence. Michelle Ruess, *Senate Expected to Limit Megan's Law*, THE RECORD (Northern N.J.), Sept. 13, 1994, at A1, A9.

provisions currently in place in the United States are failing.<sup>148</sup> Reports have shown that those offenders convicted of serious sex crimes often do not comply with their duty to register.<sup>149</sup> Furthermore, police departments do not have the resources to track and prosecute them for failure to comply.<sup>150</sup> Also, some individuals have resorted to vigilantism after their communities were notified of the presence of a sex offender.<sup>151</sup> Finally, there is a concern that registration and notification provisions create a false sense of security and ultimately cause more harm than good because of the likelihood that offenders will resort to criminal behavior if unable to find housing and employment.<sup>152</sup>

#### A. *Failure to Register and Lack of Resources*

An eight-month report on registrants in the Washington system revealed that fifty-seven percent of adult offenders had registered.<sup>153</sup> A follow-up study, conducted one year after enactment, reported that seventy percent of Washington's juvenile sex offenders had registered.<sup>154</sup> A sixteen-month study reported that nearly 4,000 convicted sex offenders had registered.<sup>155</sup> Like Washington, the number of sex offenders who registered in California is also fairly low.<sup>156</sup>

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<sup>148</sup> Marla Williams, *Where Are Sex Offenders—Authorities Say They Lack Resources to Track Them Down*, SEATTLE TIMES, Aug. 30, 1990, at A1. In Washington State, a large number of offenders have not complied with the statute requiring convicted sex offenders to register with police. *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Popkin, *supra* note 3, at 73. See also Kenneth Reich, *Sex Offender Legislation Not Working*, L.A. TIMES, Aug. 8, 1986, at 6; see also *infra* notes 160-69 and accompanying text.

<sup>152</sup> Ovetta Wiggins, *Town Considers Tracking Convicts; Critics Cite False Sense of Security*, THE RECORD (Northern N.J.) Sept. 13, 1994, at D1, D2.

<sup>153</sup> Tomas Guillen, *Thousands of Sex Offenders Now Register—Data Survey Finds 73% Compliance By Those In Most Serious Cases*, SEATTLE TIMES, July 7, 1991, at B3. Commenting on the sex offenders who had not complied, Sgt. Dwight Chamberlain of the King County Police Special Assault Unit said: "We know they're out there, somewhere, because the Department of Corrections sends us bulletins . . . and if we had additional resources we would be out there tracking them down. As it is, just getting a profile worked up on the ones that do come in is sometimes a strain, given the workload here." Williams, *supra* note 148, at A1.

<sup>154</sup> See Guillen, *supra* note 153, at B3.

<sup>155</sup> *Id.*

<sup>156</sup> Reich, *supra* note 151, at 6. California has a 40-year-old law requiring registration for life for a variety of sex offenses. *Id.* In 1986, authorities reported that only

Although the increase in the number of offenders complying with registration requirements in Washington is encouraging, there remains a chronic lack of resources in police departments that hinders law enforcement from effectively tracking those who have not registered.<sup>157</sup> It appears that police are faced with the difficult decision of whether to investigate a crime or to try and track down a person who has failed to register.<sup>158</sup> For example, as of June 1991, in King County, Washington only six of the sex offenders who failed to register were referred to prosecutors for possible charges.<sup>159</sup>

### B. *Harassment/Vigilantism*

In addition to insufficient resources to track offenders, notification has resulted in vigilantism.<sup>160</sup> For example, after the Lynnwood, Washington Sheriff's Department notified residents that, upon release, child rapist Joseph Gallardo would be moving into their neighborhood,<sup>161</sup> his house was set on fire.<sup>162</sup> Furthermore, in Detroit, a community forced a man who, in the mid-1970s

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50% of California offenders actually register. *Id.* at 26. The Attorney General's office, in particular, backed by some police officers, questioned whether the lists of registrants were useful enough to justify the cost and effort needed to compile them. *Id.* Officials complained that thousands do not register and those that do register do not notify police when they move. *Id.* at 6. Although not confirmed, in a 1984 investigation in Bernadino County, it was alleged that 90% of 4,400 registrants whose names were used in an investigation were not at the address listed. *Id.* at 26.

<sup>157</sup> Williams, *supra* note 148, at A16. In Pierce County, the police department reported being overwhelmed by the number of individuals reporting in to register. *Id.* Officials complained that the state did not provide costs for additional personnel. *Id.*

<sup>158</sup> *Id.* Sgt. Chamberlain commented that: "A lot of times, it gets down to a question of, do we try to solve a crime or try to find some guy that hasn't registered? . . . And as valuable as I think the sex offender registry is, my answer has to be, stay on the case." *Id.* at A6.

<sup>159</sup> Guillen, *supra* note 153, at B3. Dan Donohue, King County Prosecutor's Office, told the Seattle Times that in one such case, charges were filed against a man in his mid-twenties who pled guilty to failure to register and he was sentenced to 30 days in jail. In the other cases, charges were dropped because investigators could not prove the individuals were living in King County. *Id.*

<sup>160</sup> Popkin, *supra* note 3, at 73. See also *infra* note 241 and accompanying text for discussion of an incident of vigilantism in New Jersey.

<sup>161</sup> Popkin, *supra* note 3, at 73. The department handed out fliers with Gallardo's picture, warning of his deviant fantasies. *Id.*

<sup>162</sup> *Id.* Stephen Bright of the Southern Center for Human Rights commented: "When things like that happen, you jeopardize the ability of the person to ever readjust to community life." Jill Smolove, *Not in My Backyard*, TIME, Sept. 5, 1994, at 59. Such a reaction "enhances the chance they'll return to crime." *Id.*

was convicted of gross indecency, to move out after signs were posted outside of his house.<sup>163</sup> His home was later ransacked and flooded, and his whereabouts are currently unknown.<sup>164</sup> In addition, mayhem resulted when the Mountlake Terrace Police Department in Washington called a press conference to announce the release of a sex offender.<sup>165</sup> As a result of the press release, the state police received a number of phone calls from concerned community members, parents kept their children indoors, and the school district erected fences. Fears were not calmed until the offender became a candidate for civil commitment.<sup>166</sup>

In addition to direct acts of vigilantism, parole officials have difficulty placing parolee sex offenders in communities after residents are notified of the sex offender's pending move.<sup>167</sup> Although these parolees have completed their prison terms, many are forced to remain in prison while officials seek a suitable living environment for them.<sup>168</sup> Often, parole officials will attempt to place parolees with family members. When word spreads that the parolee is moving into the community, however, neighbors have become outraged and family members then change their minds.<sup>169</sup>

