

The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review

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EXECUTIVE SUMMARY

Banishment: to expel from or relegate to a country or place by authoritative decree...to compel to depart. *Webster's Unabridged Dictionary. Second Edition*

Banishment was a form of legal punishment in Ancient Greece and Renaissance Italy and England. Colonial America received its share of banished English thieves and other offenders, as did Australia. During the American Revolution, the colonies banished English loyalists. More recently, the former Soviet Union restricted inmate's rights upon release from the Gulag to 101 kilometers from large urban centers, resulting in a number of rural settlements.

Today some communities in the United States banish sex offenders from living in their midst, resulting in a difficult dilemma: where can these offenders live, and where can they best be supervised and receive treatment, if available? This report describes local ordinances and state statutes restricting where a sex offender may reside, discusses what research has found so far about the success of these restrictions, considers the impact that these restrictions are having on criminal justice management practices and sex offender treatment regimens, and examines constitutional implications. According to California Penal Code § 288 (a) (b):

A sex offender is any person who willfully and lewdly commits any lewd or lascivious act, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child. A sex offender is any person who commits an act by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.¹

Each year there are 60,000 to 70,000 arrests on charges of child sexual assault, according to the U.S. Justice Department, of which only about 115 are abductions by strangers. In addition, there are 15,000 to 20,000 arrests on charges of forcible rape. Most rape victims know their assailants: seven in ten female rape or sexual assault victims state the offender was an intimate, other relative, a friend or an acquaintance.²

Research on the effects of sexual assault on victims confirms that the consequences of this crime are often brutal and long lasting. Because most sexual assaults occur in the context of a relationship established and manipulated over time, the victim may be confused and made to feel responsible by the perpetrator. Experts on sexual abuse explain that this violation of a trusting relationship causes great confusion and nearly unbearable trauma to the victim.³

Sex acts against children include possessing, viewing, or manufacturing child pornography, juvenile solicitation, pimping of a minor, and luring a child over the Internet. But the violent child molester and rapist who commits lewd and lascivious acts against a child or adult, and who commits such acts by use of force, duress, or menace,

constitutes a unique class apart from other sex offenders and the larger class of felony offenders. These offenders are deemed “sexually violent predators” (SVP).

On average, recidivism rates for all types of sex offenders are lower than for other offenders. In California, for example, the parole revocation rate (within a two-year period after release) for all first time parolees convicted of non-sex offenses was 55 percent between 1996 and 2005, while the parole revocation rate for all categories of first time parolee sex offenders was 45 percent.⁴ Rapists are likely to recidivate at a higher rate (18.9 percent) than are child molesters (12.7 percent), according to a meta-analysis of 79 studies.⁵ Given the serious nature of sex offenses, and their life-long impact on victims, even a low re-offending rate may be too high.

The U.S. criminal justice system faces a difficult dilemma: how to best accomplish punishment and rehabilitation of an estimated 550,000 registered sex offenders while upholding public safety.⁶ About 100,000 of those registered sex offenders are located in California. This challenge has motivated various state and local jurisdictions as well as the U.S. Congress to adopt a variety of inventive policies, some of which are controversial.⁷

Registration

The U.S. Congress enacted a sex offender registration law in 1994. The goals of the *Jacob Wetterling Act* were to increase public safety, deter sex offenders from committing future crimes, and provide law enforcement with additional investigative powers. A series of state laws followed that required communities to be notified of sex offenders living in their jurisdictions. However, at least 100,000 sex offenders (or about one-in-five) in the U.S. fail to comply with registration requirements and their location is unknown. There is some indication that sex offenders move to states that have the least restrictive registration and notification laws, in order to live in communities with relative anonymity.⁸ As of April of 2006, there were 87,060 registered sex offenders in California who are in compliance with registration requirements, while 17,764 were not because they either moved or failed to report their whereabouts.⁹

Community Notification

The federal Megan’s Law requires states to make private and personal information on registered sex offenders available to the public, but allows them the discretion to establish criteria for disclosure, such as which offenders are likely to re-offend and which ones are not. California’s Megan’s Law was enacted in 1996 and amended in 2005. The law requires the California Department of Justice to make specified information about high-risk and serious sex offenders available to the public on the Internet and to update that information on an ongoing basis.

Civil Commitment

Between 1990 and 2002, a least 17 states enacted new civil commitment statutes for “sexually violent predators” (SVP).^{*} These statutes require that a SVP be confined and treated in a secure medical setting following completion of his criminal sentence. Civil commitment is different than a criminal sentence in that a criminal sentence has a definitive time frame. Civil commitment statutes generally continue indefinitely, or until it is determined that a person’s behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. To initiate the civil commitment procedure, the California Department of Correction and Rehabilitation (CDCR) and the Board of Prison Terms (BPT) conduct a review of each inmate’s record during the six months before their parole release date to determine if the sexual offenses meet the legal definition. If the offender meets the legal definition he is referred to the Department of Mental Health (DMH) upon completion of his prison term to await the legal process for civil commitment.

Residency Restrictions

Twenty-two states have enacted some form of residency restriction that prohibits sex offenders from living within a certain distance of schools, daycare centers, or places where children congregate. The least restrictive distance requirement is 500 feet, but distances from 1,000 to 2,500 feet are common.¹⁰ In addition, hundreds of municipalities (in states with and without residency restriction statutes) have passed ordinances prohibiting convicted sex offenders from living in their communities within specified distances of schools, daycare centers, and other places where children congregate. Some communities have banned any registered sex offender from living in their environs, regardless of whether the victim lives there.¹¹

In California, legislation that went into effect in 2006 (Chapter 463, Statutes of 2005) prohibits any offender on parole convicted of a certain sex offense involving a victim of 14 to 15 years of age from residing within quarter mile of any K-12 grade school. Any offender on parole convicted of a child-related sex offense, or whose victim was a dependent person, and is designated as high-risk, is prohibited from residing within a half mile of any K-12 grade school. Other legislation that went into effect in 2006 (Chapter 486, Statutes of 2005) prohibits a conditionally released sex offender from the Department of Mental Health with a history of child molestation, or an offender classified as a sexually violent predator (SVP), from living within a quarter mile of any K-12 school. New legislative and ballot initiative efforts are underway to restrict any registered sex offender from residing within 2,000 feet (about 2/5 of a mile) of any school, daycare facility, or place where children gather.

Some California cities have adopted and others are contemplating more severe local “banishment ordinances” for all sexual offenders in their jurisdictions. These local ordinances can impact the ability of sex offenders to find suitable housing, and it may

^{*} The term SVP applies to offenders who have targeted strangers, have had multiple victims, or have committed especially violent offenses of a sexual nature.

compel some to move, which would complicate the ability of parole and probation officials to track, monitor, and supervise the offenders. One concern is that local residency restrictions may force sex offenders to move from one community to the next, in a competitive spiral of tougher “not in my backyard” ordinances.¹² Unfortunately there is little research regarding the effectiveness of restricting the housing locations available to sex offenders, but the few studies available find they have no impact on re-offense rates.¹³

Risk Assessment, Treatment and Supervision

Pedophiles that molest boys and rapists of adult women are among those most likely to recidivate, according to research.¹⁴ There is also substantial evidence that sex offenders commit many undetected offenses, so a thorough assessment, including polygraph examinations and other types of psychological assessments, is useful in determining offense patterns and risk factors.¹⁵ Some sex offenders have a reasonable chance of recovery given long-term therapeutic support and supervision. For others, such as predatory offenders who prefer children, long-term direct supervision is critical. Both long-term risk assessment and treatment regimes are important.

Intervention strategies that combine therapeutic treatment, risk assessment, specialized supervision, and global positioning system (GPS) monitoring have some effect on reducing sex offender offenses and recidivism rates. States such as Colorado and Minnesota that have institutionalized this strategy have shown good results. The California Department of Corrections and Rehabilitation (CDCR) does not provide relapse prevention treatment or specialized treatment to sex offenders while they are in prison, and does not undertake an assessment to determine a parole’s future risk in the community. In addition, it does not conduct pre-release planning relative to housing and employment. CDCR does notify the victims of a sex offender’s impending release to the community, but does not provide notification to the community at-large.

The CDCR is charged with managing sex offenders in the community, especially high-risk offenders who are deemed likely to commit a new sex crime or other violent acts. However, the CDCR has only enough specially trained parole agents to supervise 2,000 high-risk sex offenders on parole. These high-risk paroled offenders are electronically monitored, but only a select few receive community-based therapeutic treatment. All other sex offenders on parole are supervised in regular parole caseloads, and are not electronically monitored.

At least six states have enacted laws requiring lifetime electronic monitoring for sex offenders, even if their sentences have expired. At least 23 states use GPS to monitor paroled sex offenders. In California, GPS pilot projects are underway in Los Angeles, Orange, and San Diego counties to monitor over 400 high-risk paroled sex offenders. Some California county probation departments are also using GPS to monitor high-risk probationers. The cost to use GPS devices vary from state-to-state but average about \$10 per day per offender.

If the California ballot initiative (Jessica's Law) is passed it would require GPS monitoring devices to be used on all paroled sex offenders. According to CDCR data, there are about 9,560 sex offenders currently on parole including 3,160 whose current commitment offense is not sexually related. Based on cost estimates developed by CDCR, we estimate that it would cost the state approximately \$88.4 million per year to monitor and supervise sex offenders using GPS.

Constitutional Implications

Many of the sex offender residency restriction statutes and ordinances are recent and their constitutionality has not yet been established. In the last chapter of this report, we discuss the legal issues involved.

I. INTRODUCTION

Megan, Jacob, Samantha, and Polly are the names of missing and murdered children memorialized in news accounts and legislation. The disturbing circumstances surrounding their deaths as victims of sex offenders have provoked anger and fear.¹⁶ In response, some states have instituted new laws intended to prevent sex offender recidivism by lengthening sentences, increasing post-release supervision, and restricting where offenders may live after completion of their sentences, and enhancing community notification.

The first national and state laws to contain sex offenders required the creation of sex offender registries, which are designed to help law enforcement keep track of an offender's whereabouts.¹⁷ California was the first state in the nation to enact a sex offender registration law in 1947. California law enforcement officials began keeping track of registered sex offenders in 1950 through fingerprints and photos. Many other states did not enact sex offender registration laws until the enactment of the federal *Jacob Wetterling Crimes Against Children Act of 1994*.

The federal *Jacob Wetterling Act* provides funding to states that enact and implement a community notification law for sex offender registrants, and gives them the discretion to release relevant information to the public about convicted sex offenders who pose a risk to public safety.¹⁸ States must release information about the locations of sex offenders, but are not required to actively notify the public.

Some states are more active than others in releasing information about sex offenders and notifying the public. Some require correctional officials to send letters to local police agencies when an offender moves into a community. For certain offenders, schools and youth groups are also notified. With the most serious offenders, in some states officers go door-to-door to notify people in a neighborhood. In other states, a sex offender might move into a neighborhood without the people who live there being actively notified.¹⁹

In 1996, federal and state laws were strengthened by a more prescriptive community notification law ("Megan's Law"), which requires law enforcement to inform residents of the identity and location of sex offenders in their neighborhoods.²⁰ Megan's Law is named after seven-year-old Megan Kanka, a New Jersey girl who was raped and killed by a known child molester who had moved across the street from the family without their knowledge. In the wake of the tragedy, the Kankas' sought to have local communities warned about sex offenders in the area. All states now have some form of Megan's Law. While the definition of a high-risk sex offender varies from state-to-state, most definitions include persons with prior sex crime convictions, or other-related criminal convictions, and who have refused or failed to complete approved treatment programs.

