



# ATSA

Registration and Community Notification of  
Adults Convicted of a Sexual Crime:  
Recommendations for  
Evidence-Based Reform  
2020

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# ACKNOWLEDGEMENTS

The Association for the Treatment of Sexual Abusers (ATSA) is an international, multi-disciplinary non-profit association of more than 3,000 professionals dedicated to preventing sexual abuse. ATSA promotes sound research, evidence-based and effective practice, informed public policy, and comprehensive prevention strategies that lead to the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse.

ATSA's members include leading researchers in the study of sexual violence; practitioners who evaluate and treat individuals adjudicated or convicted of sexual crimes and those at risk of offending; law enforcement and corrections officials; victim advocates; prosecutors, public defenders, and members of the judiciary; and other individuals who seek to end sexual abuse.

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# INTRODUCTION

## PURPOSE OF THIS PAPER

Registration<sup>1</sup> and community notification<sup>2</sup> laws originated in the United States (U.S.), with international adoption of these policies expanding to other countries in subsequent years. Federal and local laws in the U.S. and other Western countries require persons who have been convicted of a sexual crime to register their living location and other personal information with a local law enforcement agency on a regular basis. This requirement varies in its duration, but in many cases can continue for the rest of the registrant's life. For the majority of registrants in the U.S., the information is posted on the internet and available to the general public – the most common form of community notification. Failure of the adult registrant to comply with these laws is a crime and, in many cases, non-compliance can result in a period of incarceration that is longer than the sentence for the sexual offense. Given the significant expansion of sex offender registries in the U.S. and around the world, a review of the research and best practices can provide needed guidance to policymakers, legislators, and front-line registry officials on these important issues.

The purpose of this paper is to review the emergence and development of sexual offender registration and community notification (SORN) laws and consider the extent to which these laws:

- Are based on research and scientific knowledge;
- Reduce the likelihood that others will be victimized in the future by those who are required to register;
- Prevent offending by those who have not previously been convicted for a sexual crime;
- Provide actionable information to law enforcement for criminal investigation purposes and enable the public to take preventive action;
- Meet their intended goals of preventing sexual abuse and increasing community safety; and
- Support desistance<sup>3</sup> from sexual reoffending through the development of protective factors known to reduce recidivism.

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<sup>1</sup> **Registration:** A set of procedures that individuals adjudicated or convicted of sexual crimes must follow to disclose information to law enforcement authorities and to periodically update that information so it remains current. Initially designed as private and for law enforcement only, it has expanded to include dissemination of information to the public.

<sup>2</sup> **Community Notification:** Systems in which information about individuals required to register is transmitted to the public.

<sup>3</sup> **Desistance:** generally defined as the cessation of offending or other antisocial behavior.

This paper presents conclusions about the effectiveness of SORN laws as applied to adults convicted of a sexual crime, and will offer recommendations for evidence-based reform with the overarching goal to assist legislators and policymakers to improve their SORN systems.

## **WHO IS ATSA?**

The Association for the Treatment of Sexual Abusers ([ATSA](#)) is a non-profit, international, multi-disciplinary association of more than 3,000 professionals dedicated to the research and prevention of sexual abuse internationally. ATSA's members include leading researchers in the study of sexual violence, as well as practitioners who evaluate and treat individuals adjudicated or convicted of sexual crimes and those at risk of offending; law enforcement and corrections officials; victim advocates; prosecutors, public defenders, and members of the judiciary; and other individuals who seek to end sexual abuse. ATSA advocates for sound research, effective practice, informed policy, and comprehensive prevention programs to protect the public from sexual assault, while supporting the rehabilitation of individuals who have perpetrated harmful sexual behaviors.



# REGISTRATION AND NOTIFICATION

## HISTORICAL TIMELINE

Registration for adults convicted of a sexual offense originated in the United States (U.S.) in the 1930s. California became the first state to implement sex offender registration of adults in 1947, while Washington became the first state to implement public community notification for adults who had committed sexual offenses in 1990. Other states in the U.S. began developing their own versions of SORN during this period of time, with differing practices across jurisdictions. The original purpose for registering adults convicted of a sexual offense was to provide information to law enforcement only for future sex crime investigations. However, based on interest by members of the public to know about registrants in their community, community notification was added to registration laws to allow the public to take protective and preventive actions regarding those required to register. Community notification was originally achieved through such means as mailings and in person introductions but, as technology advanced, community notification information also became widely available through the Internet.