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<sup>163</sup> Popkin, *supra* note 3, at 73. The signs read, "School Kids! Watch Out!" and "Child Molester Lives Here" even though the man denied "having molested children and local papers at the time had confirmed only that he was convicted of gross indecency in 1975." *Id.*

<sup>164</sup> *Id.* "The most distressing thing of all is that the cycle of fear—heinous crime followed by panic and possible harm to people wrongfully accused of being predators—will play out indefinitely until there is a better understanding of what causes offenders' obsessions." *Id.*

<sup>165</sup> Kircher, *supra* note 13, at 172; see also Barry Siegal, *Locking up 'Sexual Predators'; A Public Outcry in Washington State Targeted Repeat Violent Sex Criminals, A New Preventive Law Would Keep them in Jail Indefinitely*, L.A. TIMES, May 10, 1990, at A1. The offender, while in custody, wrote plans to kidnap and molest children. *Id.*

<sup>166</sup> Kircher, *supra* note 13, at 172. See also WASH. REV. CODE ANN. § 71.09.010-120 (West Supp. 1995). This statute provides the grounds and procedures for the indefinite civil commitment of a convicted sexual predator to prevent that individual from reentering into the community after serving a sentence where prior attempts at rehabilitation have failed. *Id.*

<sup>167</sup> Janny Scott, *Sex Offender Due for Parole, But No Place Will Have Him*, N.Y. TIMES, Sept. 19, 1994, at A1, B7.

<sup>168</sup> *Id.* at B7.

<sup>169</sup> *Id.* at A1. Carl DeFlumer's case is illustrative of this problem. *Id.* Mr. DeFlumer, at age 14, was convicted of killing a child and of sodomizing another child 29 years later. *Id.* The New York Division of Parole attempted to place him with his sister but when the neighbors found out that he was moving in, the community was both alarmed and outraged. *Id.* When Mr. DeFlumer's sister heard what the neighbors were saying, she rescinded her offer to house her brother. *Id.*

### C. *A False Sense of Security*

Some critics believe that registration and notification provisions, though well-intentioned, do nothing more than create a false sense of security.<sup>170</sup> Such critics base this belief on the fact that community notification provisions allow officials to alert neighbors in one community but do not allow for notification of people in the next town, leaving those residents uninformed.<sup>171</sup> In addition, the law does little proactively to prevent a sex offender from committing a crime.

### D. *Potential Increase in Crime*

Critics have argued that Megan's Law will not permit criminals to reintegrate into society but will, instead, due to the stress surrounding dissemination of registration information, cause them to relapse and revert to criminal behavior.<sup>172</sup> According to this theory, sex offenders will be unable to retain new employment or housing due to disdain and fear of them. Thus, because they will

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Finally, a New Jersey sex offender, after serving a sentence for assaulting a ten-year-old girl, was driven out of four towns before parole officials finally found him a place to live. Fromm, *supra* note 31, at 20.

<sup>170</sup> See Wiggins, *supra* note 152, at D1, D2. Edward Martone of the American Civil Liberties Union of New Jersey commented that: "To think that the government is going to watch over me, it's not going to happen. . . . This is just an extension of the reckless public policy used in tracking sex offenders." *Id.* Moreover, a convicted sex offender who asked not to be identified, commented that "[f]or [lawmakers] to lead people to believe that public notification and registration are going to make them safer is a lie. . . . The man who is still repetitive and compulsive in his desire . . . is still going to commit that crime." Michelle Ruess, *Offenders Fear Vigilantism, Say Megan's Law Would Do More Harm Than Good*, THE SUNDAY RECORD (Northern N.J.), Sept. 18, 1994, at A4.

<sup>171</sup> *Stopping Sex Offenders Will Take More Money*, THE RECORD (Northern N.J.), Aug. 26, 1994, at B6. Without added safeguards such as longer prison sentences and greater access to therapy and medication, "a notification law simply passes the buck. It gives the community an unreliable means of protecting its children, and it does nothing to ensure that a sexual predator will not strike again." *Id.*

<sup>172</sup> Popkin, *supra* note 3, at 67-68. Scott Murphy, mentioned *supra* note 11, believes that community notification would set him back. He commented, "I'm the scum of the earth. If everyone in the community knows, I'll feel worse about myself. And the reason people reoffend is that they don't feel good about themselves." Popkin, *supra* note 3, at 67-68. He also commented that the law would not help those who are still dangerous: "If you told everyone in my community that I was a pedophile, I would hide out. Sure, everyone in my community would know. But do you think I would go home at night? No. I would go to some other part of town where no one knew who I was." *Id.* at 68.

have no income and no permanent home, the sex offender may resort to criminal activity.<sup>173</sup> Another potential issue regarding legislation such as Megan's Law is its constitutionality, which will be discussed in the following sections.

## VI. *Constitutionality of Sex Offender Notification and Registration Provisions: State v. Ward*<sup>174</sup>

Both registration and notification statutes have been facing legal challenges throughout the country.<sup>175</sup> Registration statutes routinely have been upheld in Alaska, Arizona, Illinois, New Hampshire, and Washington.<sup>176</sup> Meanwhile, a California court has struck down a similar registration statute because it applied even to the most minor of sex offenders.<sup>177</sup> On the other hand, community notification statutes have been struck down as unconstitutional in Louisiana<sup>178</sup> and Alaska.<sup>179</sup> The only state that has upheld both a

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<sup>173</sup> See Barry Meier, 'Sexual Predators' Finding Sentence May Last Past Jail, N.Y. TIMES, Feb. 27, 1995, at A1, B8. See also Jason Gottlieb, *Megan Ill-Served by Assembly*, THE RECORD (Northern N.J.), Sept. 6, 1994, at B9. The author noted that in addition to the possibility of the offender reverting to criminal behavior, the law is inconsistent in notifying the community of the presence of sex offenders but not of the presence of other violent criminals such as murderers. *Id.*

<sup>174</sup> 869 P.2d 1062 (Wash. 1994).

<sup>175</sup> See Sullivan, *supra* note 6, at B1. The statutes have been challenged based upon violation of the prohibition against *ex post facto* laws; violations of due process and equal protection rights; violation of cruel and unusual punishment; and violation of the right to privacy. See *infra* notes 176-79 and accompanying text for discussion of cases that have challenged sex offender registration statutes. Edward Martone, Executive Director of the American Civil Liberties Union of New Jersey, commented that Megan's Law is "more symbolic than substantial," and that the retroactive nature of the registry is open to constitutional challenge. See Sullivan, *supra* note 6, at B1. Moreover, John S. Furlong, a lawyer from West Trenton who works with sex offenders, commented that he planned to challenge the registry law because it applies to those offenders who were convicted before the law was enacted. *Id.* at B6. See also *infra* note 226 discussing one of Mr. Furlong's challenges to Megan's Law.