California's Megan's Law was enacted in 1996 and amended in 2005. The law requires the California Department of Justice to make specified information about high-risk and serious sex offenders available to the public via the Internet and to update that information on an ongoing basis. Californians have Internet access to sex offender names

and aliases, addresses, information on physical appearance, registered sex offenses, location, addresses, and in some cases, pictures of these high-risk sex offenders (<http://meaganslaw.ca.gov/search.asp>).

Local law enforcement agencies are required to notify the public about sex offender registrants who pose a risk to the public. The California Department of Justice categorizes offenders as high-risk when their criminal history meets the statutory definition, which includes offenders who have committed at least two violent offenses, at least one of which was a violent sex offense. A statutory definition of “high-risk” offender is contained in California Penal Code Section 290.45.*

Considerable variation exists among states, and even within some states, as to how Megan’s Law is implemented. For example, the federal Megan’s Law requires law enforcement officers to make information available in a neighborhood if a sexual predator moves into the area. However, it does not mandate the direct notification of close neighbors. Information about a sex offender’s presence in the neighborhood (including address and picture in some cases) may be made available on the Internet or through other forms of communication, but not necessarily by person-to-person contact or by mail.

All states require convicted sex offenders, especially convicted child sex offenders, to register with the police. They must report when they leave prison, where they live, or if they become convicted of another crime. In most places sex offenders are subject to an exit-ban, meaning that they may not travel or leave a certain place at a certain time. Most often the offender cannot leave his/her hometown without permission from a probation or parole officer, although the exact provisions vary. The purpose of sex offender registration requirements and restrictions on the movement of sex offenders is to protect children by increasing community awareness. Policy makers and advocates who support this intervention hope that community awareness will assist in preventing future sex offenses.

A 2000 Iowa study of the impact of the sex offender registry on recidivism found a slight decrease in violations after the registry was established. For example, over a 4.3-year period, sex-offense recidivism was three percent for the registry sample (offenders listed in the state registry) and three and a half percent for the pre-registry sample. Nearly 21 percent of the new convictions for both the registry parole group and the pre-registry parole group occurred out of state.²¹

* Sex offenders are considered as “high-risk” in California when they have been convicted of an offense specified in Penal Code Section 290.4 (1) (a) and any one of the following criteria: conviction of either three or more violent sex offenses, at least two of which were tried separately; two violent sex offenses and one or more violent non-sex offenses, at least two of which were tried separately; one violent sex offense and two or more violent non-sex offenses, at least two of which were tried separately; either two violent sex offenses or one violent sex offense and one violent non-sex offense, at least two of which were tried separately; or been adjudicated a sexually violent predator pursuant to Welfare and Institution Code Section 6600. In addition, the sex offender must have been involved in specified criminal activity within the five years prior to the high-risk assessment, not including time in custody.

Some state law enforcement agencies are very active in enforcing sex offender registration laws. For example, earlier this year Michigan law enforcement officers arrested 405 people during a 14-day sweep for violation of Michigan's sex offender registry law. The effort resulted in 585 additional arrest warrant requests for sex offenders who had failed to register after moving. Officers targeted felony offenders who had failed to change or verify their addresses for the sex offender registry by an April 15 deadline. The state's *Sex Offenders Registration Act* requires that individuals convicted of a sex offense felony verify their addresses at a local law enforcement agency four times a year. For lesser sexual offenses, the requirement is to register once a year. Offenders on the registry who move are required to report their new addresses within ten days. Penalties for not complying range from a 93-day misdemeanor to a four-year felony incarceration.²²

The Illinois Sex Offender Registry Team, composed of law enforcement personnel from three levels of government, recently participated in a sex offender registry sweep in the city of East St. Louis. Of the 72 sex offenders targeted, 44 were in compliance, two were in jail, one was in the hospital, and 22 were arrested for non-compliance. According to police officials, the arrests reduced the number of sex offenders living in the city.²³ On the other hand, in a sweep of 81 addresses given by sex offenders in Chicago, law enforcement personnel found over 75 percent of the addresses given were places the offenders did not live or were abandoned buildings. According to the Illinois Prison Review Board, these findings raise questions about how many sex offenders are going underground to avoid monitoring, and/or the difficulty they have in finding housing.²⁴

In several California counties, local and state law enforcement agencies teams are collaborating to undertake Internet sting operations, and to conduct surveillance of registered sex offenders, to ensure that they are complying with registration and parole requirements.²⁵ Sting operations require team members to monitor Internet websites such as "myspace.com" for any chat room activity that might involve a sex offender. Team members get involved in the chat room discussion, identify the email address of the suspected responder, and begin the sting phase of the operation.

Registration may not be as effective as it might be. John Q. LaFond, editor of *Protecting Society from Sexually Dangerous Offenders: Law, Justice, and Therapy*, notes that in Florida, nearly half of the state's released sex offenders are not on parole or probation, about a quarter (over 7,000) have run away or can not be found, and only a third are actually registered to live in Florida. "As a result, you have an excessively long list that does not generate enough accurate information to make registration useful to anyone."²⁶

The federal government does not keep data on how states implement Megan's Law, nor does it evaluate their compliance efforts. For example, while the federal government mandates that all 50 states develop and maintain Internet websites containing sex offender registration information, there is very little data available on the effectiveness of these state efforts.²⁷ In contrast, most federally funded criminal justice projects are required to measure outcomes in order to evaluate and demonstrate program

effectiveness. Indicators of success usually involve reduction in recidivism rates, completion of treatment, gainful employment, etc.

Washington State, which enacted a sex offender notification law in 1990, is the only state to have researched the efficacy of its notification law. The state found no reduction in sex crimes against children. However, the evaluation found a benefit in the increased level of community education about sex crimes, the various types of sex offenders, and the degree of risk they pose.²⁸

Some states have legal requirements that can prevent communities from being notified in a timely manner when a high-risk sex offender is released in their neighborhood. A state audit in Massachusetts, for example, found that about 40 percent of sex offenders released to the community had requested a court hearing to reduce their risk level classification. This resulted in a backlog of hearings due to limited hearing sites and lawyers, and budget constraints at the Sex Offender Registry Board. The most dangerous offenders, those classified as Level III, could not be posted on the state's sex offender Internet website until the hearing process was complete.²⁹

In Arkansas, a sex offender who is released into the community must undergo a state evaluation to determine his risk of re-offending. The state agency responsible for this evaluation has a large backup of pending evaluations. Until this process is complete, the community where the sex offender lives cannot be notified of his presence. The state has a backlog of 1,500 paroled sex offenders living in the community without notification pending their evaluations.³⁰

Recently a non-profit New York-based group of parents issued a nationwide report card (*Megan's Law Report Card*) comparing sex offender registries and community notification programs of all 50 states.³¹ Survey questions ranged from the availability of phone access to sex offender databases to whether law enforcement agencies engage in door-to-door notification about high-risk offenders. California earned points for having a lifetime registration requirement for SVP offenders (sexually violent predators), but lost points for not providing free telephone access to the sex-offender registry, and for not having a uniform policy requiring police officers to directly notify the public about high-risk sex offenders in a neighborhood (See Table 1).

The survey found that methods vary from state-to-state regarding how police notify residents of high-risk sex offenders moving into a neighborhood. California communities have Internet access to information about these high-risk sex offenders and most of the state's 100,000 registered sex offenders. Some law enforcement agencies post fliers in police station lobbies, and others notify people door-to-door. There is no uniform state policy requiring law enforcement officers to directly notify the public.³²

Table 1
2006 Megan's Law Report Card

State	2005 Number of Registered Sex Offenders	2006 Number of Registered Offenders	Civil Commitment For SVP	Lifetime Registration Required	Minimum/Max to Life Sentence for Sex Offenses
Alabama	5,616	5,193	No	Yes	10-15 years
Alaska	2,873	4,219	No	No	15 to life
Arizona	9,221	11,305	Yes	Yes	10-15 years
Arkansas	5,864	6,426	No	No	25 to life
California	102,180***	104,824***	Yes	No	No
Colorado	8,381	9,125	No	No	10-15-20 to life
Connecticut	3,785	4,106	No	No	10 to life
District of Columbia	624	641	No	No	10 to life
Delaware	2,961	2,984	No	No	15 to life
Florida	33,990	35,910	Yes	Yes	No
Georgia	8,958	11,744	No	No	10 to life
Hawaii	1,957	2,170	No	Yes	No
Idaho	2,606	2,801	No	Yes	No
Illinois	17,100	17,890	Yes	No	10 to life
Indiana	7,300	8,500	No	No	10-to life
Iowa	6,104	6,058	Yes	No	10 to life
Kansas	3,563	3,981	Yes	No	10 to life
Kentucky	4,898	5,351	No	No	10 to life
Louisiana	6,591	6,921	No	No	10 to life
Maine	1,553	1,670	No	No	10 to life
Maryland	4,253	4,340	No	No	10 to life
Massachusetts	18,000	8,104	Yes	No	20 to life
Michigan	36,233	38,032	No	No	10-25 to life
Minnesota	15,819	13,885	Yes	No	10 to life
Mississippi	3,300	3,689	No	No	10 to life
Missouri	10,719	11,031	Yes	Yes	No
Montana	3,370	1,495	No	Yes	No
Nebraska	2,041	2,189	No	No	10 to life
Nevada	4,734	5,573	No	Yes	No
New Hampshire	3,100	3,250	No	No	10 to life
New Jersey	10,464	11,003	Yes	No	15 to life
New Mexico	1,864	1,915	No	No	10-20 to life
New York	20,969	22,209	Yes*	No	20 to life
North Carolina	10,244	9,228	No	No	10 to life
North Dakota	801	946	Yes	No	10 to life
Ohio	13,485	13,750	No	No	10 to life
Oklahoma	5,507	5,118	Yes	No	10 to life
Oregon	15,259	17,160	No	Yes	No
Pennsylvania	7,199	7,736	No	No	10 to life
Rhode Island	1,640	1,352	No	No	10 to life
South Carolina	8,049	8,556	Yes	Yes	No
South Dakota	1,707	1,993	No	Yes	No
Tennessee	7,873	8,561	No	No	10 to life
Texas	46,484	44,336	Yes**	No	10 to life
Utah	8,000	6,904	No	No	10 to life
Vermont	2,226	2,340	No	No	10 to life

Table 1 (Continued)					
2006 Megan's Law Report Card					
State	2005 Number of Registered Sex Offenders	2006 Number of Registered Offenders	Civil Commitment For SVP	Lifetime Registration Required	Minimum/Max to Life Sentence for Sex Offenses
Virginia	13,211	12,152	Yes	No	10 to life
Washington	18,557	18,790	Yes	No	10 to 15 to 25 to life
West Virginia	2,220	2,500	No	No	10 to life
Wisconsin	17,169	17,887	Yes	No	15 to life
Wyoming	929	981	No	No	10 to life
Total	551,987	558,824	Yes 18 No 33	Yes 11 No 40	12 No life 39 10 years to life
Source: Parents for Megan's Law, 2006.					
* Pending legislative approval.					
** Outpatient only.					
*** Includes offenders who were in the community, incarcerated, from out-of-state, and deported.					

In 2005, states began to take more stringent approaches in a effort to protect the community from sexual predators, following a high profile case involving a paroled sex offender who murdered a girl in Florida. The *Jessica Lunsford Act*, better known as Jessica's Law, was enacted in Florida in 2005 and is now being replicated in some other states. Among the law's key provisions are a mandatory minimum sentence of 25 years in prison, and lifetime monitoring of adults convicted of sexual battery of a minor under the age of 13. A version of Jessica's Law has been introduced in Congress (*H.R. 4472*) and in California. The federal law, if passed, would reduce the amount of funding available under the Violent Crime Control and Law Enforcement Act of 1994 (*42 U.S.C. § 4071*) and the Omnibus Crime Control and Safe Streets Act of 1968 (*42 U.S.C. § 3765*) for states that do not comply with the following:

- Require sex offenders convicted more than twice of failing to properly register to wear global positioning system (GPS) devices on their ankles for five years following their release from prison, or ten years for those deemed sexual predators; the costs of tracking and monitoring to be absorbed by each state.
- Mail sex offender registration forms at least twice per year, at random times, to verify sex offenders' addresses. Any registered sex offender who does not respond within ten days must be considered non-compliant.