The U.S. government first implemented a federal registration law with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act in 1994. Jacob Wetterling's parents, Patty and Jerry Wetterling, advocated for a national sex offender registry to provide law enforcement agencies with information to investigate sexual crimes, which might have been helpful in the investigation of the disappearance of their son. However, based upon the overly expansive registries and community notification systems during the past 30 years, Mrs. Wetterling has subsequently questioned the effectiveness of broad-based public sex offender registration and notification systems, and now strongly advocates for returning these laws to their original purpose as a non-public law enforcement tool for adult offenders (Wetterling, 2017).

A U.S. federal community notification law was first enacted with the Megan's Law amendment to the Wetterling Act in 1996 based on the case of Megan Kanka, who was sexually assaulted and murdered by an adult male registrant. Megan's parents, Maureen and Richard Kanka, believed their daughter would be alive today had they known of the registrant's status. While it is difficult to argue with their rationale, cases such as Megan's are the rare exception rather than the norm (Bureau of Justice Statistics [BJS], 2000) and it is integral for public policy to be grounded in facts rather than emotion. Laws and policies based on unusual cases may also be less effective, as they are a one-size-fits-all approach that does not recognize the differing range of risk and pathology presented by individuals convicted of sexual crimes.

Subsequent to enactment of the federal sex offender registration and notification (SORN) laws, all 50 states have implemented these systems in varying ways. The U.S. government has repeatedly refined and expanded the scope of SORN via a series of amendments to the Wetterling Act (i.e., the Lychner Act in 1996, the Jacob Wetterling Improvements Act in 1998, the Campus Sex Crimes Prevention Act in 2000, and the PROTECT Act in 2003). Most recently, the U.S. government set forth a new SORN scheme with the passage of Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), which replaced the Wetterling Act and its subsequent amendments. SORNA's provisions enhanced registration requirements via tiering based on the offense of conviction, expanded the requirement of registration to from solely adults to include juveniles,<sup>4</sup> increased availability of sex offender registration information to the public, and required additional jurisdictions, including some Native American tribes and U.S. territories, to implement a registration system.

In June 2019, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) published the latest implementation overview (SMART Office, 2019). The review rated all 50 states, the District of Columbia, and five U.S. territories on each jurisdiction's implementation of SORNA across five broad categories.<sup>5</sup> While only 22 jurisdictions met minimum standards in all five categories, the overall compliance rate for all 56 jurisdictions was 61% (172 out of 280). In a more in-depth analysis, Harris and colleagues reviewed the state implementation of the 14 SORNA standards and found that states met minimum implementation of the SORNA standards 77% of the time (Harris et al., 2017; Harris et al., 2020). SORNA also requires the registration of children 14 years of age and older who have been adjudicated for specific sexual offenses. For more information about registration and community notification as applied to children and adolescents, see ATSA's paper on [\*The Registration & Community Notification of Children & Adolescents Adjudicated of a Sexual Crime: Recommendations for Evidence-Based Reform\*](#).

## **ADJUNCT POLICIES: RESIDENCE RESTRICTIONS**

As states and local jurisdictions in the U.S. have continued to expand the scope of their SORN systems, adjunct policies related to residence, education and employment restrictions have been added to SORN laws. The most common example of these adjunct policies are residence restrictions. These restrictions limit where a registrant may legally live, and typically prohibits people who are registered from living within 500 to 2,500 feet of schools, daycare centers and other places where children congregate. The first states to adopt residence restrictions

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<sup>4</sup> Note, the U.S. Department of Justice has subsequently modified this requirement through a series of supplemental guidelines.

<sup>5</sup> SORNA Categories: 1) Offenses and offenders included; 2) Tracking and penalizing absconders; 3) Community notification; 4) Appearance and verification; and 5) Information sharing.

were Delaware and Florida in 1995. Currently, 35 states and many local municipalities have residence restriction laws (Meloy et al., 2008). Residence restriction laws increase the requirements for people who are registered as they return to a community, and often create unnecessary barriers to community reintegration. Please see Appendix A for a more comprehensive overview of the research and unintended consequences of residence restrictions.

## INTERNATIONAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS

Outside the United States, registration is more common than community notification and, when community notification does occur, it is not as broad-based or publicly available as currently practiced in the U.S. Rather, registration is more often a non-public law enforcement tool with no community notification component and, when community notification does occur, it is provided on a limited or case-by-case basis (McCartan & Gotch, 2020). In the majority of jurisdictions outside the U.S., registration is not applied retroactively as it is a part of the sentence for the crime. In contrast, SORN is considered a civil, rather than criminal, penalty in the U.S. and, due to this, these policies are able to be applied retroactively ([\*Smith v. Doe\*, 2003](#)).

International SORN laws are also applied almost exclusively to adults convicted of sexual crimes (e.g., Canada, France, India, Netherlands) and, in some countries, these laws are applied only to adults convicted of sexual crimes involving children (e.g., Australia). As such, some international registries are identified as “child protection” registries rather than “sex offender” registries. Most of the international registries also provide far less detailed information than the U.S. SORNA requirements. Furthermore, many countries do not have a sex offender or child protection registry (e.g., Denmark, Italy, Pakistan, Sweden, and Switzerland) and those that have a registry do not use registration in the same way as is practiced in the U.S.: some countries have a national registry (e.g., Canada, France, India, Jamaica, Kenya, Netherlands, New Zealand, Pitcairn Island, Republic of Ireland, South Africa, and the United Kingdom) while others have regional, but not national, registries (e.g., Australia).

An intentional focus on rehabilitation and reintegration versus solely on monitoring and tracking is another difference between international application and use of SORN laws when compared to the U.S. In developing an evidenced based approach to the creation of their registration systems, New Zealand and Australia have developed innovative practices. The New Zealand registry was developed on the basis that a Risk Management Framework (RMF) would be pivotal to its success in reducing recidivism. The design of the New Zealand registry has been informed by international best practice, with measures in place to mitigate some of the risks that have been identified in other jurisdictions such as human rights and privacy concerns, maintenance costs, and the possibility of stigmatizing offenders which can

have the effect of increasing risk for re-offending (Willis & Grace, 2009). Given the New Zealand RMF is grounded in the ‘risk-need-responsivity model’ (Bonta & Andrews, 2016), persons on the registry are being managed according to assessed risk and not according to the offense of conviction (Purvis et al., 2013). The RMF is jointly developed and collaboratively administered by the Department of Corrections and New Zealand Police as this type of collaboration was foreseen as being pivotal to the success of the Register in reducing reoffending (Duwe & Donnay 2008; Peck, 2011).

In Australia, all jurisdictions operate a registration scheme administered by their state police service and the focus is on child protection; as such, registrants have generally committed sexual or other serious offenses against children. Judicial discretion is applied where a person convicted of a sexual crime is deemed to represent a risk to the sexual safety of members of the community. Since 2011 the state of Victoria has undertaken significant reform to the management of their sex offender registry. Substantial investment has led to the establishment of an offender management framework incorporating actuarial and dynamic risk assessment which culminates in a comprehensive offender management plan. In order to effectively manage those offenders who actually pose a risk to the community, police aim to direct finite resources towards risk relevant behavior and criminogenic needs<sup>6</sup> of registered offenders.

## **FACTS ABOUT ADULTS CONVICTED OF SEXUAL CRIMES**

Contrary to public opinion, the vast majority of sexual offenses are committed by acquaintances and family members, not by strangers (Bureau of Justice Statistics [BJS], 2000); this data clearly dispels the myth of “stranger danger” in which individuals are viewed to be most at risk of sexual victimization by a stranger lurking in the shadows (Levenson et al., 2007). The BJS study (2000) revealed that the majority of sexual abuse involving children (approximately 93%) in the U.S. was perpetrated by someone known to the victim, with 34% of sexual abuse involving children perpetrated by family members and 59% perpetrated by acquaintances (BJS, 2000). A Canadian study (Cotter & Beaupre, 2014) provided similar results revealing that only 12% of all sexual offenses against minors reported to police in Canada identified a stranger as the perpetrator. Although adults have a slightly higher likelihood of being sexually assaulted by a stranger, the 2005 National Crime Victimization Survey (BJS, 2006) indicated 73% of rapes against females age 12 and older were perpetrated by someone known to the victim. Additionally, the 2010 National Intimate Partner and Sexual Violence Survey (Black et al., 2011)

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<sup>6</sup> **Criminogenic Needs:** characteristics, traits, problems, or issues that directly relate to an individual's likelihood to re-offend and commit another crime which can be targeted through interventions to reduce recidivism risk potential.

reported 51.1% of female victims of rape reported being sexually abused by an intimate partner, 40.8% by an acquaintance and 13.8% by a stranger, while 52.4% of male victims of rape reported being raped by an acquaintance and 15.1% by a stranger.