<sup>176</sup> *Rowe v. Burton*, No. A. 94-206 (D. Alaska July 27, 1994); *State v. Noble*, 829 P.2d 1217, 1224 (Ariz. 1992); *People v. Adams*, 581 N.E.2d 637, 641 (Ill. 1991); *State v. Costello* 643 A.2d 531, 534 (N.H. 1994); *State v. Ward*, 869 P.2d 1062, 1077 (Wash. 1994).

<sup>177</sup> *In re Reed*, 663 P.2d 216, 222 (Cal. 1983). In this case, the petitioner was convicted of soliciting "lewd or dissolute conduct" from an undercover officer in a public restroom. *Id.* at 216. The individual was subsequently required to register as a sex offender. *Id.* The California Supreme Court held that mandatory registration of a sex offender convicted under misdemeanor disorderly conduct was violative of the California constitution's cruel and unusual punishment provision. *Id.* at 222.

<sup>178</sup> See *Louisiana v. Babin*, 637 So.2d 814, 824 (Ct. App. La. 1994). In *Babin*, the Louisiana Court of Appeals held that a sex offender's condition of probation mandat-

registration and notification statute is Washington.<sup>180</sup>

In *State v. Ward*,<sup>181</sup> two sex offenders asserted that Washington's sex offender registration statute<sup>182</sup> violated the prohibition against *ex post facto* laws.<sup>183</sup> One of the petitioners also asserted that the statute was an unconstitutional violation of the due process<sup>184</sup> and equal protection<sup>185</sup> clauses of the federal and state constitutions.<sup>186</sup> The Supreme Court of Washington held, based upon the statute's legislative history and intent, that the Washington statute was regulatory and not punitive in nature and thus did not violate the prohibition against *ex post facto* laws.<sup>187</sup> In addition, the court held that the statute was constitutional under the equal protection and due process clauses.<sup>188</sup>

Petitioners in *Ward* first argued that the statute violated the prohibition against *ex post facto* laws because their legal duty to register as sex offenders had not yet been enacted at the time their

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ing public notification was violative of the *ex post facto* clauses of both the United States and Louisiana constitutions because the statute had not been enacted at the time of the commission of the crime. *Id.*

<sup>179</sup> *Rowe v. Burton*, No. A. 94-206 (D. Alaska July 27, 1994). In the context of a request for a preliminary injunction, the District Court of Alaska concluded that plaintiff had a meritorious claim that the public dissemination provision in the Alaska Registration Act was punitive and violative of the *ex post facto* clause of the United States Constitution. *Id.* at 16-17.

<sup>180</sup> *State v. Ward*, 869 P.2d 1062, 1074 (1994). The Washington Supreme Court held that the statute was not punishment and was constitutional under the *ex post facto* clauses of the United States and Washington constitutions. *Id.* at 1074. Because the Washington law places limits on whether a state agency may disclose information, *see infra* note 202, only four to five percent of the 7,000 sex offenders in Washington are subject to the public notification provisions. Carter, *supra* note 6, at 1, 14.

<sup>181</sup> 869 P.2d at 1062.

<sup>182</sup> WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1995).

<sup>183</sup> *Ward*, 869 P.2d at 1066; U.S. CONST. art. I, § 10. The United States Constitution prohibits Congress and the state legislatures from passing any law that alters the treatment of a person under the law retroactively. BLACK'S LAW DICTIONARY 580 (6th ed. 1990).

<sup>184</sup> *Ward*, 869 P.2d at 1066; U.S. CONST. amends. V, XIV. The Due Process clause under the Fourteenth Amendment requires that a person shall not be deprived of life, liberty, or property without due process of law. BLACK'S LAW DICTIONARY 500 (6th ed. 1990).

<sup>185</sup> *Ward*, 869 P.2d at 1066; U.S. CONST. amend. XIV § 1. Equal protection guarantees require similar treatment under the law for similarly situated persons. BLACK'S LAW DICTIONARY 537 (6th ed. 1990).

<sup>186</sup> *Ward*, 869 P.2d at 1066.

<sup>187</sup> *Id.* at 1074.

<sup>188</sup> *Id.* at 1076-77.



offenses had been committed.<sup>189</sup> To determine whether the petitioners' claim was meritorious, the Washington Supreme Court looked first to the *ex post facto* analysis set forth by the United States Supreme Court in *Calder v. Bull*.<sup>190</sup> In *Calder*, the Court held that a law is violative of the prohibition against *ex post facto* laws if it makes the punishment greater than the law that was in effect when the crime was committed.<sup>191</sup> Following *Calder*, the *ex post facto* prohibition was broadened in *Kring v. Missouri*,<sup>192</sup> but that case was overruled by *Collins v. Youngblood*<sup>193</sup> as being too expansive a reading of the *ex post facto* clause.<sup>194</sup> *Collins* thus reestablished the *Calder* categories as the prevailing definition of an *ex post facto* law.<sup>195</sup> Specifically, *Collins* held that a law violates the *ex post facto* clause if it meets one of three criteria.<sup>196</sup>

In *In re Powell*,<sup>197</sup> the Washington Supreme Court restated the *ex post facto* definition as a law that is substantive rather than merely procedural, retrospective, and disadvantageous to the person affected by it.<sup>198</sup> In applying the test set forth in *In re Powell*, the *Ward* court, as a threshold matter, concluded that the Washington regis-

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<sup>189</sup> *Id.* at 1066. One petitioner was convicted of first degree rape in March, 1988, was sentenced to 41 months in the Department of Corrections, and was advised of his duty to register upon release in April, 1990. *Id.* at 1065. The other petitioner was convicted of first degree rape in 1980. *Ward*, 869 P.2d at 1066. He was paroled on active supervision in 1987, was conditionally released from supervision in June, 1991, and was finally discharged in September of 1992. *Id.* at 1066. The law went into effect on February 28, 1990. *Id.* at 1065.

<sup>190</sup> *Id.* at 1067 (citing *Calder v. Bull*, 3 U.S. 386 (1798)).

<sup>191</sup> *Ward*, 869 P.2d at 1067 (citing *Calder*, 3 U.S. at 390).

<sup>192</sup> 107 U.S. 221 (1882). *Kring* broadened the *ex post facto* definition to include any law which "in relation to that offense, or its consequences, alters the situation of a party to his disadvantage." *Id.* at 228-29.

<sup>193</sup> 497 U.S. 37 (1990).