Proposals to increase punishment for sex offenders are being considered in several state legislatures. Oklahoma and South Carolina recently enacted laws that apply the death penalty to repeat child molesters. The Oklahoma law provides that people found guilty more than once of rape and other sex crimes against children younger than 14 are eligible for the death penalty. The South Carolina law requires multiple crimes against children under the age of 11 for the death penalty.³³ Georgia enacted a law that requires a minimum sentence of 30 years for child-related sex crimes and GPS monitoring for sexual predators.³⁴ Missouri has enacted a law that requires a minimum sentence of 30

years with no chance of parole for sexual predators whose victims are younger than 12. Other proposals under consideration include:

- In Florida and Louisiana, lawmakers are proposing that a special mark be placed on a sex offender's driver's licenses.
- In North Carolina, the attorney general has proposed that residents receive e-mail notifications when a sex offender moves within a mile of their home.³⁵
- Lawmakers in Arkansas, Virginia, West Virginia, and Maryland have set a mandatory minimum 25-year sentence for certain violent sex offenses against children. Maryland is also considering legislation to impose lifetime supervision and GPS electronic monitoring for all sex offenders.³⁶
- Louisiana is considering a bill that would require lifelong electronic monitoring of sex offenders convicted of targeting children.
- In Kentucky, lawmakers have expanded the sex offender registry to include people convicted of possessing child pornography. The minimum time offenders are listed on the registry will double to 20 years under one proposal.
- Nebraska and New York are considering legislation restricting where a sex offender can live.

II. STATE SEX OFFENDER RESIDENCY RESTRICTION LAWS

The first state sex offender residency restriction laws appeared in 2001, and at least 21 states now have enacted them. State sex offender restrictions tend to fall into one of two categories: Child Safety Zone or Distance Marker. Child safety zones involve identifying areas where children congregate, such as schools, childcare centers, playgrounds, school bus stops, video arcades and amusement parks, and imposing a distance requirement, typically 300 feet, in which a sex offender may not loiter. Distance Marker legislation is the more common restriction. Distance Marker laws restrict sex offenders from permanently residing within a certain distance of designated places where children congregate. This restriction typically ranges from 1,000 to 2,500 feet.³⁷

In 2002, the Iowa legislature enacted a distance marker law prohibiting all people convicted of a sex crime from living within 2,000 feet of a school, daycare center or park. Many municipalities in the state passed local ordinances with similar prohibitions. The Iowa residency restriction law was challenged in a class-action suit by the American Civil Liberties Union (ACLU), which was granted a temporary restraining order by the U.S. District Court. In 2005, the Eighth Circuit Court of Appeals upheld the Iowa statute in *Doe v. Miller*.[†] A federal district court later upheld Ohio's Distance Marker legislation.³⁸ In both cases, the courts unanimously concluded that residency restrictions are a form of civil regulation, not a form of punishment, because the statutes are intended to protect children and are rationally related to that goal.

In addition, the Eighth U.S. Circuit Court found in *Doe v. Miller* that the federal constitution does not include a "right to live where you choose." While the federal constitution does protect the right to travel from state to state—and perhaps includes the right to travel within a state Distance Marker—residency restrictions do not interfere with the right to travel. They do not discriminate between state residents and those from out-of-state, and they restrict only the ability to reside near a school, not the ability to enter the area near a school. Finally, the court concluded that residency restrictions do not offend the equal protection clause. They represent a rational legislative determination that excluding sex offenders from areas where children congregate will advance the state's interest in protecting children (See page 43 for a more detailed discussion of the underlying legal issues).³⁹

To date, there have been no reported court decisions affecting Child Safety Zone legislation. Two federal courts have upheld city actions to ban individual sex offenders from public parks.⁴⁰

In California, legislation was introduced in 2006 (*AB 2603*) to allow an apartment or motel owner to ask a prospective tenant if he or she is a registered sex offender, and to deny rental on that basis. The proposal also would allow landlords to evict tenants for misrepresentation.

[†] *Doe v. Miller*, No. 04-1568, U.S. Eighth Circuit Court of Appeals, April 29, 2005

Some state laws and local ordinances address the problem of large numbers of paroled sex offenders living in the same residential dwelling, in what are called “sober-living-environment facilities.” These laws and local ordinances seek to limit the number of offenders who can live in a single facility, and generally require a conditional use permit if more than one offender will be living in a residence. (See Pomona, California *Municipal Code Chapter 50* and Pomona, California *Zoning Code*) The California Penal Code (*Sec. 3003.5*) prohibits more than one paroled registered sex offender from living in any single family dwelling unless legally related by blood, marriage or adoption. This statute provides an exception when the sex offenders are living in a residential facility serving six or fewer people.

Some city and state laws contain exceptions to residency restrictions, for example if

- The sex offender had established a permanent residence (through deed or title) prior to the legislation being enacted.
- The sex offender was a minor when the offense was committed.
- The sex offender is currently a minor.
- The sex offender is required to live in the residence as a condition of parole.⁴¹

Alabama recently broadened its sex offender residency restriction law by enhancing residence and employment reporting requirements, increasing the punishment for violating those requirements, limiting the places that convicted sex offenders may live and work, and creating an electronic monitoring system for certain offenders.⁴²

Georgia has widened its sex offender residency restriction law to include living, working or loitering within 1,000 feet of places where children gather including schools, churches, parks, gyms, swimming pools, or any of the state’s school bus stops.⁴³ However, the U.S. District Court stopped the forcible relocation of eight registered sex offenders living in Georgia from being required to move 1,000 feet from a school bus stop, a key provision of the new law that recently took effect.⁴⁴

Ohio has expanded what is deemed to be a residence within the meaning of a residency restriction to include “premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency that is located within 1,000 feet of any school premises.”⁴⁵

In Florida, residence restrictions apply only to sex offenders who were sentenced after October 1, 1997, for crimes involving victims younger than the age of 18 (*Special Conditions of Sex Offender Probation*, 1997). However, the conditions of probationary supervision in Florida preclude sex offenders with minor victims from living within 1,000 feet of a school, school bus stop, daycare center, park, playground, or other place where children regularly congregate.

Several states, including Arkansas, Minnesota, and Washington, place residency restrictions on sexually violent predators and offenders who are high-risk.

Oregon's sex offender residency restriction law is somewhat unique in that there is a set of requirements to be followed prior to the release of a sex offender to parole. The Oregon Department of Corrections has developed a matrix of rules in consultation with the State Board of Parole and Post-Prison Supervision and community corrections agencies to determine where a paroled sex offender may live.

- A general prohibition against allowing a sex offender to reside near locations where children are the primary occupants or users.
- A prohibition against allowing a sex offender to reside in any dwelling in which another sex offender on probation, parole or post-prison supervision resides unless authorized as provided in *ORS 144.102 (3)(b)(M)*,
- A process that allows affected communities and community correctional agencies to be informed of the decision making process about a sex offender's residence before the offender is released.

EVALUATION OF RESIDENCY RESTRICTIONS

Advocates believe that residency restrictions diminish the likelihood that sex offenders will come in contact with children whom they might victimize. However, there is little research-based evidence that residency restrictions actually reduce recidivistic sexual violence.⁴⁶ Some research suggests that residency restrictions may lead to serious unintended collateral consequences for offenders, such as limiting their opportunities for employment, treatment services, pro-social support systems, and most importantly, housing.⁴⁷

Some states have expressed doubts about the laws' effectiveness. Minnesota and Colorado considered passing residency restriction laws, but decided against it after commissioning studies. Colorado researchers found that molesters who re-offended while under supervision did not live closer than non-recidivists to schools or child-care centers. They also found that placing restrictions on the location of supervised sex offender's residences did not deter the sex offender from re-offending and was not effective in controlling sexual offending recidivism.⁴⁸ Most importantly, the research found that sex offenders who had a positive support system in their lives had significantly lower recidivism rates and fewer rule violations than offenders who had negative or no support.⁴⁹

According to a Minnesota Department of Corrections report, residency restrictions create a shortage of housing options for sex offenders and force them to move to rural areas where they are likely to become increasingly isolated with few employment opportunities, a lack of social support, and limited availability of social services and mental health treatment. Such restrictions can lead to homelessness and transience, which interfere with effective tracking, monitoring, and close probationary supervision.⁵⁰

To alleviate housing problems for sex offenders transitioning from prison to the community in Minnesota, the Department of Corrections is increasing the number and capacity of halfway houses and establishing "three-quarter way houses." Three-quarter

way houses provide affordable housing and a positive community within the house. There is no staff on the premise, but some degree on monitoring by supervising agents takes place. These facilities allow for increased community supervision by parole agents, law enforcement, and the public. According to Minnesota Department of Corrections officials, there is no evidence that concentrating level three offenders in these facilities increases the likelihood of re-offense within the community.⁵¹

The most serious of sex offenders (13 level-III offenders) who were released in Minnesota between 1997 and 1999, and were re-arrested for committing new sex offenses, did not reside at the time of their arrests within 2,500 feet of schools or parks.⁵² The study did not provide re-arrest information for the less serious sex offenders.

In Florida, a 2004 survey of sex offenders found that half of the respondents reported that residency restrictions had forced them to move from a residence in which they were living, and 25 percent were unable to return to their residence after their conviction (see Table 3 below). Nearly half reported that residence restrictions prevented them from living with supportive family members. The surveyed sex offenders did not perceive residency restrictions as helpful in risk management, and in fact reported that such restrictions inadvertently increased their psychosocial stress, which can lead to recidivism.⁵³ At that time, housing restrictions in Florida were enforced by special conditions of sex offender probation with a restriction zone of 1,000 feet. It is likely that hardships related to housing increase with larger exclusionary zones.

Table 3	
Impact of Residency Restrictions (1,000 feet) in Florida	
(N=135), 2004	
Item	Yes
I have had to move out of a home that I owned.	22%
When released from prison, I was unable to return to my home.	25%
I cannot live with supportive family members.	30%
I find it difficult to find affordable housing.	57%
I have suffered financially.	48%
I have suffered emotionally.	60%
I have had to move out of an apartment that I rented.	28%
Source: Jill S. Levenson, 2005.	