Sexual recidivism rates are also significantly lower than the common public perception that almost three-quarters of individuals convicted of sexual crimes will sexually reoffend (Levenson et al., 2007). Contrary to this belief, the U.S. Department of Justice reports a 9-year re-arrest rate for sexual offenses of 7.7% among individuals who committed a sexual offense and were released from prison in 2005 (BJS, 2019). Additionally, participation in specialized treatment has also been shown to reduce sexual recidivism risk for adults convicted of sexual crimes. A recent meta-analysis demonstrated that those who received specialized sexual abuse specific treatment were 32.6% less likely to recidivate than those who do not receive such treatment (9.5% vs 14.1% respectively; Gannon et al., 2019). This is consistent with previous meta-analyses demonstrating similar treatment effects for adult males convicted of sexual crimes (e.g., Hanson et al., 2002; Lösel & Schmucker, 2005; Schmucker & Lösel, 2015).

One of the most significant advancements in identifying sexual recidivism risk for adult males convicted of sexual crimes has been the development and refinement of empirically-validated instruments which assess level of risk and identify individual criminogenic needs which, when targeted, reduce recidivism risk potential. Of key importance to the development of these practices are the Risk-Need-Responsivity (RNR) principles of offender rehabilitation (Bonta & Andrews, 2016).<sup>7</sup> The RNR principles are also applicable for adult males convicted of sexual crimes and research has shown that sexual abuse specific treatment which adhered to the RNR principles was shown to be the most effective at reducing recidivism risk (Hanson et al., 2009). While there are several ways to assess sexual recidivism risk (i.e., structured professional judgment, unstructured clinical judgement, and actuarial prediction) (Hanson et al., 2003), actuarial measures are generally viewed as the most accurate (Booth & Kingston, 2016). Actuarial measures use static, historical variables to estimate a broad risk category for an offender (e.g., low, medium, and high) (Hanson et al., 2003), to determine where to allocate treatment and supervision resources (i.e., risk principle) (Bonta & Andrews, 2016). There are a number of available instruments for measuring future sexual abuse specific risk that have well-evidenced reliability and validity (e.g., Tully et al., 2013), such as the

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<sup>7</sup> **Risk Principle:** intensity of services should be determined by the risk level of the individual

**Need Principle:** interventions should focus on criminogenic factors associated with recidivism risk

**Responsivity Principle:** interventions should be provided in a manner that incorporates the person's individual characteristics such as learning style, level of motivation, and other individual factors that may impact delivery of services

Static-99R (Hanson & Thornton, 2000) and the Risk-Matrix 2000 (RM2000; Thornton et al., 2003).

Assessing an individual's criminogenic needs, or dynamic risk factors, is additionally important as the assessment of both risk and need is a better predictor of sexual recidivism than static risk alone (Hanson et al., 2007; Brankley et al., 2019). Dynamic risk factors are changeable and provide the ability to assess behavioral change over time (i.e., risk reduction), with some of these variables being relatively stable (i.e., stable factors) whereas others fluctuate regularly (i.e., acute factors) (Hanson & Harris, 2000). Stable factors can be also be described as long-term treatment targets (e.g., intimacy deficits, antisocial attitudes) while acute factors reflect recent, risk-relevant behavior (e.g., substance use). There are tools available to measure need alone (e.g., Structured Assessment of Risk and Need-Treatment Needs Analysis, Thornton, 2002; Webster et al., 2006), to measure need and be combined with a static actuarial tool (e.g., STABLE-2007, Fernandez et al., 2014; Sex Offender Treatment Intervention & Progress Scale, McGrath et al., 2012), or to measure risk and need combined (e.g., Violence Risk Scale: Sex Offender Version, Wong et al., 2003). Utilization of empirically validated risk/need instruments assists in the management of adult males convicted of sexual crimes by providing meaningful differentiation between those at higher risk for sexual reoffense, who should receive more intensive interventions and monitoring than those at lower risk for sexual reoffense, who should receive fewer intensive interventions and monitoring.