<sup>194</sup> *Ward*, 869 P.2d at 1067 (citing *Collins*, 497 U.S. at 50).

<sup>195</sup> *Id.* (citing *Collins*, 497 U.S. at 42-43).

<sup>196</sup> *Ward*, 869 P.2d at 1067 (citing *Collins*, 497 U.S. at 42-43). The three criteria are that the law

(1) punishes as a crime an act previously committed which was innocent when done; (2) makes more burdensome the punishment for a crime, after its commission; or (3) deprives one charged with a crime of any defense available according to the law at the time the act was committed.

*Id.* The proper inquiry, therefore, is whether the law "makes more burdensome the punishment for the crime." *Ward*, 869 P.2d at 1067 (emphasis in original). If the law does make the crime more burdensome, it will be struck down as violative of the prohibition against *ex post facto* laws. *Id.*

<sup>197</sup> 814 P.2d 635 (Wash. 1991).

<sup>198</sup> *Ward*, 869 P.2d at 1067-68 (citing *In Re Powell*, 814 P.2d at 639).

tration statute was retrospective and substantive. However, the court held that it was not disadvantageous to petitioners because it did not change the standard of punishment which had previously existed under prior law.<sup>199</sup>

In reaching its conclusion, the court focused on whether Washington's registration requirement constituted punishment.<sup>200</sup> To ascertain whether a sex offender registration statute is punitive or regulatory, a court must first look to the legislative intent of the statute.<sup>201</sup> If the legislature did not intend for the statute to be punitive, a court must also determine whether the statute is punitive in effect.<sup>202</sup>

Looking beyond the legislature's intent to assist law enforcement in their efforts to regulate sex offenders, the court applied the factors set forth in *Kennedy v. Mendoza-Martinez*<sup>203</sup> (hereinafter the "*Kennedy* factors") to determine whether the statute was punitive in effect.<sup>204</sup> In applying the *Kennedy* factors, the *Ward* court found that the registration and notification provisions did not place an additional burden on an offender and did not affirmatively inhibit or restrain a sex offender's movements;<sup>205</sup> that regis-

<sup>199</sup> *Ward*, 869 P.2d at 1068.

<sup>200</sup> *Id.* The *ex post facto* clause only applies to laws that are punitive. *Id.*

<sup>201</sup> *Id.* at 1068 (citing *De Veau v. Braisted*, 363 U.S. 144, 160 (1960)). In *De Veau*, the United States Supreme Court explained:

The mark of an *ex post facto* law is the imposition of what can fairly be designated punishment for past acts. The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession.

*Id.* at 160.

<sup>202</sup> *Ward*, 869 P.2d at 1068.

<sup>203</sup> 372 U.S. 144, 168-69 (1963).

<sup>204</sup> *Ward*, 869 P.2d at 1068-74 (citing *Kennedy*, 372 U.S. at 168-69). The factors considered in determining whether the statute is punitive in effect are:

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

*Kennedy*, 372 U.S. at 168-69.

<sup>205</sup> *Ward*, 869 P.2d at 1069. The *Ward* court based its determination on the fact that

tration was not historically deemed to be punishment;<sup>206</sup> that registration did not promote the traditional deterrent function of punishment;<sup>207</sup> and that registration was not excessive in relation

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law enforcement officials already had all the information necessary for registration on file and the offender did not have to divulge anything further. *Id.* Moreover, the physical act of registration did not create an affirmative disability or restraint because registrants were free to move "provided they compl[ie]d with the statute's registration requirements." *Id.* Finally, the court found that filling out a form with eight blanks did not create an affirmative disability. *Id.*

The court then examined whether the publicity that may result from registration constituted punishment. *Id.* Because Washington already had a law permitting criminal justice agencies to release criminal information, the court held it did not. *Id.* In addition, the court was satisfied by the fact that disclosure of the information was limited to those circumstances which presented a threat to public safety. *Ward*, 869 P.2d at 1070. Disclosure could only be made after a determination that an offender was dangerous, was likely to reoffend, or was a threat to the community. *Id.* Moreover, the court determined that information released "must be reasonably necessary to counteract the danger created by the particular offender." *Id.* Finally, the court held that the geographic scope of the disclosure must "rationally relate to the threat posed by the registered offender." *Id.*

*Ward* found support for its conclusion in *Noble*. *Id.* at 1071 (citing *State v. Noble*, 829 P.2d at 1217 (Ariz. 1992)). *Noble* dealt with the retroactive application of Arizona's sex offender registration statute. *Id.* at 1218-19. The Arizona statute did not include a public notification provision. *Id.* at 1217. After applying the *Kennedy* factors, the *Noble* court found that the Arizona statute was not punitive and did not offend the *ex post facto* clauses of the United States and Arizona Constitutions. *Id.* at 1224. The *Ward* court noted that the fact that the registration information was kept confidential in the Arizona statute would not alter *Ward's* conclusion. *Ward*, 869 P.2d at 1071. In *Noble*, the law's purpose was to assist law enforcement in keeping track of sex offenders. *Noble*, 829 P.2d at 1217. The *Ward* court similarly found that the overriding purpose of the Washington statute was public safety. *Ward*, 869 P.2d at 1071.

Additionally, the *Ward* court contrasted its holding with that of *In re Reed*. *In re Reed*, 663 P.2d at 222. In *In re Reed*, the petitioner was convicted of "soliciting lewd or dissolute conduct" and was ordered to register as a sex offender. *Id.* at 216. *In re Reed* held that the registration requirement was out of proportion to the crime with which petitioner was charged and was, thus, unconstitutional punishment. *Id.* at 220. *Ward* did not find *In re Reed* "dispositive on the issue of whether Washington's sexual offender registration [was] punitive." *Ward*, 869 P.2d at 1072. The court reasoned that "[u]nlike California's registration requirement, the Washington statute require[d] registration for felony sexual offenders only." *Ward*, 869 P.2d at 1072.

<sup>206</sup> *Id.* at 1072. *Ward* found that registration had not traditionally been viewed as punishment but rather was "a traditional governmental method of making available relevant and necessary information to law enforcement agencies." *Id.* at 1072.