An Arkansas study found that 48 percent of child molesters lived in close proximity to schools, daycare centers, or parks. However, the authors could not establish an empirical relationship between sex offender housing and recidivism. They speculate that molesters who are motivated to re offend might be more likely to live in close access to potential child victims.⁵⁴

A 2001 risk-assessment study by Virginia’s Criminal Sentencing Commission found employment to be a major factor affecting whether paroled sex offenders relapse and re-offend. The study of 579 paroled sex offenders over a five year-period found that an

offender's record of employment for the previous two years was correlated with the likelihood of recidivism. Sex offenders who had been unemployed or not regularly employed (i.e., employed with a full-time job at least 75 percent of the time) were found to recidivate at higher rates than sex offenders who experienced stable employment.⁵⁵

Research in Colorado suggests that sex offenders with positive, informed support (stable housing and social support) have significantly lower criminal and technical violations than sex offenders who had negative or no support (such as friend, family, or roommate who negatively influence the offender or refuse to cooperate with the authorities).⁵⁶

A U.S. Department of Justice Bureau of Statistics study that tracked 9,700 released sex offenders for three years after release found a re-arrest rate for another sex crime of 5.3 percent, and a 3.3 percent re-arrest rate for sex crimes against a child. The study found a general re-arrest rate for all released offenders of 68 percent, compared to a re-arrest rate for all sex offenders of 43 percent.⁵⁷ Another U.S. Department of Justice Bureau of Statistics study found that the risk of an individual committing a new sex crime is greater among people who have previously committed a sex crime; a sex offender is about four times more likely than a non-sex offender to be arrested for another sex crime.⁵⁸

A 1998 study of 400 paroled sex offenders drawing from data over a five-year period found a significant attitudinal difference between recidivists and non-recidivists. Recidivists saw themselves as being at little risk for committing new offenses, were less likely to avoid high-risk situations, and were more likely to report (in a polygraph) engaging in deviant sexual behavior.⁵⁹

In general, people do not want to live near a sex offender. A study conducted in May 2006 by the National Bureau of Economic Research found that when a sex offender moves into a neighborhood, values of homes within a tenth of a mile drop an average of four percent.⁶⁰

III. LOCAL ORDINANCES RESTRICTING SEX OFFENDER RESIDENCY

Even though the vast majority of child victims know their abusers, the headline-grabbing cases often involve strangers.⁶¹ Since the abduction and murder of Jessica Lunsford in 2005, there has been a dramatic increase in the number of local ordinances and regulations creating “sex offender free” communities and buffer zones that exclude registered sex offenders. These ordinances are designed to promote community safety by limiting the housing options available to sex offenders.

In California, Texas, Florida, Virginia, Georgia, New York, Iowa, Washington, Nebraska, and Kansas, local officials are limiting where sex offenders can live. Researchers estimate that over 400 municipalities’ have enacted restrictive ordinances. For example, New Jersey does not have a statewide residency rule but at least 113 municipalities in the state have local residency restrictions.⁶²

- “I think all the towns will get involved, and it’ll be one-upmanship, and then the courts will probably get involved,” said Joseph C. Scarpelli, the mayor of Brick, N.J., which enacted an ordinance in 2005 that bars sex offenders from living or working within 2,500 feet of a school, park, playground, daycare center, or school bus stop.
- A local elected official from Iowa said, “If we can get these people out of our community, it’s not that these crimes won’t happen... It’s just that they won’t happen in my community.”⁶³

In Lincoln, Nebraska, the mayor is concerned that if the city does not act, it could bring a migration of sex offenders who have been affected by the laws in other communities.⁶⁴ City officials also contend that local law enforcement personnel are needed to participate in the enforcement of the sex offender laws that would otherwise be the responsibility of state parole or probation personnel.⁶⁵

Some city ordinances are more restrictive than others. In Florida, where more than 60 municipalities have residency restriction ordinances, the restricted areas now include parks, playgrounds, churches, libraries, bus stops or any other place where minors normally congregate.⁶⁶ The township of Jackson, New Jersey, toughened its prohibition recently, restricting sex offenders from living within 2,500 feet, of any park or playground, movie theater or amusement park. (Jackson is home to the Six Flags Great Adventure Park.) The New Jersey township of Middletown bans sex offenders from residing within 1,000 feet of public schools, parks, and daycare centers, and creates a 150 feet exclusion zone around places where children normally congregate.⁶⁷ In Snellville, Georgia, a state with a statute that prohibits sex offenders from residing within 1,000 feet of any school, the city council implemented an ordinance banning sex offenders from living within 2,500 feet of any school, over twice the distance of the state statute.⁶⁸

In Alvin, Texas, a new ordinance strengthens a state law restricting where sex offenders may live and provides local law enforcement more enforcement authority. City police officers have the power to enforce the restrictions, and landlords in restricted areas are prohibited from leasing to sex offenders. Residency is defined as a place where a person resides for 14 days or more. Knowingly renting to a sex offender in a restricted area could yield a fine of up to \$500. Previously, only parole officers could enforce the state law. “We have one more tool in our toolbox to protect our children,” said Alvin Police Chief Mike Merkel.⁶⁹ The Alvin ordinance finds that sex offenders who use physical violence and are convicted of preying on children present an extreme threat to the health, safety and welfare of children. The ordinance applies to anyone who is required to register with the Texas Department of Public Safety for the Sex Offender Database. The ordinance does not apply to minors or those convicted as minors.⁷⁰

Ordinances restricting sex offender residency have also been approved in the Texas towns of Brazoria, Manvel, and Freeport, and are under consideration in Lake Jackson and Sweeny. The city of Brazoria has banned registered sex offenders from living within 1,000 feet of places where children gather including schools, daycare facilities, playgrounds, public or private youth centers, public swimming pools and video arcades. According to Mayor Ken Corley, the city has yet to receive a single complaint about the new ordinance: “If you’ve ever visited with a child who has been sexually molested, it will not only wreck their life and their family’s life, it will do some damage to you as well,” he said. “You will never forget that. I’m very passionate about this.”⁷¹

New housing developments in Lubbock, Texas, require prospective buyers to submit personal information and be screened for sex offenses. Anyone convicted of a sex offense is not allowed to move into the neighborhood. If a person is convicted of a sex crime while living in the housing development, the subdivision will fine that person \$1,500 a day until he or she moves.⁷² In the Texas town of Cuero, high-risk sex offenders must announce their presence with a sign in their yards. The City Council unanimously approved an ordinance that calls for a sign that reads, “A Registered Sex Offender Lives Here.” Offenders who do not comply can be fined up to \$500.⁷³ Many cities in Texas are in the process of drafting similar ordinances.⁷⁴

In Canandaigua, New York, the City Council exercised its authority under the Municipal Home Rule Law (*Sections 20 (13) (22) and (23) of the General City Law*) to protect and safeguard the lives and well being of the community, and especially children, from registered sexual predators. The city ordinance bans a sex offender from establishing a residence or domicile within 1,000 feet of the property line of any land utilized, in whole or in part, as a school, and within 500 feet of the property line of any land utilized, in whole or in part, as a park, playground, or daycare center.

Some local communities differentiate between risk levels. Some exclusion zones apply only to adult sex offenders or to offenders who committed crimes against minors. Monmouth County in New Jersey does not have a residency prohibition, but it has barred adult sex offenders whose victims were minors from using county-owned or operated

properties. For example, an 18-year-old high school senior convicted of having consensual sex with a 14-year-old may not enter a county-owned library or park.⁷⁵

The town of Taylor Falls, Minnesota, enacted an ordinance that prevents level III sex offenders, who are considered most likely to re-offend, from living in the town. The restrictive nature of this ordinance is being challenged by the American Civil Liberties Union (ALCU), which is also concerned that the ordinance could discourage sex offenders from registering with authorities. In the Minnesota town of Austin, just north of the Iowa state border, Police Chief Paul Philipp told the City Council that it would be a mistake to enact an ordinance restricting where a sex offender may live in the city because it would apply to only a small number of offenders while disrupting the lives of offenders trying to get their lives back in order. He cited the Iowa sex offender residency law. “The number of unregistered offenders in Iowa has doubled in just a few years.”⁷⁶

In October 2005, the Cook County, Illinois, Sheriffs’ Department and local police conducted Halloween premise checks at the homes of all registered sex offenders in their jurisdictions. A total of 99 suburban departments agreed to participate in the effort. A sheriffs’ spokesperson estimated that more than 1,000 of the 1,300 registered sex offenders who live in suburban Cook County received Halloween home visits from either the Sheriffs’ or local police departments to ensure that they were not passing out candy to “trick-or-treaters.”⁷⁷

Some California cities have adopted or are considering adopting ordinances that restrict sex offenders from loitering near areas where children congregate, and that restrict where a paroled sex offender may live. In National City, La Mesa, Santee, Folsom, and Elk Grove registered sex offenders cannot linger within 300 feet of schools, amusement parks and other places where children gather.⁷⁸ Sacramento County adopted an even broader safety zone ordinance that prohibits sex offenders from loitering within 300 feet of any library, daycare center, skate park, public swimming pool, video arcade, youth sports facility, or bus stop.⁷⁹ San Diego and Chula Vista are considering similar restrictions.⁸⁰ These ordinances present thorny legal and policy questions, including whether they are pre-empted by state laws establishing parole and probation requirements.⁸¹

EFFECTIVENESS OF LOCAL SEX OFFENDER RESIDENCY RESTRICTIONS

There have been no careful evaluations of local residency restrictions, in part because they are so recent. There have been some evaluations of state laws, which we discussed earlier.⁸² A number of experts in the field have expressed opinions, which we quote below.

According to John Gruber, executive director of the Association for the Treatment of Sexual Abusers (ATSA), the organization is generally opposed to residency restrictions: “What you’re doing is pushing people more underground, pushing them away from treatment and pushing them away from monitoring,” he said. “You’re really not improving the safety, but you’re giving people a false sense of safety.”⁸³

Jill S. Levenson, author of a study on sex offender zoning laws, contends that local restrictions could force some sex offenders to move away from the sources of stability such as family in their lives, perhaps putting them at greater risk of committing more crimes: “When you push offenders out of the more populated areas, they can lose access to jobs and treatment, and it makes them harder to track.”

Ernie Allen, the president of the National Center for Missing and Exploited Children, is of the opinion that sex offender residency restrictions can create a false sense of security because people will believe that sex offenders will just go away. Also, they may move sex offenders from one community to the next, setting off a competitive spiral of ever-tougher “not in my backyard” ordinances.⁸⁴

According to John Furlong, a Trenton, New Jersey lawyer and coeditor of *A Megan’s Law Sourcebook*, sex offender ordinances overlook the chief victimizers of children: relatives and acquaintances.⁸⁵ Each year there are 60,000 to 70,000 arrests on charges of child sexual assault, according to the U.S. Justice Department, of which about 115 abductions by strangers. About seven in ten female rape or sexual assault victims state that the offender was an intimate, other relative, a friend or acquaintance.⁸⁶

According to Ronald K. Chen, a Rutgers University Law School dean and authority on Megan’s Law, each town is trying to make sex offender residency someone else’s problem. More often than not, said Chen, “the exclusion is so comprehensive that if it doesn’t prevent offenders from having any meaningful existence in the town, it comes pretty close.”⁸⁷

Local residency restrictions may drive some of the estimated 500,000 registered sex offenders in the country underground: “What they’re probably going to do is move into a community and not register,” said Carolyn Atwell-Davis, legislative director for the nonprofit National Center for Missing and Exploited Children. There are an estimated 100,000 offenders nationally who have failed to comply with registration requirements and remain undetected: “It’s better to know where these “lost offenders” are than where they aren’t.”⁸⁸

Seattle police detective Bob Shilling, a nationally recognized expert on sex offenders, is of the opinion that sex-offender-free zones chase offenders “from one jurisdiction to another.” “It creates a lot more homeless sex offenders, which makes it a lot harder for us to keep track of them,” Shilling said. “They do not work. In fact, it exacerbates the problem.”⁸⁹

Linn County, Iowa, Sheriff Don Zeller reports that his county had 435 sex offenders registered in 2002, when the state residency restriction law first went into effect. Of those, 114 moved, 74 were charged with violating the ordinance, and others just disappeared; “We went from knowing where about 90 percent of them were. We’re lucky if we know where 50 to 55 percent of them are now...the law created an atmosphere that these individuals can’t find a place to live.”⁹⁰

Some cities have rejected proposals to ban or restrict sex offender residency. For example, in the town of Covington, Kentucky, the city commission rejected a proposal to ban sex offenders from living within a 2,000 foot radius of any school or daycare center. A concern was that it would push registered sex offenders from the city's urban core into a handful of neighborhoods. Attorney Steven Johnson-Grove cited the studies conducted in Minnesota and Colorado showing that similar restrictions had led to more sex offenders failing to register, which is a key component of notification.⁹¹

In the Colorado town of Greenwood Village, a proposal to ban sex offenders from living within a 2,500 feet barrier was debated and defeated. After the decision, an editorial in the *Denver Post* stated, "We do not become a safer society by adopting a one-size-fits-all strategy toward sex offenders. We vary the treatment, the levels of supervision and the length of sentences because we recognize that different types of sex offenses and different psychological profiles of offenders justify different levels of supervision, treatment or incarceration."⁹²

Supervision and Parole

In California, sex offenders are placed on parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR). Last year the Legislature enacted a law restricting sexual violent predators (SVPs) and child molesters with multiple offenses from living within a quarter-mile of any K-12 school. A law was also enacted that prohibits high-risk paroled sex offenders from residing within a half-mile of any school, daycare center, or place where children congregate for the duration of their parole term. By law, when released from prison, parolees in California are returned to their county of commitment unless there are special circumstances that would endanger the public and the offender.