### DESISTANCE<sup>8</sup> FROM SEXUAL OFFENDING

Recent research in the field of sexual offense specific recidivism has found that adult males convicted of sexual crimes are less likely to reoffend the longer they desist and are offense-free in the community. Specifically, a recent study by Hanson et al. (2014) identified this impact for individuals classified as high risk on the Static-99R. Specifically, the risk for sexual recidivism for all groups was highest during the first few years after release and decreased substantially the longer individuals remained sexual-offense free in the community. While the recidivism rates of low risk offenders were consistently low (1%-5%) for all time periods, this pattern was consistently strong for the high-risk individuals who commit sexual offenses. For example, while the 5-year sexual recidivism rate for high risk sexual offenders was 22% at the time of release, this rate decreased to 4.2% for the offenders in the same risk category who remained offense free in the community for ten years. The results suggest that offense history is a valid, but potentially time dependent, indicator of the likelihood to sexually reoffend.

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<sup>8</sup> Desistance: generally defined as the cessation of offending or other antisocial behavior.

A more recent study (Hanson et al., 2018) modeled the long-term (25-year) risk of sexual recidivism in a large, combined sample ( $N = 7,000$ ) of adult males convicted of sexual crimes and found that the likelihood of new sexual offenses (i.e., arrest, charge and/or conviction) declined the longer an individual with a history of sexual offending remained sexual offense free in the community. This effect was found for all age groups and all initial risk levels. As such, the authors recommended that policies designed to manage risk of sexual recidivism need to include mechanisms to adjust initial risk classifications and determine time periods where individuals with a history of sexual crime should be released from the conditions and restrictions associated with the “sexual offender” label (Hanson et al., 2018). In essence, restrictions such as lifetime registration for those who do not reoffend appear to have been designed for a category of individuals that may not actually exist.

## **RESEARCH ON THE IMPACT OF REGISTRATION AND COMMUNITY NOTIFICATION LAWS**

As noted previously, the primary goals of SORN are to prevent sexual abuse, protect society and manage the risk of individuals within the community who were convicted of sexual crimes. The majority of studies conducted to date demonstrate that registration and notification laws have done little to reduce sexual recidivism or first time sexual offenses (Ackerman et al., 2011b; Bouffard & Askew, 2019; Letourneau et al., 2010; Letourneau & Armstrong, 2008; Levenson, 2007; Levenson & D’Amora, 2007; Levenson & Zgoba, 2015; Levenson et al., 2016; Sandler et al., 2008; Vasquez et al., 2008; Veysey et al., 2008; Zgoba et al., 2010). While policymakers intended to create a system to enhance community safety, SORN laws are based upon the myths that individuals who commit sexual crimes are “repetitive, compulsive, predatory and potentially violent abusers of young children” (Ackerman et al., 2011a). In contrast to these common public perceptions, adults convicted of sexual crimes are an extremely heterogeneous group who cross all socioeconomic, ethnic, gender, educational and cultural lines. While a certain percentage of adult registrants may present significant risk to our communities, once apprehended by the criminal justice system, the majority of individuals convicted of sexual crimes desist from sexually abusive behavior (Hanson et al., 2017).

Research has shown that the majority of sexual crimes reported to law enforcement are actually committed by first-time offenders, not recidivists. Sandler and colleagues (2008) conducted a seminal study in New York which reviewed the criminal history files of every offender arrested for a registerable sexual offense between 1986 and 2006, totalling more than 170,000 sexual offense arrests and more than 160,000 unique sexual offenders. The results of this study showed that approximately 95% of prosecuted sexual crimes were committed by men never

previously convicted of a sexual offense (i.e., men who would not have been on the registry), raising questions regarding the ability of SORN laws to meaningfully prevent sexual abuse or reduce sexual offending. Additionally, a recent large-scale study that focused on data from a Texas metropolitan area between 1977 to 2012 indicated that as many as 70% of the sexual offenses were committed by individuals who had not previously been arrested for a registerable sexual crime (Bouffard & Askew, 2019). This indicates that almost two-thirds of these first-time offenders would not have been identified by SORN laws and there was a limited deterrent effect from SORN laws in general (Bouffard & Askew, 2019).