<sup>207</sup> *Ward*, 869 P.2d at 1073. The court acknowledged that registration might deter a sex offender from committing a crime in the future but noted that "a registrant may be deterred from the fact of conviction and punishment served, whether he is required to register or not." *Id.* (emphasis in original). Moreover, the primary intent of the statute was to aid law enforcement. *Id.* The court concluded, therefore, that "[e]ven if a secondary effect of registration is to deter future crimes in our communities, we decline to hold that such positive effects are punitive in nature." *Id.*

to its nonpunitive purpose.<sup>208</sup> Thus, the court held that the retroactive registration and notification statute was not punishment and was, therefore, constitutional under the *ex post facto* clause.<sup>209</sup>

As to the due process claim, one petitioner in *Ward* argued that because he had not been given written notice of his duty to register in his original plea form, the failure to notify him was a breach of his plea agreement and was violative of due process.<sup>210</sup> The court held that the fact that petitioner would have to register as a sex offender if he pled guilty was merely a collateral consequence of the plea,<sup>211</sup> and therefore the petitioner did not have to be notified.<sup>212</sup> Thus, the court concluded that there was no violation of petitioner's due process rights.<sup>213</sup>

Finally, one of the petitioners in *Ward* argued that because the registration statute required registration by only those sex offenders who were under supervision and not those who were no longer under supervision, the statute violated equal protection guarantees

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<sup>208</sup> *Id.* In concluding that the registration statute was not excessive in relation to its non-punitive purpose, the *Ward* court noted that the Washington legislature had clearly stated that law enforcement agencies must have "relevant and necessary" information regarding sex offenders. *Ward*, 869 P.2d at 1073. The court struck down the argument that registration would burden former offenders because they would become suspects in every sex crime. *Id.* The court noted that suspects have all the constitutional guarantees that other citizens enjoy and cannot be arrested simply because of prior convictions. The court acknowledged that suspects might be subject to pre-arrest suspicion. The court held, however, that "such attention is incident to the conviction and not a result of registration as a sex offender." *Id.* The court also found that it did not amount to a "badge of infamy" because only felony sex offenders must register and offenders may petition the court to discontinue the duty to register. *Id.* at 1073-74.

<sup>209</sup> *Id.* at 1074.

<sup>210</sup> *Ward*, 869 P.2d at 1075.

<sup>211</sup> *Id.* at 1076. "A criminal defendant must be informed of all the direct consequences of his or her plea prior to acceptance" of a guilty plea. *Id.* at 1075 (citing *State v. Barton*, 609 P.2d 1353, 1356 (Wash. 1980)). However, he or she does not have to be informed of collateral consequences. *Ward*, 869 P.2d at 1075 (citing *Barton*, 609 P.2d at 1356). The difference between direct and collateral consequences of a plea "turn on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." *Ward*, 869 P.2d at 1075 (citing *Barton*, 609 P.2d 1358 (quoting *Cuthrell v. Director*, 475 F.2d 1364, 1366 (4th Cir.), *cert. denied*, 414 U.S. 1005 (1973))). Here, the court held that because registration did not alter the standard of punishment, it was a collateral consequence of a guilty plea. *Ward*, 869 P.2d at 1076.

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

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

under the federal and state constitutions.<sup>214</sup> The court rejected this argument.<sup>215</sup> Applying a rational basis test,<sup>216</sup> the court held that limiting the registration of sex offenders to those under supervision was not arbitrary but was rationally related to the state's interest in assisting law enforcement to monitor a manageable number of sex offenders.<sup>217</sup> In conclusion, because there was no *ex post facto*, due process, or equal protection violations under the United States and Washington constitutions, the Supreme Court of Washington upheld the registration statute.<sup>218</sup>

### VII. State and Federal Constitutional Challenges to Megan's Law

As was the case in Washington as a result of its sex offender registration requirement, numerous challenges to Megan's Law have been filed following the law's enactment.<sup>219</sup> One of the earliest challenges was initiated by Carlos Diaz,<sup>220</sup> a convicted rapist released from incarceration in early January of 1995. Expressing reservations about the constitutionality of the law's community notification provision, United States District Court Judge John W. Bissell issued a preliminary injunction preventing authorities in Passaic County from notifying the public about the presence of Mr. Diaz in the community.<sup>221</sup> In reaching its decision, the District

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<sup>214</sup> *Id.* at 1076-77.

<sup>215</sup> *Id.* at 1077.

<sup>216</sup> *Id.* (citing *State v. Coria*, 839 P.2d 890 (1992)). Under a rational basis test, "the law being challenged must rest upon a legitimate state objective, and the law must not be wholly irrelevant to achieving that objective." *Id.* A rational basis test is used for those statutes that do not affect a fundamental right or create a suspect classification. *Ward*, 869 P.2d at 1077 (citing *Seattle Sch. Dist. 1 v. Dept. of Labor & Indus.*, 804 P.2d 621 (1991)). The court rejected petitioner's assertion that sex offenders are a suspect class because the court found that "liberty interests alone are not sufficient to subject a statute to strict scrutiny." *Ward*, 869 P.2d at 1077.

<sup>217</sup> *Ward*, 869 P.2d at 1077.

<sup>218</sup> *Id.*

<sup>219</sup> See Guy Sterling, *More Sex Offenders Challenge Megan's Law*, STAR-LEDGER, Jan. 5, 1995, at 1.

<sup>220</sup> Guy Sterling, *Rapist Gains Temporary Ban on Megan's Law Notification*, STAR-LEDGER, Jan. 4, 1995, at 1. The 46-year-old Diaz was released from Avenel after serving "the maximum amount of time required by his 20-year term" for kidnapping and aggravated sexual assault. *Id.* In the early 1980s, Diaz forced a 20-year-old Garfield woman into his vehicle and raped her. *Id.* at 4.

<sup>221</sup> Sterling, *supra* note 220, at 1. Diaz was classified as a "tier two" or moderate sex offender by Passaic County Prosecutor Ronald Fava, in consultation with Bergen County law enforcement. *Id.* at 4. Specifically, the preliminary injunction blocked the Passaic County Prosecutor's Office from notifying local schools, child care centers,

Court examined whether Megan's Law was punitive in nature as applied to prisoners convicted before the law went into effect. In addition, the court questioned whether Mr. Diaz's due process rights might be violated by the law's community notification provisions.<sup>222</sup>

Mr. Diaz's case was only the beginning of an anticipated flood of challenges<sup>223</sup> to Megan's Law in both the state and federal courts.<sup>224</sup> In a subsequent state suit brought by "John Doe" in the

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summer camps, and those community groups registered with the prosecutor's office. *Id.* at 4. The injunction only applied to Mr. Diaz. *Id.* at 1.