California officials are having a harder time finding a place for paroled sex offenders to live:

- Twenty-seven paroled sex offenders [20 were considered high-risk] were placed in hotels and motels within 11 miles of Disneyland, creating an uproar that resulted in their being moved to other locations.⁹³
- In Solano County, several sex offenders released on parole are living in a parole field office because there are not able to find any living quarters in the area.
- Twelve paroled sex offenders living in a motel were evicted once it was learned who they were, leading to their placement in a trailer on the grounds of San Quentin State Prison, which sparked an angry outcry from people living near the prison.⁹⁴ According to CDCR spokesperson Elaine Jennings, "Placing the parolees at San Quentin is the only way to keep them from becoming homeless, which could lead to parole agents losing track of them."⁹⁵
- A motel manager in Hayward evicted seven paroled sex offenders staying in the motel after neighbors lodged dozens of complaints, according to CDCR officials. The parolees temporarily reside in the local parole field office.

IV. COMPREHENSIVE RISK ASSESSMENT AS A MEANS TO CONTAIN THE MOST SERIOUS SEX OFFENDERS

Historically, efforts to manage and provide treatment to sex offenders within the criminal justice system have been fragmented. The goals of offender accountability and community safety may be better attained through a more comprehensive, coordinated, and systemic approach. Anchored by a series of fundamental principles as described below, the comprehensive approach to sex offender management recognizes the interrelatedness of key criminal justice system components including investigation, prosecution, and sentencing, along with specialized assessment, treatment and supervision, and registration and timely community notification.⁹⁶

Factors associated with sex offense recidivism have been identified by researchers, resulting in the development of risk-assessment instruments that can be useful in estimating the likelihood that a sex offender will re-offend.⁹⁷ It is possible, to classify sex offenders into risk categories, and apply the most restrictive interventions and the most aggressive community residency restrictions and notification to the most dangerous offenders. Pedophiles that molest boys and rapists of adult women are among those most likely to recidivate, according to research.⁹⁸ There is also substantial evidence that sex offenders commit many undetected offenses, so a thorough assessment, including polygraph examinations and other types of psychological assessments, is useful in determining offense patterns and risk factors.⁹⁹

Using a proven risk assessment tool to evaluate the supervision and treatment needs of sex offenders who have been convicted multiple times is important because of the limited law enforcement and correctional resources that can be directed towards these offenders. When sex offenders are ready to return to their communities, coordination between correctional officials and local law enforcement agencies is also important so that communities can be properly notified in advance of their return.

Not all sex offenders pose the same threat. Broad prohibitions may, by lumping all sex offenders together, dilute the public's ability to truly identify those who pose the greatest threat to public safety.¹⁰⁰ At the same time, good risk assessment tools can allow limited law enforcement resources to be used more cost-effectively to monitor, treat, and restrict highly dangerous offenders, without unnecessarily disrupting the stability of lower risk offenders.

Under a 2005 Minnesota statute, the state correctional commissioner is required to develop a risk assessment scale for use by administrative law judges. The scale assigns weights to various risk factors including the age of the offender, the age and relationship to the victim, the availability and level of social and family support for the offender, prior history, educational attainment, and access to therapeutic treatment. These factors determine the risk assessment score. A low-risk offender, or tier I offender, for example, could be someone who was convicted of a single nonviolent sex offense, such as having consensual sex with an underage teen, and who is supported by family.¹⁰¹

Minnesota uses a three-tier system to rank the least-to-the highest risk level sex offender:

- Tier-three: Highest risk of committing another sex crime. Police inform neighbors, schools, and community groups of the offender's location. The offender's photo, address and type of car are placed on the state's Megan's Law Internet registry.
- Tier-two: Moderate risk of committing another sex crime. Schools and community groups are notified about the offender. Photo, address and type of car may be placed on the Internet.
- Tier-one: Low risk of committing another sex crime. The offender's address is listed by local police on their Internet website.

RISK ASSESSMENT MODELS

The practice of risk assessment allows correctional officials to determine the likelihood that a sex offender will commit a new sex crime in the future. Although researchers cannot predict with certainty that any particular offender will act in a specific way, they can estimate, with moderate accuracy, whether or not an offender belongs to a high- or low-risk group. Using risk factors that have been correlated with recidivism, qualified clinical practitioners* can use scientific risk assessment tools to screen offenders into risk categories.¹⁰²

Methods of assessing risk can be generally categorized as actuarial (calculating risk based on probabilities determined by statistical records), clinical or some combination of each, and placed within six methodological approaches:

- *Unguided clinical judgment:* A process by which a clinician reviews case materials without any significant assumptions prioritizing the relative importance of the information obtained.
- *Guided clinical judgment:* Clinicians start with some assumptions of what is important based on their own ideas and theories without significant support from research. This approach is similar to unguided judgment, but clinicians have a better chance of being more consistent across cases.
- *Clinical Judgment based on a Case History Approach:* This approach uses the offender's own history as a guide to determine the factors that are relevant to recidivism risk.
- *Research-Guided Clinical Judgment:* A pre-determined set of research-supported factors are considered and given weight in determining risk. This approach results in consistency across cases of a similar nature.
- *Clinical Adjusted Actuarial Approach:* One or more actuarial instruments are used with adjustments based on clinically-derived considerations. An actuarial

* A clinician is usually a professional practitioner of medicine or psychology who does clinical work instead of laboratory experiments. It is a non-specific term, not implying any particular qualification or branch of medicine.

instrument is used to help predict behavior. Using more than one actuarial instrument makes it easy to compare and rate the effectiveness of each instrument.

- *Purely Actuarial Approach:* This approach uses actuarial instruments with no adjustments. Clinicians focus on specific risk factors to avoid being swayed by emotion.¹⁰³

Research indicates that data-based purely actuarial risk assessments achieve greater accuracy than clinical models due to the stability of historical factors in determining risk. However, most actuarial methods are insensitive to change and are thus unable to measure possible changes in risk levels or to determine how or when to intervene. To fill that gap, researchers are focusing on dynamic factors such as age, criminal history, and living arrangements that can change over time and combining them with static variables in risk assessments.¹⁰⁴

Sex offender risk assessments have been extensively studied by leading researchers in the field. There appears to be no significant difference in predictive strength among the commonly used actuarial measures.¹⁰⁵ This does not mean that all risk assessment instruments would be appropriate for all sex offenders, as each instrument is developed for a specific population. The majority of research has concentrated on the adult male population. Very little research has been done for juvenile sex offenders and almost none for female offenders.

The following table shows the results of a prediction study conducted by Robert J. McGrath, one of the leading researchers in the field of sex offender risk assessment. Six risk assessment methods are displayed along with the predictive validity of each.¹⁰⁶ All show moderate predictive validity for sex offense recidivism: two also show moderate predictive validity for violent offenses. For the accuracy of predicting sexual offense recidivism, researchers use the summary of the number of times each instrument is correct in assessing whether a sex offender re-offends within five years versus the number of times the instrument is incorrect. This score is referred to as the “receiver operating characteristics curve.” If the instrument score is accurate .75 percent of the time, that is considered moderate predictability. If the instrument is accurate at .05 to .50, it is considered low predictability.¹⁰⁷

Table 4 Prediction of Sex Offender Risk					
Method	Predictive Validity			Purpose	Description
	Sex	Violence	Any		
Clinical Judgment	Low	Low	Low	Assess re-offense risk among sex offenders	Meta-analysis of 61 studies (n=23,393) that examined factors related to recidivism among sex offenders
Minnesota Sex Offender Screening Tool-Revised (MnSORT-R)	Moderate	--	--	Assess sexual re-offense risk among adult rapist and extra-familial child molesters	16 items (static and dynamic) scored by clinical staff or case managers using a weighted scoring key
Rapid Risk Assessment for Sex Offense Recidivism (RRASOR)	Moderate	--	--	Assess sexual re-offense risk among adult sex offenders at 5 and 10-year follow-up periods	4 items (static) scored by clinical staff or case managers using a weighted scoring key
STATIC-99	Moderate	Moderate	--	Assess risk of sexual re-offense risk among adult sex offenders at 5, 10, and 15-year follow-up periods	10 items (static) scored by clinical staff or case managers using a weighted scoring key
Sexual Violence Risk-20 (SVR-20)	Moderate	--	--	Assess risk of sexual re-offense risk among adult sex offenders	20 items (static and dynamic) scored by clinical staff or case managers using a weighted scoring key
Vermont Assessment of Sex Offender Risk (VASOR)	Moderate	Moderate	--	Assess sexual re-offense risk and offense severity among adult sex offenders	19 items (static and dynamic) scored by clinical staff or case managers using a weighted scoring key

Source: Robert McGrath, Clinical Director, Vermont Treatment Programs for Sexual Aggressors, 2003.

STATE COMPARISONS

In a review of how states are addressing the challenge of sex offender risk, we examine Iowa, Texas and Colorado and compare them to California. Texas and Colorado have dedicated governmental organizations that are all responsible for post-incarceration decisions about sex offenders including their supervision and treatment needs.

Iowa

There are 6,105 sex offenders registered under Iowa law, of these 1,589 are registrants of other states living in Iowa, 1,564 registrants live outside the state, and 664 registrants are incarcerated.¹⁰⁸

In Iowa, sex offenders convicted of any sex offense cannot reside within 2,000 feet of a school, daycare center, or places where children gather. Iowa law does not establish

exclusionary zones in which sex offenders cannot be present (near schools, daycare centers, etc.). Parole and probation officers are responsible for sex offender supervision upon release from prison.

The *STATIC-99* and the Iowa Sex Offender Risk Assessment-8 (*ISORA-8*) for adult sex offenders, and the Iowa Juvenile Sex Offender Registry Risk Assessment (*JSORRAT-II*) for juvenile offenders, are the actuarial instruments used by the Iowa Department of Corrections to measure the risk of re-offending by sex offenders whose crime involved a minor. There are three category levels of risk (highest risk to least risk). The category of risk for each sex offender is included on the state's sex offender registry website, as required by law for persons whose victims were minors (*Iowa Code Chapter 692A*).¹⁰⁹ Risk assessments ranking are used to determine whether a sex offender needs electronic monitoring, treatment, residential facility placement, supervision, or civil commitment.

Validation of these risk assessment instruments is an ongoing process involving tracking data, literature review, contacts with researchers and clinical professionals, and regular contacts with other Iowa agencies involved with sex offenders.¹¹⁰ According to Iowa Department of Corrections officials, a study has been proposed to determine the comparative predictive validity of both the *STATIC-99* and the *ISORA-8* risk assessment tools, based on a sample of all sex offenders under supervision. However the scope and level of the validation study has not yet been determined and no resources have been allocated for it.