Research has also clearly demonstrated numerous unintended consequences of public registration and notification as practiced within the U.S. that create barriers for successful community reintegration not only for the individual required to register, but also for their children and families. Adult registrants are often faced with difficulties obtaining employment and housing, as well as experience threats, harassment and/or property damage (Levenson & Cotter, 2005; Levenson et al., 2007; Mercado et al., 2008; Tewksbury, 2005; Zevitz & Farkas, 2000). The families of adult registrants often experience the shame, stigma, isolation, depression and hopelessness faced by registrants, as well as the financial and social effects, including forced residential relocation, when a family member is placed on the registry (Farkas & Miller, 2007; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009). Even the children of registrants have faced negative consequences that include stigmatization and differential treatment by teachers and classmates, as well as experiencing ridicule, teasing, depression, anxiety, fear, and/or anger (Levenson & Tewksbury, 2009). Stable housing, employment and prosocial support networks are all related to lower rates of recidivism (Andrews & Bonita, 2010). Destabilization, isolation and barriers in meeting basic life needs may actually undermine the prevention of sexual abuse by increasing, rather than decreasing, recidivism risk.

From a law enforcement perspective, SORN laws were viewed as necessary for the monitoring and tracking of registrants in the U.S. and beneficial to law enforcement for criminal investigation purposes. However, law enforcement personnel appeared to be less confident in the public use of this information due to concerns about the public misunderstanding or misinterpreting the currently available registry information (Harris et al., 2016). International research mirrors this perspective, indicating law enforcement valued the information provided by the register in their respective countries, but were against the public dissemination of that information due to the unintended consequences, such as those outlined above (McCartan, 2018; O'Sullivan et al., 2016). Similarly, law enforcement within the U.S. has expressed concerns regarding residence restrictions and similar adjunct laws due to the negative impact on the ability for law enforcement to effectively track, monitor and provide community supervision of individuals convicted of sexual crimes (Harris et al., 2016). Residence restrictions and SORN laws have additionally faced numerous



legal and constitutional challenges in the United States due to concerns regarding violation of due process, retroactive application, and similar issues (SMART, 2018).

## **LEGAL CHALLENGES**

SORN laws in the United States have also come under numerous legal challenges, particularly since the enactment of the Adam Walsh Act in 2006. Similar legal challenges do not exist in other countries due to the differences in application, procedure and use of registration internationally. Challenges to SORN statutes have occurred at both the federal and state levels in the U.S., and typically focus on violations of the following constitutional and legal tenets – freedom of speech, retroactive application of law, cruel and unusual punishment, and equal protection and due process. In all of these areas, the law is evolving. Please see Appendix B for a more comprehensive overview of the legal challenges to these laws within the United States.

## **CONCLUSIONS AND RECOMMENDATIONS**

The research to date on SORN has not identified significant reductions in the incidence of sexual abuse or sexual offense recidivism as a result of this policy. This fact leads to the conclusion that SORN, as currently implemented within the United States, does not achieve the intended goals of preventing sexual abuse, protecting society, or effectively managing the risk of individuals convicted of sexual crimes. Current practices additionally have numerous unintended consequences which actually potentially increase, rather than decrease, risk factors for individuals required to register. If the goals of these laws are the prevention of sexual abuse and reducing recidivism risk, meaningful legislative reforms will be required.

In recent years, several states (e.g., Oregon, California, Arizona) have recognized the need for changes to current SORN laws and have taken steps toward meaningful reforms such as individualization of registration requirements based on level of risk and providing avenues for relief from registration. While ATSA applauds these efforts, they are not enough and more needs to be done. The U.S. would also benefit from exploring how our international partners have implemented registration within their jurisdictions, especially the countries that have incorporated rehabilitation and reintegration as foundational bases of their registration systems.