<sup>222</sup> Sterling, *supra* note 220, at 1. The District Court was particularly concerned that decisions regarding the level of community notification required under Megan's Law were made solely by county prosecutors without any provision for a pre-classification hearing or a "neutral" review by the courts. *Id.* Eric Neisser, a professor at Rutgers Law School, commented that "[t]he county prosecutor has an investment." Carter, *supra* note 6, at 14. Professor Neisser also said that he or she is not an impartial third party and therefore may not be an objective person to decide the level of dangerousness. *Id.* In Washington State, a panel of officials from corrections, law enforcement, and social services makes the decision. *Id.*

In response to this concern, Marilyn Zdobinski, Passaic County's first deputy assistant prosecutor, commented that the review process for assigning a sex offender to a classification was an "administrative determination" having no direct impact on a defendant. Sterling, *supra* note 220, at 4. Moreover, Jane Grall said the guidelines provided significant protection because they set out in great detail the facts that must go into the decision. Carter, *supra* note 6, at 14. The Court disagreed, however, noting that the offender's quality of life in the community is directly affected by such a determination. Sterling, *supra* note 220, at 4. The Guardian Angels, a citizens patrol group, claimed that they would hand out leaflets in Passaic notifying the community of Mr. Diaz' presence regardless of the court order. Sterling, *supra* note 219, at 1.

<sup>223</sup> Rocco Cammarere, *1,500 Defendants Consider Challenging Megan's Law*, 4 N.J. LAW. 235, Feb. 6, 1995, at 3. Assistant State Public Defender Dale Jones estimated there could be as many as 1,500 challenges to the law within the first half of 1995. *Id.* Mr. Jones claimed that this number represented a mere fraction of the defendants who will be subjected to Megan's Law. According to Mr. Jones, defendants are not willing to plead guilty and submit themselves to Megan's Law provision. *Id.* at 33.

<sup>224</sup> See Sterling, *supra* note 219, at 1. Ronald W. Telepo, a convicted multiple rapist scheduled to have been released in April of 1995, filed suit in Federal District Court challenging Megan's Law as unfairly discriminatory against sex criminals. Robert Rudolph, *Multiple Rapist Nearing Release Files U.S. Court Challenge to Megan's Law*, STAR-LEDGER, Jan. 13, 1995, at 24. In his complaint, Mr. Telepo claimed he was "part of a minority of sex offenders treated worse [than other criminals]" and accused the state of criminal bias, discrimination, and harassment. *Id.* In addition, Mr. Telepo claimed that because he had already served his sentence, community notification would punish him again. *Id.* Sen. Cardinale, outraged by Mr. Telepo's argument, said the court "should throw these arguments where they belong—in the garbage." *Id.*

In addition, the Public Defender's Office filed a motion with Somerset County Superior Court Judge Edward M. Coleman on January 25, 1995 to issue a stay from requiring Miguel Torres to comply with the Megan's Law provisions. See Cammarere,

Superior Court of Mt. Holly, Burlington County, Mr. Doe alleged that Megan's Law's registration provisions were too broad.<sup>225</sup> Mr. Doe, charged in June of 1985 with committing various sexual offenses against children, including rape, was released in 1992 after a report found he was no longer repetitive, compulsive, or dangerous to the community.<sup>226</sup> Superior Court Judge Harold B. Wells, III issued a temporary injunction barring community notification.<sup>227</sup> In doing so, the court upheld the law's notification provision as constitutional but struck down the section of the law giving prosecutors the sole authority to determine a sex offender's risk of reoffense.<sup>228</sup> In addition, the court found that the Attorney General's Office had not adopted Megan's Law's administrative guidelines properly and thus mandated that they be re-drafted and re-adopted.<sup>229</sup> Finally, the court found that a sex offender should be able to challenge a classification decision in court.<sup>230</sup> The Appel-

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*supra* note 223, at 33. Torres was convicted of the third-degree crime of endangering the welfare of a minor the day after the enactment of Megan's Law. Maureen Castellano, *Megan's Law Challenged at Sentencing*, 139 N.J.L.J. 528, Feb. 6, 1995, at 8. Assistant Public Defender Anthony Mignella wrote in his motion, "In this case, the punishment is both grossly disproportionate to the offense, and goes beyond that necessary to accomplish any legitimate penal aim." See Cammarere, *supra* note 223, at 33.

Judge Coleman, in March of 1995, denied the motion to declare the registration provision unconstitutional and ordered the defendant to register. In addition, Judge Coleman decided to stay the community notification provisions of Megan's Law as to the defendant until appeals are decided. *State v. Torres, Order*, Honorable Edward M. Coleman, Super. Ct. of N.J., Somerset County, Law Div., Indictment No. 94-04-0185-I, March 22, 1995.

<sup>225</sup> See Castellano, *supra* note 224, at 8.

<sup>226</sup> Sterling, *supra* note 219, at 23. John Furlong, counsel for plaintiff, argued that the law does not apply to Mr. Doe because he was no longer considered dangerous. Kathy Barrett Carter, *With An Asterisk, Judge Rules Megan's Law Constitutional But Temporarily Bars Warnings to Public*, STAR-LEDGER, Feb. 23, 1995, at 1, 18.

<sup>227</sup> Carter, *supra* note 226, at 1

<sup>228</sup> *Id.* at 1; see also N.J. STAT. ANN. § 2C:7-8d(1) (West 1994). The court opined that such determination of risk of reoffense should be made by the courts in conjunction with police, psychologists, prosecutors, and offenders. Carter, *supra* note 226, at 1. The court did not find judicial involvement necessary in low-risk cases where only law enforcement and the victim are notified. *Id.*

<sup>229</sup> Carter, *supra* note 227, at 1.

<sup>230</sup> *Id.* The court also found that the law did not constitute punishment. *Id.* As a result, the court eliminated: (1) the *ex post facto* argument because no additional punishment had been imposed on the offender after he served his time; (2) the violation of double jeopardy argument because the offender had not been punished twice; and (3) the cruel and unusual punishment argument. *Id.* The court found that there was no violation of privacy rights because most of the information necessary for registration was already part of the public record. *Id.*

late Division, however, disagreed with Judge Wells in a March 1, 1995 decision and again gave prosecutors the authority to make notification decisions.<sup>231</sup>

A second federal ruling issued by United States District Judge Nicholas H. Politan again abolished prosecutorial discretion.<sup>232</sup> This second federal case was initiated by Alexander Artway, a forty-nine-year-old resident of Woodbridge, New Jersey, who was released from prison after serving time for a sodomy conviction.<sup>233</sup> As a result of Megan's Law, he was required to register.<sup>234</sup> Mr. Artway claimed that Megan's Law violated his right to privacy as well as his constitutional protection against cruel and unusual punishment.<sup>235</sup> The court upheld the registration requirement but struck down the provisions allowing community notification for sex offenders sentenced prior to the passage of the law.<sup>236</sup> The judge held that the law constituted additional punishment for those who were convicted and sentenced before the law was enacted.<sup>237</sup> The Attorney General will appeal Judge Politan's decision to the United States Court of Appeals for the Third Circuit.<sup>238</sup> In addition, the New Jersey Supreme Court is scheduled to hear the appeal of the Doe case on May 2, 1995.<sup>239</sup>

### VIII. *Practical Problems Resulting from Megan's Law*

In addition to constitutional challenges to the law, practical problems have also begun to surface.<sup>240</sup> One such problem was an

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<sup>231</sup> Elizabeth Moore, *Megan's Law Mired in Judicial Conflict*, STAR-LEDGER, Mar. 2, 1995, at 1, 12. New Jersey Appellate Division Judges Thomas Shebell, Jr., Stephen Skillman, and John Wallace, Jr. issued the decision. *Id.*

<sup>232</sup> *Id.* at 12.