Other risk assessment tools used in Iowa to evaluate and monitor sex offenders in community-based corrections programs include:

- *Polygraph*: A physiological measure designed to distinguish truth from falsehood (used for sexual history and to evaluate maintenance of progress)
- *Plethysmograph*: A physiological measurement of sexual arousal[†]
- *Minnesota Multiphasic Personality Inventory-2 (MMPI-2)*: An assessment of adult psychopathology
- *Multiphasic Sex Inventory-II (MSI-II)*: A measurement of sexual characteristics
- *Wechsler Abbreviated Scale of Intelligence (WASI)*: A measurement of intelligence
- *Shipley Institute of Living Scale (SILS)*: An assessment of general intellectual functioning
- *Abel Assessment*: A measurement of sexual interest in children
- *Level of Service Inventory Revised (LSI-R)*: A measurement of attributes of offenders and their situations in relation to level of supervision and treatment decisions

[†] The 1st and 9th U.S. Circuit Courts of Appeals have found that requiring the Plethysmograph as a condition of probation/parole may violate a defendant's constitutional right to bodily integrity (*United States v. Webber*). No. 05-50491 (9th Cir., June 20, 2006).

- *STABLE 2000*: Assessment of risk using dynamic factors that change slowly over time
- *CUTE 2000*: Assessment of risk using dynamic factors that change rapidly and are situational in nature
- *Parole Board Risk Assessment*: An assessment of risk for general and violent recidivism

Texas and Colorado

Neither Texas nor Colorado has a sex offender residency restriction law. Both states have developed risk assessment tools. Many of the risk assessment tools used in Iowa to evaluate and monitor sex offenders prior to their release in the community are also used by clinicians and correctional officials in Texas and Colorado.

In both states, a dedicated board or council is responsible for the treatment and supervision of sex offenders on parole. They also partner with local law enforcement to notify communities of sex offender residency in a timely manner. These two state-level sex offender management organizations have a multi-disciplinary membership that is defined in legislation. Both organizations issue guidelines for the evaluation, treatment, and monitoring of adult sex offenders behavior, including for sex offenders with developmental disabilities. They also develop release criteria for sex offenders serving lifetime probation or parole sentences. Colorado does not have a civil commitment process for sexually violent predators, but the board does use a set of guidelines to determine risk for each sex offender.^{111‡}

Colorado Sex Offender Management Board

The Colorado Sex Offender Management Board (SOMB) was created by the legislature in 1992 to create and oversee guidelines for sex offender treatment, evaluation, and supervision, including standards for lifetime supervision and for offenders with developmental disabilities. The SOMB is composed of personnel from the Department of Corrections, the Judicial Department, local law enforcement, the Public Defender's Office, clinical polygraph examiners, the Department of Public Safety, district attorneys, the Department of Human Services, licensed mental health professionals with expertise in treating sex offenders, the victim services community, and the Department of Community Corrections.

At the outset of the process, probation departments conduct pre-sentence investigations and evaluations of sex offenders to determine if they are amenable and eligible for

[‡] Civil commitment statutes are designed for “sexually violent predators” (SVPs), and require that they be confined and treated in a medical setting following completion of their criminal sentences (The term SVP applies to offenders who have targeted strangers, have had multiple victims, or have committed especially violent offenses of a sexual nature). Civil commitment is different than a criminal sentence in that a criminal sentence has a definitive time frame. Civil commitment usually continues until it is determined that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

treatment. Subsequent assessments occur at the entry and exit points of all sentencing options: probation, prison, parole, and community corrections.

Sex offenders with a sentence of six or more years participate in an inclusive structured treatment program. Offenders with a sentence of from two-to-six years participate in a modified program, and offenders with sentences less than two years participate in treatment and risk testing. All offenders are required to undergo risk assessment and treatment evaluation.¹¹²

While in prison, in order to successfully progress in treatment and be eligible for parole, the offender must:

- Demonstrate control over sexual arousal or interest through improvements in Plethysmograph or Abel Screen testing.
- Consistently complete non-deceptive polygraphs regarding any planning behavior or masturbation involving unlawful arousal and fantasies.
- Consistently demonstrate self-motivated use of their relapse prevention plan and distribute copies of the plan to any co-habitor or significant other.
- Demonstrate the development and maintenance of appropriate adult relationships that value the quality of the relationship over sexual gratification.
- Demonstrate an ongoing commitment to and active engagement in treatment, containment and monitoring to manage lifelong risk.¹¹³

Even after demonstrating improvement on these measures, there is no guarantee that the offender will be able to control arousal or inappropriate interests. Sex offenders who are sadists or psychopaths, for example, may not have the ability to successfully complete treatment. These offenders will probably not be released from lifetime supervision.¹¹⁴

After successful completion of the prison treatment program and the minimum sentence, sex offenders are eligible for release to community supervision. The offender must agree to intensive and sometimes intrusive accountability measures in order to remain in the community rather than in prison. Concurrently, the victims have the option to decide their level of involvement in the process, especially after the offender has been released. The SOMB guidelines allow the victim(s) to be informed about the offender's compliance with treatment, as well as any changes in the offender's treatment status that might pose a risk to the victim (e.g. if the offender has discontinued treatment).¹¹⁵

Personnel from agencies involved in sex offender management are required to make decisions regarding sex offender housing early in the process of determining risk, including evaluating the quality of family and associate relationships. Offenders sentenced to community corrections typically serve a six-to-nine month residential term and complete the sentence in the community. These sex offenders usually do not live together in a shared living arrangement.

Outside of jail and community corrections, which have their own guidelines, there are multiple arrangements in which sex offenders can live in the community. They may live

alone, with family or friends, in motels, residential homes, homeless shelters, or shared living arrangements. Preliminary research suggests that these arrangements do not equally promote community safety. The study, which looked at 217 sex offenders on probation (75 percent were high-risk) over a 15-month period, found that 27 percent had committed a “hands off” sex offense (peeping, voyeurism, or exposure). Of these offenses, 27 percent occurred while the offender was living with a family member, 27 percent occurred while living with a friend, 13 percent occurred while living alone, 20 percent occurred while living in a shared living arrangement, and 13 percent occurred while in jail or work release.¹¹⁶

The risk assessment evaluation instruments and law enforcement processes that the SOMB uses to determine a sex offender’s risk in the community rely on collecting information from a variety of sources, including:

- The offender’s criminal history.
- The Colorado Sex Offender Risk Scale (actuarial scale norms based on Colorado offenders from probation, parole and prison).
- Violence Risk Assessment Guide (norms based on a psychiatric hospital sample).
- Sex Offense Risk Assessment Guide, Rapid Risk Assessment for Sex Offender Re-arrest (sample excludes incest offenders).
- *MnSOST-R* (norms on Minnesota offenders in that state’s Department of Corrections, excludes incest offenders), *CARAT*, *STATIC-99* or *2002 SONAR* assessment tools.

In May 2005, there were 8,244 registered sex offenders in Colorado. Since 2000, approximately 65 percent of convicted sex offenders in Colorado have been placed on probation, about 20 percent sentenced to prison, and approximately 15 percent placed in community corrections programs. A total of 626 sex offenders were sentenced to prison under the Lifetime Supervision provisions for sex offenses from fiscal year (FY) 1998-99 through FY 2003-04. As of June 30, 2004, there were 905 sex offenders under intensive probation supervision in Colorado. Of these offenders, approximately 309 (34 percent) were sex offenders under lifetime supervision.

Research findings published by the Colorado Department of Public Safety suggest that sex offenders with positive, informed support have significantly fewer criminal and technical violations than sex offenders with negative or no support (i.e., friends, family, or roommates who negatively influence the sex offender or refuse to cooperate with the containment teams). The study found that sex offenders living in a shared living arrangement had the lowest recidivism rate. Offenders with no support and living with a family member or friend had the highest numbers of violations (both criminal and technical violations). Family member and friends may not provide a supportive or healthy environment.¹¹⁷ Sex offenders on probation living with their families in the Denver metropolitan area were more likely to have both a criminal and technical violation. The study also found that sex offenders who had committed a criminal offense (either sexual or non-sexual) while under criminal justice supervision were randomly

scattered throughout the Denver study area, and were no more likely to live in proximity to schools and childcare centers than other types of offenders. The study did not separately report on child-related sex offenses.¹¹⁸

Texas Sex Offender Management Council

Treatment, intervention, and community supervision are key components of the Texas approach to sex offender management. The Council on Sex Offender Treatment sets all standards for specialized sex offender treatment in state prisons and local communities, and maintains a registry of sex offender treatment providers. The Council has been in existence since 1983, and is housed in and staffed by the Texas Department of Health. The Council has four primary functions:

- *Public safety* by administering the civil commitment program of sexually violent predators and preventing sexual assault.
- *Public and behavioral health* by treating sex offenders.
- *Regulatory* by maintaining a list of licensed sex offender treatment providers and establishing the rules and regulations regarding the treatment of sex offenders.
- *Educational* by disseminating information to the public regarding the management of sex offenders.

A serious sex offender in Texas state prison must complete a three-phase treatment program that takes up to 24 months before he is eligible for parole release to community treatment. Offenders in the prison treatment program include sexually violent predators returned to prison on parole violation charges, inmates with a previous sex offense who are not in administrative segregation, and inmates who were convicted of a sex crime. The three treatment phases are:

- *Evaluation and Treatment Orientation*-(3-6 months): This phase of treatment consists of training aimed at helping the offender to admit guilt, accept responsibility, understand sexual offending, identify deviant thoughts, and learn appropriate coping skills. Each participant receives a psychological evaluation from which an individual treatment plan is developed.
- *Intensive Treatment*-(9-12 months): This phase attempts to restructure deviant behaviors and thought patterns to lower the risk of re-offending. Group therapy and various sanctions and privileges give the offender immediate feedback about his behavior and treatment progress.
- *Transition and Relapse Prevention*-(3-6 months): Participants continue in group therapy while working on behavioral changes and learning coping skills. During this time they begin to reconnect with their family or an alternative support system, and learn the responsibilities that are expected of them by parole officers, community treatment providers, and registration laws.¹¹⁹

Continued specialized treatment in the community is mandatory for all violent sexual predators and sex offenders released early from prison after treatment. A risk assessment

team determines the level of treatment and the intensity of supervision each sex offender will receive at the time of his release from prison. The program is limited to about 40 percent of eligible sex offenders. Up to 60 percent of convicted sex offenders do not receive specialized treatment through this program while in prison, nor do they receive treatment after release from prison, because the sentencing courts require them to complete the full term of their sentence in prison.¹²⁰

Due to fiscal constraints, the civil commitment program for sexually violent predators (SVP) operates on an outpatient basis. Texas is the only state SVP civil commitment program in the country that operates this way. The annual outpatient cost ranges between \$30,000 and \$37,000 per client-offender. This compares to yearly inpatient SVP treatment costs of \$80,000 to \$125,000 per offender in fifteen other states.¹²¹ Sex offenders live in-group housing (if applicable) and engage in intensive sex offender treatment (testing, groups, individual and family sessions, etc.). They also must wear GPS devices, take anti-androgen medication, and undergo polygraph exams, penile plethysmograph exams, and substance abuse testing.[§]

There is a significant difference between the Texas program and civil commitment programs in other states. In other states, the civilly committed sex offender is placed in a locked, secure residential facility and can choose not to participate in sex offender treatment. In Texas, civilly committed SVPs are allowed to transition back into the community where they are mandated to actively participate and comply with intensive outpatient sex offender treatment and supervision.

California Risk Assessment and Sex Offender Management

In California, most adult sex offenders are sentenced to serve a determinate number of years in prison, and are granted a parole release date upon satisfactory completion of their sentences. Since 2001, California state law requires (*Penal Code Section 3005*) that all parolees under active supervision, and deemed to pose a high risk to the public of committing violent sex crimes, be placed in an intensive and specialized parole supervision caseload. However, because of limited financial resources, the California Department of Corrections and Rehabilitation (CDCR) has only 52 high-risk parole agents to supervise 2,000 high-risk parolee sex offenders in caseloads of about 40-to-one. Only about 300 of the 2,000 high-risk paroled sex offenders (about 15 percent) receive specialized treatment from licensed therapists.