It is also significant that the overall size of the registrant population has continued to grow since SORNA's passage by approximately 300,000 (600,000 at the time of SORNA's passage to more than 900,000 in 2018). This growth is estimated to add 20,000-25,000 new registrants each year (Harris et al., 2020). As a result, the fiscal impact of managing SORN, as well as the harm these policies cause to individuals,

families, communities and society as a whole, cannot be ignored; it is time for policy makers to enact meaningful reforms by incorporating what the research has clearly shown to improve existing SORN systems and further our shared goal of preventing sexual abuse.

Based upon current knowledge and research, ATSA offers the following recommendations for evidence-based registration reforms:

- **Discontinue one-size-fits all approaches** for the registration and notification of individuals convicted of sexual crimes;
- **Individualize registration and notification requirements** based upon empirically validated risk assessment tools and similar methods;
- **Develop avenues and criteria for relief from registration** which incorporates the desistance literature and recognizes the importance of treatment and supervision interventions for reducing recidivism risk, facilitating desistance and strengthening protective factors;
- **Limit public community notification practices** to the highest risk registrants, decrease broad-based dissemination of registrant information and/or re-establish law enforcement only registration practices coupled with allowing public inquiry about specific individuals;
- **Remove adjunct policies, such as residence restrictions**, from SORN laws as they do not work and are one of the primary drivers for legal challenges. Adjunct policies also undermine protective factors and create unnecessary barriers for community reintegration;
- Recognize that a national **one-size-fits all approach to SORN laws does not work** within the U.S. and allow states to make adjustments to their registries based on individual needs without incurring any financial penalty;
- **Utilize registration as part of a larger management scheme** for adults convicted of sexual crimes, with greater collaboration and focus on rehabilitative and reintegration efforts;
- **Enhance SORN information for law enforcement purposes**, including steps to ensure the accuracy of the information and strengthening tracking of registrants moving between jurisdictions; and
- **Strengthen partnerships** between law enforcement and sexual offense specific management professionals, including treatment professionals.

Evidence-based assessment, treatment, management, and policy strategies enhance community safety, reduce sexual abuse recidivism and prevent sexual abuse. However, too often the data surrounding public policy interventions is discounted or ignored, especially when the conclusions of the research cause discomfort among policymakers and their constituents. Although SORN laws were created to protect the public from potentially dangerous offenders, given the research and all that is known about the negative effects of such policies, policy makers and practitioners are now faced with the necessity to modify these laws in keeping with their goals.

SORN laws as currently applied to adults convicted of a sexual offense in the U.S. are not evidenced-based, do not enhance community safety or prevent sexual abuse. ATSA takes the position that sex offender registration and notification laws for adults should be reformed to better meet the goals of community safety, victim protection, and the effective rehabilitation of those who have committed such offenses.

# APPENDIX A

## RESIDENCE RESTRICTIONS

Most states and local jurisdictions in the U.S. have continued to expand the scope of their SORN systems through adjunct policies related to residence, education and employment restrictions. The most common example is residence restrictions, which have exacerbated many of the unintended consequences of public registration and community notification. Residence restrictions have been widely utilized in various forms throughout the U.S. and typically prohibit individuals required to register from residing within a certain defined distance, usually between 500 to 2500 feet, of schools, parks, playgrounds, day care centers, bus stops and other places where children congregate. The reasoning behind residence restrictions is based on the false assumption that, if a registrant is prohibited from living near children or places where children congregate, then that person's access to potential victims is reduced and sexual abuse will be prevented. These laws are also based on the false myth of "stranger danger" which, as described above, is not supported by the facts of sexual offending. Many of these laws are also applied to everyone convicted of a sexual offense in a one-size-fits-all manner, regardless of whether the person ever sexually abused children and/or presents an imminent risk to children. To date, there is no research to support that the residential proximity to places where children congregate, such as schools or parks, leads to increased recidivism risk. In contrast, several studies have shown that the distance an individual convicted of a sexual crime lives from schools or day cares was not associated in any way with sexual recidivism (Duwe et al., 2008; Nobles et al., 2012; Zandbergen et al., 2010). As the majority of sexual abuse involving children is perpetrated by someone known to the adult offender (90-95%; Snyder, 2000), as well as perpetrated within the home of the victim and family, relative or friend (~60%), it is not surprising that residence restrictions have not achieved their stated goal of preventing child sexual abuse.