<sup>233</sup> See Sterling, *supra* note 219, at 1.

<sup>234</sup> *Id.* at 23. Mr. Artway was classified by a psychiatrist in 1975 as being repetitive and compulsive. *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> Robert Rudolph, *Megan's Law Ruling: Judge Strikes Down Sex Offender Notification*, STAR-LEDGER, Mar. 1, 1995, at 1, 6.

<sup>237</sup> Robert Hanley, *'Megan's Law' Suffers Setback In Court Ruling*, N.Y. TIMES, Mar. 1, 1995, at A1, B5. The court found that "broad public awareness of a sex offender's presence, increased vigilance for children's safety, and getting ordinary citizens to become agents of law enforcement were all elements of deterrence and therefore, improper punishment." *Id.*

<sup>238</sup> See Moore, *supra* note 231, at 12.

<sup>239</sup> *'John Doe' is Fighting 'Megan,'* N.Y. TIMES, Mar. 15, 1995, at B1.

<sup>240</sup> See David Vanhorn & Art Charlton, *Megan's Law Linked to Vigilante Mis-attack*, STAR-LEDGER, Jan. 11, 1995, at 1.



act of alleged vigilantism towards a sex offender resulting in an innocent man being assaulted.<sup>241</sup> In another incident, someone issued notices falsely informing a community that a child sex offender was living nearby.<sup>242</sup> The person listed on the posters, however, had never been convicted of a crime.<sup>243</sup> The state has also issued notices containing false address information which resulted in threats to the occupants at the mistaken address.<sup>244</sup> Finally, it

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<sup>241</sup> *Id.* at 13. In early January 1995, Kenneth J. Kerekes, Sr., and his son, Kenneth J. Kerekes, Jr., broke into the home of Michael Groff, a convicted sex offender, and attacked a man they mistook for Groff. The Warren County Prosecutor's office had publicized Groff's name and address after he was released from state prison. Groff had served "four years of a ten-year sentence for sexual assault and endangering the welfare of a child." *Id.* The elder Kerekes went into the home of Groff's aunt and uncle and attacked Thomas Vicari, 41, who was sleeping in the same room as Mr. Groff. The younger Kerekes simultaneously threw a bottle through the front window of the home. *Id.*

Ronald Chen, who handled the Diaz case, commented, "We all knew the risk of this happening. . . . Incidents like it should bring home to the state and to the community the other side of Megan's Law, and show that community notification requires some balancing." *Id.* at 1, 13. State officials pointed out that the public had been warned against vigilantism. Vanhorn & Charlton, *supra* note 240, at 13. Regarding the incident, Chuck Davis, spokesman for the state Department of Law and Public Safety said, "It's the type of behavior that's totally unacceptable, and the people who do something like this will be prosecuted to the fullest extent of the law they're charged with." See Vanhorn & Charlton, *supra* note 240, at 13.

Mr. Vicari and his girlfriend, Barbara Ann Keller, filed a tort claim notice in February, 1995 in Warren County alleging the county "negligently and recklessly" issued public information with Mr. Groff's address. David Vanhorn, *Pair Blames Use of Law in 'Vigilante' Mis-Attack*, STAR-LEDGER, Feb. 23, 1995, at 18. They also filed a civil lawsuit on the same day seeking compensatory and punitive damages against the two defendants. *Id.*

<sup>242</sup> Lenny Melisurgo et al., *Assault, False Notices Spur Debate on "Megan,"* STAR LEDGER, Jan. 12, 1995, at 1, 22.

<sup>243</sup> *Id.* at 22. The incident occurred in Cumberland County, N.J., when posters appeared telling Maurice River Township residents that there was a "child stalker" in their midst. *Id.* Prosecutor Michael Fisher said, "I'm afraid if people keep doing this on their own, and a person has not been convicted, then it would reduce the effect of Megan's Law." *Id.*

<sup>244</sup> Melisurgo, *supra* note 242, at 1. For example, police issued notices regarding the release of Ronald S. Kammerer, Jr., saying he was to live in Robert Meyer's home in Woodbridge. *Id.* Mr. Kammerer had listed Mr. Meyer's address on a notice given to the Department of Corrections. The information was, however, false. *Id.* Mr. Kammerer had briefly rented a room in 1991 from Mr. Meyer but Mr. Kammerer had been evicted for failure to pay rent. *Id.* As a result of the false notice, Mr. Meyer received threats and subsequently asked the town to issue another flier acknowledging the mistake. *Id.* at 1.

In Burlington County, released sex offender Dennis Hoffman told officials he would be living with his former employer upon release. Melisurgo, *supra* note 242, at

appears that some sex offenders have been fleeing the state or country as a result of the community notification publicity.<sup>245</sup>

### IX. Recommendations

Certainly, Megan Kanka's tragic death exhibits the great need for a change in New Jersey's criminal justice system. However, the law enacted in her memory may not provide the protection that most people expect. Megan's Law is only one step of several which must be taken to protect children. Consequently, the following additional measures should be considered to help safeguard New Jersey's children.

#### 1. Develop, Expand, and Improve Treatment Programs

Although there is no scientifically proven cure for sex offender personality disorders,<sup>246</sup> such behavior can be controlled.<sup>247</sup> Some research has shown that treatment may lower recidivism rates.<sup>248</sup> However, sex offenders currently receive very little treatment.<sup>249</sup> In response to this lack of treatment, sex offenders must have available to them a continuum of care.<sup>250</sup> In particular, New Jersey should provide counseling and support to sex offenders in combination with close supervision upon release and must impose immediate sanctions for illegal behavior.<sup>251</sup> Without providing supportive services and strict supervision to both incarcerated and

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22. After officials spread the word, it was determined that Mr. Hoffman's residence information was false. Ultimately, Mr. Hoffman decided to move to Texas. *Id.*

<sup>245</sup> *Id.* Dennis Hoffman moved to Texas, Carlos Diaz disappeared and is allegedly in Puerto Rico, and another offender in Sussex County is trying to leave but has not been able to save enough money to do so. *Id.* Governor Whitman acknowledged the fleeing and commented that New Jersey does not want to export sex offenders. Melisurgo, *supra* note 242, at 22.