The process has two approaches to determine which of the eligible paroled high-risk sex offenders is to receive specialized parole supervision. The first priority is to determine if

[§] Studies beginning at Johns Hopkins in 1966 and continuing today show that some sex offenders, such as pedophiliacs treated with the antiandrogenic hormone Depo-Provera plus counseling, have gained in self-regulation of sexual behavior. Depo-Provera suppresses or lessens the frequency of erection and ejaculation and also lessens the feeling of libido and the mental imagery of sexual arousal. For the pedophile, for example, there will be decreased erotic “turn-on” to children. The sex offender has “a vacation” from his sex drive, during which time conjunctive counseling therapy can be effective. John Money, *Love and Love Sickness: The Science of Sex, Gender Difference and Pair-bonding*, pp. 205-207. John Hopkins University Press (Baltimore, London) 1980.

the offender meets the criteria for civil commitment. To initiate the civil commitment procedure, the CDCR and the Board of Prison Terms (BPT) conduct a review of each inmate's record during the six months before their parole release date to determine if the sexual offenses meet the legal definition required for civil commitment. If the offender meets the legal definition he is referred to the Department of Mental Health (DMH) upon completion of his prison term to await the legal process for civil commitment.**

If the offender does not meet the criteria for civil commitment, the CDCR Adult Parole Division, High-Risk Sex Offender Program determines which of the remaining eligible paroled high-risk sex offenders is selected to receive specialized parole supervision. While the CDCR has not yet developed a risk-assessment tool to determine who among the eligible paroled sex offenders should be designated high-risk, those whose county of commitment is located within the range of where the 52 high-risk parole agents work, are usually selected to be part of their caseloads.

New laws that went into effect in January 2006 prohibit all paroled sex offenders not classified as high-risk from residing within one-quarter mile of any school in the state. New parolees who are classified as high-risk cannot reside within a half-mile of any school in the state (*Penal Code § 3003 (g) (1 & 2)*). At the beginning of 2006, there were about 9,560 convicted sex offenders on parole in California including 3,160 whose current offense is not sexually related. The majority of these offenders are not classified as high-risk and thus are not subject to the new residency restriction law.

Both current sex offenders and those with prior offenses must register as sex offenders with local law enforcement when released on parole. Sex offenders released to parole with a prior sexual history (*Penal Code 290* violator), but a non-sexual new commitment offense, must report to the regional Parole Outpatient Clinic (POC) for evaluation to determine the type of service they are to receive, if any, and whether they should be classified as a HRSO. Types of services they might receive include the two major drug abuse programs (Substance Abuse Treatment and Recovery-STAR and Parolee Services Network-PSN), literacy labs, Parolee Employment Programs, and the Offender Employment Continuum. These are not particularly directed to treating sex offenders.

Due to a lack of parole resources, some sexually violent offenders who are either released on parole or not civilly committed by the Department of Mental Health, and who live outside the urban core areas of the four parole regions, are not included in the HRSO parole caseloads.

All sex offenders are required to report for a parolee orientation. The parolee orientation usually includes a meeting with the parole officer, local law enforcement, and treatment providers. At this meeting the terms and conditions of parole are explained to the parolee, who must agree or risk being sent to the Board of Prison Terms for violating parole. At a minimum, conditions usually include where the offender can and cannot

** See Marcus Nieto, *Community Treatment and Supervision of Sex Offenders: How It's Done Across the Country and in California*. (Sacramento: California Research Bureau, California State Library, December 2004, pages 37-38.)

travel, things he can not do (such as Internet surfing of pornographic websites), people and places he can visit or not visit, submission of weekly or by-weekly urine samples, and if possible, relapse prevention therapy at a CDCR Parole Outpatient Clinic. Additional meetings involving the parolee and the parole officer may be conducted unannounced at the parolee's worksite or at his home.

The CDCR is considering proposals to hire more parole officers and to adopt risk-assessment tools, including the *STATIC-99* risk assessment tool and a dynamic assessment tool. In one scenario, the CDCR would classify fewer sex offenders as high-risk parolees, but these offenders would receive more treatment and intensive supervision. Sex offenders who progress in treatment, as measured by a dynamic risk assessment tool, might be shifted to a new "medium risk" designation, under which they would not be subject to GPS surveillance.¹²²

Since July of 2005, CDCR has outfitted nearly 400 high-risk sex offenders in the three county-region of San Diego, Orange and Los Angeles and another 100 high-risk offenders in other counties with GPS devices. Of these, 48 offenders have been returned to custody for parole violations, including tampering with their devices. GPS technology assisted parole and Department of Justice agents to apprehend a sex offender in Orange County who visited the parking lot of an elementary school, a violation of his parole conditions.¹²³

The CDCR received an additional \$5 million for FY 2006-07 to expand the use of GPS tracking for high-risk sex offenders and other parolees.¹²⁴ The University of California is currently evaluating the CDCR GPS program for high-risk sex offenders; results are expected by August 2007. The CDCR estimates that by FY 2009-10, they would need \$18.5 million to cover the cost of an additional 2,000 GPS units and monitoring equipment, as well as increased parole agent staffing to monitor high-risk sex offenders. If the California initiative (Jessica's Law) on the November 2006 ballot is passed, it would require that GPS monitoring devices be used for all paroled sex offenders. Projecting from CDCR data, it would cost the state approximately \$88.4 million to monitor and supervise these offenders per year.^{††}

THE CONTAINMENT APPROACH TO COMMUNITY SUPERVISION OF SEX OFFENDERS

Colorado and several other states employ the "containment model," which defines victim protection and community safety as the primary objectives of sex offender management.¹²⁵ Paroled sex offenders must abide by a set of restrictive guidelines developed by the parole or probation officials who supervise their daily activities. The sex offender must participate in extensive therapy, receive intensive supervision and

^{††} As of April 30, 2006, there are 9,560 sex offenders currently on parole including 3,160 whose current commitment offense is not sexually related. Using the CDCR FY 2009-10 budget cost estimate of \$18.5 million for 2,000 GPS devices and multiplying that figure by the number of sex offenders currently on parole (9,560 sex offenders), we find that it would cost \$88.4 million per year. ($\$18.5 \text{ million} \div 2,000 = \$9,250 \times 9,560 = \$88.4 \text{ million}$)

monitoring (which can include electronic or GPS devices), and submit to unannounced polygraph or other forms of psychological examination. The goal is to shield victims and the community from the sex offender.¹²⁶

The community containment model stresses individualized sex offender case management. The offender is held accountable for any adverse action by a “supervising triangle,” including offender therapy, supervision and electronic monitoring, and polygraph/and or other forms of psychological examination.¹²⁷

The model is built on a collaboration approach, which focuses on developing multiple levels of law enforcement and parole management teams. This is particularly important given the various residency restrictions recently imposed by some local municipalities and states. Collaboration involves local law enforcement, parole, case supervisor, treatment providers, employment and housing counselors, and in some cases, victims. Containment teams are required to make housing decisions early in the process so as to determine the offender’s risk issues, and the quality of family and associate relationships. This is important because many problems can arise due to lack of authorized housing, such as homelessness, moving to an unauthorized area, and/or having no available supervision or treatment therapy.¹²⁸

Frequent communication between treatment therapists working with sex offenders and law enforcement is an important element of this approach. For instance, therapists share insights about their clients with law enforcement officials and keep them informed about potential issues that might result in failure and recidivism.¹²⁹ Therapists may also provide information to lawmakers about possible changes to the law.

Quality control consists of overseeing and evaluating all components of the model to ensure that they are working, especially treatment. This includes reviewing policies, practices and programs to ensure that they are working as intended, minimizing secondary trauma (staff burn-out), and increasing training for those who work with sex offenders.¹³⁰

The containment model is evolving and numerous jurisdictions around the country have enacted variations of it. Colorado, Minnesota, Texas, and Maricopa County, Arizona, were among the first to experiment with the model, although it has now become widespread. Indiana has a containment program called The Indiana Sex Offender Management and Monitoring Program. In Illinois, the Cook County Adult Sex Offender Program (ASOP), which utilizes a form of the containment model, has proven effective in reducing sex offender recidivism.¹³¹ A 2001 study compared the outcomes of 203 sex offenders in Cook County jail receiving treatment but not supervised to 78 sex offenders who were receiving treatment and supervision in the containment model. Researchers examined variables such as reductions in reoccurrence, rates and lifestyle changes that result in effective problem-solving skills, and pro-social and productive lives. Fifty-nine percent of the sex offenders who completed the treatment part of the containment program did not violate the terms of probation, compared to forty-one percent of the offenders who failed treatment.¹³²

GPS and Electronic Monitoring

Global Positioning Systems (GPS) and Geographic Information Systems satellite-related mapping systems (GIS) are gaining credibility as the tools to monitor and supervise sex offenders. Offenders supervised via GPS wear a wireless anklet device the size of a bar of soap, which requires 30 minutes a day to recharge. The GPS device can continuously detect a sex offender's location. GPS technology is not easily tampered with and can be used in two different ways to monitor sex offenders. There are "active" and "passive" tracking devices. The passive devices require the offender to download the information that details his whereabouts at the end of the day through a landline receiver. The active devices have cellular capability and can report real-time monitoring of the person's whereabouts to tracking centers or parole and probation officers. The most likely candidate to wear this device is the high-risk, violent or aggressive sex offender.

Radio frequency devices, or electronic monitoring (EM), is an older technology and is largely used to enforce curfews and house arrest. With this device, an offender wears a transmitter that sends signals to a receiver unit connected to the offender's landline telephone. If the offender goes out of range of the telephone receiver, the unit will relay this information to the monitoring center. While this technology is cheaper, and can report if an offender leaves his base location, it cannot identify where he is located.¹³³

Illinois utilizes a GIS mapping system to keep track of where sex offenders live. It has been instrumental in determining the precise location of over 360 child sex offenders residing within no sex offender residency zones in the state.¹³⁴

At least six states (Colorado, Florida, Missouri, Ohio, Wisconsin, and Oklahoma) have enacted laws requiring lifetime electronic monitoring for some sex offenders, even if their sentences have expired. At least 23 states use GPS to monitor paroled sex offenders. The number of sex offenders subject to GPS monitoring averages under 100 parolees in 15 of these states. The range is from five sex offenders in Iowa to nearly 800 in Florida. Numerous local law enforcement agencies, including several in California, use GPS devices to monitor sex offenders living in their jurisdictions. GPS pilot projects are underway in Los Angeles, Orange, and San Diego counties to monitor over 400 high-risk paroled sex offenders. Some California county probation departments are also using GPS to monitor high-risk probationers.

In Wisconsin, the governor recently signed legislation that requires lifetime GPS tracking for certain child sex offenders. The law requires individuals who sexually assault a child under age 12, or use or threaten force or violence while molesting a child, to be subject to global positioning tracking as a condition of parole, probation or extended supervision. The Wisconsin Legislative Fiscal Bureau estimates that active monitoring will cost about \$1 million for 285 offenders in the first year and about twice as much for 570 offenders in the second year.¹³⁵

Florida was the first state to require mandatory lifetime tracking via GPS for convicted sex offenders. In 2004, Florida research drawing on data from FY 2001 to 2002, found that sex offender parolees fitted with the devices were less likely to commit new crimes

than those who were monitored by traditional means.¹³⁶ The state Department of Corrections followed about 16,000 offenders placed on community supervision, including more than 1,000 under GPS monitoring. As part of this study, the department revoked the community release of 31 percent of GPS-monitored sex offenders because of bad behavior, compared to 44 percent of those monitored by other means such as electronic monitoring or intensive supervision. Six percent of sex offenders monitored by GPS committed new felonies or misdemeanors, compared to 11 percent of those not electronically monitored.¹³⁷

In Minnesota, GPS monitoring is required for all level III sex offenders for at least 90 days. The GPS gives parole agents a computerized record of a parolee's movements. If that sex offender goes somewhere prohibited, the GPS transmits a text message alerting the parole agent. It does not, however, dispatch a police officer. State parole agents, who already have large caseloads, cannot respond to the thousands of alerts. One problem is that there is no way to distinguish between serious threats and the mundane. For example, schools are located in many areas. The GPS sends an alert whether an offender is merely driving by or actually posing a risk.¹³⁸

GPS technology does provide verifiable evidence when a sex offender has attempted to circumvent the parole condition(s) for release. Officers are able to better focus their efforts on persons they know are a greater risk for re-offense.¹³⁹ Peggy Conway, editor of the *Journal of Offender Monitoring*, notes that GPS devices will not send a police officer racing to a school when a sex offender walks nearby, but they do act as a deterrent: "There is no anonymity to a crime. They can be put at the scene of a crime... They know they will get caught."¹⁴⁰

GPS is costly. According to Florida officials, it costs \$10 per day per offender, or \$3,600 per year, to actively monitor a sex offender using GPS. The Florida Department of Corrections estimates that up to 12,940 offenders may have to be monitored for 20 years, at a cost of over \$46 million per year. The cost may decrease as the technology becomes more common, and there may be some economies of scale.¹⁴¹

In Georgia, lawmakers have required that GPS monitoring be funded by sex offenders: "There is a cost associated with your criminal activity," said Georgia Representative Jerry Keen.¹⁴² "For you to remain in Georgia after you serve your time in prison, then you're going to have to wear and pay for one of these tracking devices."¹⁴³

Florida, Georgia, Oklahoma, and Ohio also require offenders to pay for their own GPS monitoring, provided they are able to do so. If an offender is able to pay and refuses, he could have his parole revoked.¹⁴⁴

LEGAL AND CONSTITUTIONAL IMPLICATIONS OF SEX OFFENDER RESIDENCY RESTRICTIONS

By David Jung

California's current state sex offender residency restriction laws apply to sexually violent predators (SVP), recently paroled sex offenders, and high-risk paroled sex offenders. Once released from the California state civil commitment program, an SVP cannot live within one-fourth of a mile of a school for life.¹⁴⁵ These provisions, which went into effect in 2006, have not been challenged in court, so their constitutionality is yet to be determined.

Pending legislation¹⁴⁶ and a proposed ballot initiative¹⁴⁷ in California would significantly broaden the current law to make it unlawful for registered sex offenders to live within 2,000 feet of any school, park, or place where children regularly gather, and would allow municipalities to enact similar ordinances. If either the bill or the initiative passes, California will join twenty other states across the country that have passed similar laws placing residency restrictions on some or all registered sex offenders. In either case, a new law would have major policy implications for cities across the state in that they would be essentially off limits to sex offenders, while more rural areas might not be.

Constitutional Challenges

Residency restrictions on sex offenders face three types of constitutional challenges.¹⁴⁸ First, to the extent that these residency restrictions are criminal sanctions imposed to punish the offender—as opposed to civil, safety regulations—they may be unconstitutional as a form of ex post facto law or double jeopardy when they are applied to offenders whose convictions are already final. When applied to new and prior offenders alike, residency restrictions might constitute a form of cruel and unusual punishment that violates the Eighth Amendment to the United States Constitution.

Second, if residency restrictions are regulatory, and not punitive in nature, they may be challenged as depriving offenders of a basic right secured by the federal or state constitution – the right to travel within or among the states, for example, or the right to live where one chooses.

Finally, even if residency restrictions do not deprive offenders of a constitutionally protected right, they may be unconstitutional if they do not rationally advance a legitimate state interest. Challenges to residency restrictions in other states on these three grounds have so far been unsuccessful. A federal district court in Ohio, a state appellate court in Illinois, a federal court of appeals in Iowa, and the Iowa Supreme Court have upheld sex offender residency statutes against all three types of constitutional challenges.¹⁴⁹

First, these courts have unanimously concluded that residency restrictions are a form of civil regulation, not a form of punishment, because the statutes are intended to protect

children, and are rationally related to that goal. Therefore, prohibitions on ex post facto laws, double jeopardy and cruel and unusual punishment do not apply.

Second, residency restrictions do not burden any basic right secured by the federal constitution. The federal constitution does not include a “right to live where you choose.” While the federal constitution does protect the right to travel from state to state – and perhaps includes the right to travel within a state – residency restrictions do not interfere with the right to travel. They do not discriminate between state residents and those from out-of-state, and they restrict only the ability to reside near a school, not the ability to enter the area near a school.

Finally, according to the courts that have visited the issue so far, residency restrictions do not offend the equal protection clause. They represent a rational legislative determination that excluding sex offenders from areas where children congregate will advance the state’s interest in protecting children.

It is not clear, however, that any California legislation establishing residency restrictions (*SB 588*), or an equally restrictive ballot initiative (*Jessica’s Law*) would pass constitutional muster for several reasons. First, a line of California appellate decisions suggests that the California constitution may protect the right to choose one’s residence as part of the right to travel within the state, even though the federal constitution does not.^{‡‡} If that is the case, sex offender residency laws would need to be more narrowly tailored, and it is not clear that they could pass that strict a level of judicial scrutiny. For example, the proposed law would prohibit offenders from residing near schools even though they had never committed a crime against a minor and nothing in their records suggested that they posed a danger to minors. As such, the statute is overly broad. Including offenders who pose very little danger to minors within its prohibitions is not a narrowly tailored means for advancing the state’s compelling interest in protecting minors. Thus, the statute would pose serious constitutional problems if strict scrutiny were applied.

Second, the only federal appellate court to have considered the constitutionality of a sex offender residency restriction was faced with a statute that was drawn much more narrowly than the pending California bills. The Iowa statute at issue in the Eighth Circuit Court of Appeals case applied only to sex offenders who had committed crimes against minors.¹⁵⁰ The pending California laws would apply to all registered sex offenders.¹⁵¹

The broader proposed California statute raises a question the Eighth Circuit did not reach: Are residency restrictions that apply to offenders who have never committed an offense

^{‡‡} *In re Fingert*, 221 Cal. App. 3d 1575, 1581-82 (2d Dist., Div. 6 1990) (holding unconstitutional under the right to travel an order requiring a mother to move in order to retain custody of her child); *People v. Bauer*, 211 Cal. App. 3d 937, 944-45 (1st Dist., Div. 2 1989) (holding that such broad discretion given to a probation officer to infringe on the probationer’s right to travel was not sufficiently narrowly tailored); *People v. Beach*, 147 Cal. App. 3d 612, 621 (2d Dist., Div. 5 1983) (holding that there were other less subversive means to accomplish the probationary goal); *In re White*, 97 Cal. App. 3d 141, 150 (5th Dist. 1979) (holding that means less restrictive of the right to travel were available to prevent soliciting for prostitution).

against a minor rationally related to the state's interest in protecting children? If they are not, then the statute might be viewed as a form of punishment that potentially offends the federal constitution's prohibitions on ex post facto laws, double jeopardy, or cruel and unusual punishments. Further, even as a form of safety regulation the statute might violate the equal protection clause if it arbitrarily subjected offenders who pose no threat to children to residency restrictions focusing on schools.

Residency restrictions as broad as those proposed for California have been upheld by a state court of appeals in Illinois, and by a federal district court in Ohio. Both of those courts decided that the legislature could rationally conclude that sex offenders who had never offended against minors in the past nonetheless posed a sufficient threat to children to justify prohibiting them from living near places where children congregate.

These decisions, however, would not be binding precedent in the Ninth Circuit Court of Appeals. The factual record the state courts relied on was not substantial, and the courts failed to consider cases that have questioned the logic of treating all felons alike for purposes of licensing restrictions and the like.¹⁵² Thus, it is extremely difficult to predict whether a statute restricting the residency of registered sex offenders who have never offended against a minor would be found constitutional by the Ninth Circuit.

Local Ordinances

Although California courts have not yet considered the constitutionality of state-wide sex offender residency restriction laws (either Child Safety Zone legislation-parks or Distance Marker legislation-schools), it is clear from other courts throughout the country that these types of state statutes may sometimes meet the legal challenge. When local governments enact similar ordinances, as discussed earlier, thorny legal and policy questions emerge, including whether these laws are pre-empted by state parole and probation laws.

If California courts were to consider local residency restrictions and whether or not local jurisdictions--cities or counties--have the authority under the state constitution to enact a residency ban, three issues would be central.

First, under a legal principle known as "Dillon's Rule," local governments can only enact laws if the state constitution expressly or implicitly empowers them to do so. The California Constitution delegates the power to legislate to local governments in the broadest terms. Under article XI section 7, cities and counties can enact "all police ordinances not in conflict with general laws." Courts have held that this authority is essentially coextensive with the state legislature's police (that is, regulatory) power.

Second, if the state has enacted a residency restriction, can local governments enact further restrictions? Local governments can enact further restrictions unless the local ordinance conflicts with state law. A conflict can arise in several ways.¹⁵³ If a local ordinance permits what state law prohibits, or prohibits what state law permits, the local ordinance is invalid. For example, if a local ordinance were enacted authorizing a residential treatment facility for sex offenders within 2,000 feet of a school, the ordinance

would be invalid under Jessica's Law. A local government cannot permit that which a state law prohibits.

Whether local governments can enact ordinances that are more restrictive than state law is generally a trickier question. Such an ordinance might be invalid in two sets of circumstances. First, if the state statute were interpreted deliberately to permit offenders to live anywhere "but" 2,000 feet from a school, an ordinance establishing, for example, a 3,000 feet limit might be held to conflict with the state law. Or, if the state statute were intended to regulate the subject so thoroughly as to permit no further regulation, the state statute might be said to have "occupied the field," preempting all further regulation.

Preemption, however, is primarily a question of legislative intent. In the 2005-2006 California legislative session there is one proposed sex offender residency bill (SB 588) whose legislative intent is clear, since it provides: that "nothing in this section shall prohibit local ordinances that further restrict residency." A similar ballot initiative (Jessica's Law) would do the same.

Finally, is the local ordinance unconstitutional? The first two questions go to whether local governments have the power to legislate in this area. Assuming that they do, their actions would nonetheless be subject to the same constitutional constraints discussed in relation to proposed legislation and the ballot initiative. The fact that they are local, not statewide, bans would not generally be significant in the analysis.

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¹⁴⁹ Professor David Jung, Director, Public Law Research Institute, Summary of court decisions affecting where a sex offender can reside: *Coston v. Petro*, 398 F.Supp. 2d 878 (S.D. Oh. 2005), *People v. Leroy*, 357 Ill.App. 3d 530 (2005), *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005, and *State v. Steering*, 701 N.W.2d 655 (Iowa 2005)), Hastings Law School, May 2006.

¹⁵⁰ *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005). See also *State v. Steering*, 701 N.W.2d 655 (Iowa 2005).

¹⁵¹ The existing California statute restricting the residency of some sex offenders, Welfare and Institutions Code section 6608.5 (f), offers an example of a statute that is clearly narrowly tailored to achieve its goal. The statute prohibits only sexual violent offenders or predators who have offended against minors in the past or whom the court determines are likely to offend against minors.

¹⁵² See, e.g. *Smith v. Fussenich*, 440 F.Supp. 1077 (D. Conn. 1977) (statute prohibiting all felons from becoming security guards did not rationally advance state's interests because it applied to felons whose convictions had no relevance to their performance as a security guard, like tax evaders).

¹⁵³ See *American Financial Services Association v. City of Oakland*, 34 Cal.4th 1239 (2005); *Sherwin Williams v. City of Los Angeles*, 4 Cal.4th 893 (1993).