<sup>246</sup> See Goode, *supra* note 11, at 74, 76.

<sup>247</sup> See Carter, *supra* note 6, at 14. Psychologist Phillip H. Witt, who has worked at Avenel for ten years, stated, "I'd be the first one to admit there are treatment failures but for the majority there are effective ways to treat them." *Id.*

<sup>248</sup> See Becker, *supra* note 5, at 185.

<sup>249</sup> See Gold, *supra* note 27, at A4.

<sup>250</sup> Becker, *supra* note 5, at 192. "A continuum of care should be made available so that individuals can receive treatment if they are incarcerated or in residential treatment, followed by coordinated services after release. We are in need of specialized group homes, therapeutic foster care, specialized day treatment, and community-based treatment for both individuals and groups." *Id.*

<sup>251</sup> Becker, *supra* note 5, at 192. Ms. Becker is referring to the relapse prevention model discussed earlier. See *supra* note 26 and accompanying text.

released offenders, after-the-fact measures such as Megan's Law will not be enough.<sup>252</sup>

## 2. *Target Juvenile Sex Offenders*

The daunting problem of juvenile sex offenders has been largely ignored in New Jersey.<sup>253</sup> Because a large number of adult sex offenders commit their first offense as youngsters, juveniles should receive treatment as soon as there is any sign of trouble.<sup>254</sup> Such treatment should be tailored to the specific developmental needs of teenagers.<sup>255</sup> In addition, there is a strong need for education of individuals who work within the juvenile justice system to better understand inappropriate juvenile sexual behavior.<sup>256</sup> Thus, more residential treatment programs, stronger post-release programs, and better supervision and therapy for young offenders on probation should be instituted to remedy problems before they become more severe.<sup>257</sup>

## 3. *Improve Child Safety Programs*

The National Center for Missing and Exploited Children (hereinafter "NCMEC")<sup>258</sup> believes that current child safety programs that emphasize the theme of stranger danger are inade-

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<sup>252</sup> Sullivan, *supra* note 6, at B1. Edward Martone, Executive Director of the American Civil Liberties Union of New Jersey, stated that "[w]hat is really needed is quality treatment and education while the offender is incarcerated and the creation of facilities and programs to continue treatment and supervision after release. . . . Unfortunately, New Jersey doesn't offer any of these things." *Id.* at B1, B6. Sen. Inverso additionally commented, "[W]e have to provide for a long-term treatment system that combines effective community supervision with treatment." See Fromm, *supra* note 31, at 19.

<sup>253</sup> See Mendez, *supra* note 33, at 1.

<sup>254</sup> *Id.* at 1. Such treatment is essential to stop the cycle of abuse and prevent juveniles from becoming adult offenders. *Id.*

<sup>255</sup> *Id.* at 17. Treatment is also essential to prevent sexually disturbed delinquents from developing into chronic offenders. *Id.*

<sup>256</sup> See Becker, *supra* note 5, at 192. Ms. Becker recommends that the community be provided with information on how to "respond to youths who abuse sexuality, and the consequences of young offenders inadvertently receiving the message that their behavior is acceptable. The community also needs to be informed of the availability and the success of various treatment strategies." *Id.*

<sup>257</sup> See generally Becker, *supra* note 5.

<sup>258</sup> Allen, *supra* note 18, at 46. NCMEC is a private, nonprofit group that works with the U.S. Department of Justice to find children who are missing and prevent child victimization. *Id.*

quate.<sup>259</sup> They should be replaced instead with programs to empower children based upon the theory that those with self-esteem and self-confidence are less vulnerable to victimization.<sup>260</sup> Thus, non-frightening child safety messages and curricula that will reach every school and home should be developed and implemented.<sup>261</sup>

#### 4. *Heavier Sentencing and Disallowance of Pleas to Non-Sex Crimes*

New Jersey must ensure that all violent child sex offenders are given extended sentences in view of the devastating and lifelong consequences suffered by victims of sex crimes and their families.<sup>262</sup> Additionally, sex offenders should not be allowed to plea bargain to an offense which is not a sex crime under Megan's Law, to ensure that sex offenders do not bypass the registration and notification provisions.<sup>263</sup>

### X. *Conclusion*

Megan's Law was enacted to illustrate to New Jersey residents that the atrocious conduct of sex offenders will not be tolerated. Rather, New Jersey attempted to insure that its sex offenders will be

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<sup>259</sup> *Id.* at 47.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* Governor Whitman acknowledged that Megan's Law did not include money for education or treatment. Sullivan, *supra* note 6, at B6. In response, she promised to include an amount for such items in next year's budget. Ms. Whitman should also carefully consider each of the results and recommendations of the Avenel Task Force. *Id.*

<sup>262</sup> See Robert Rudolph, *Judge Calls For Stiffer Sentences*, STAR-LEDGER, Mar. 1, 1995, at 6. United States District Court Judge Nicholas H. Politan offered this suggestion during the Artway hearing. The judge advocated writing new laws that will impose stiffer sentences upon sex offenders. *Id.* "Why doesn't Congress, or why don't the states, pass an act [stating that] if you commit a sex offense against a child you never get out of jail—you never get off probation and you lock them up forever? In other words, what I am saying to you is: If we're engaged in how to attack these problems and how to attack crime, why don't the legislators get up and have the gumption to say that if you are convicted of a crime against a child, that you shall spend life in prison, or if you are released you shall be subject to continual probation for the rest of your life?" *Id.* Currently, sex offenders are parole-eligible within a shockingly short period of time. *Id.*

<sup>263</sup> See Alice Vachss, Lecture to the *Seton Hall Legislative Bureau*, Seton Hall University School of Law, Newark, N.J., Oct. 20, 1994 (transcript on file with the *Seton Hall Legislative Journal*).

watched closely. Although the notification and registration provisions of Megan's Law are intended as a step in the right direction, they do not guarantee that all children will be safe. In addition, they pose practical problems such as the issuance of false notifications, the fleeing of offenders once notification procedures are initiated, and vigilantism. Not only must these problems be promptly and properly addressed, but preventive measures such as treatment combined with strict supervision, public education, and heavier sentencing must also be adopted to supplement Megan's Law. This will ensure that criminals are stopped before a crime is committed and, hopefully, will prevent a repeat of the nightmare that Megan Kanka's family continues to suffer.