Residence restrictions also exacerbate the unintended consequences described above by increasing transience, homelessness and instability (Levenson & Hern, 2007). For example, the Sexual Assault Reform Act in New York State resulted in the prohibition for certain registrants from living within one thousand feet of a school during their parole or conditional release, resulting in the majority of New York City being off limits to registrants (Frankel, 2019). Similar consequences have been highlighted in Miami-Dade County Florida as the combination of federal, state and local laws resulted in essentially all of Miami being off-limits to registrants (Levenson, 2016).

Additionally, research has consistently shown that stable housing, secure employment and prosocial support networks are all associated with lower rates of recidivism (Andrews & Bonita, 2010) and increased desistance (McNeill et al., 2012) for people with a criminal conviction. This is also true for individuals convicted of sexual offenses. Specifically, when a registrant has developed factors within their life which support desistance, known as “protective domains<sup>9</sup>,” their recidivism risk decreases. Creating unnecessary and ineffective barriers for registrants to successfully reintegrate into society does not help registrants develop these identified protective factors or promote desistance.

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<sup>9</sup> **Protective domains** for adults convicted of sexual crimes include the presence of healthy sexual interests; the capacity for emotional intimacy; the presence of constructive social and professional support networks; goal-directed living; good problem-solving skills; engagement in employment or constructive leisure activities; sobriety; and possession of a hopeful, optimistic and motivated attitude toward desistance (de Vries Robbe et al., 2014).

# APPENDIX B

## LEGAL CHALLENGES AND RULINGS

Challenges to registration statutes in the United States at both the federal and state levels typically have focused on violations of the following constitutional and legal tenets – freedom of speech, retroactive application of law, cruel and unusual punishment, and equal protection and due process. In all of these areas, the law is evolving. A sampling of recent cases in each of these areas follows.

- ***Freedom of speech:*** The First Amendment to the U.S. Constitution prevents the government from abridging individuals’ right to exercise freedom of speech, freedom of peaceable assembly, and freedom of religious practice.

Recent rulings show support for protecting the free speech of registrants.

- In 2012 (*Doe v. Nebraska*), the U.S. District Court in Nebraska found that preventing registrants from using social networking websites, instant messaging services, and chat rooms violated the First Amendment, and that requiring registrants to provide internet identifiers also violated the First Amendment.
  - In 2017 (*Packingham v. North Carolina*), the U.S. Supreme Court found that North Carolina’s law prohibiting registered sex offenders from accessing social media sites where minors are permitted violated the First Amendment.
  - In 2018 (*Doe v. Marshall*), the U.S. District Court in Alabama ruled that Alabama’s sex offender registration law violated the First Amendment by branding state-issued ID cards with “CRIMINAL SEX OFFENDER” and imposing extensive internet-use reporting requirements.
- ***Ex post facto:*** An ex post facto law retroactively applies new laws to actions that were committed before the law took effect. Ex post facto laws are expressly forbidden by the U.S. Constitution. Ex post facto challenges to the use of sex offender registries have occurred and continue to occur in states where individuals who were not originally required to register were later required to register due to a law change that retroactively applied to the original crime.

Rulings on cases involving ex post facto challenges have been mixed, but more recent decisions have found that retroactive application of sex offender

registration laws is an ex post facto violation.

- In 2003 (*Smith v. Doe*), the U.S. Supreme Court upheld Alaska's sex offender registration statute, ruling that sex offender registration laws were civil laws, not punitive measures, and therefore were not unconstitutional ex post facto violations.
  - However, in 2008 (*Doe v. State of Alaska*), the Alaska Supreme Court ruled that Alaska's Sex Offender Registration Act violated the ex post facto clause of the state's constitution, and ruled that the registration requirement does not apply to persons who committed their crimes before the act became effective.
  - Missouri's courts issued a series of conflicting rulings in 2006, 2007, 2009, and 2010 on whether individuals were required to register if they pled guilty to a registrable offense before the state's sex offender registration law took effect. As of the 2010 ruling, individuals who pled guilty to a sex offense that occurred prior to the enactment of Missouri's registration law are not required to register.
  - In 2012 (*In re C.P.*), the Ohio Supreme Court ruled that the state's version of the Adam Walsh Act was punitive, rather than a civil regulatory measure, and barred retroactive application of the law to individuals whose crimes predated the law's effective date.
  - In 2013 (*Doe v. Department of Public Safety and Correctional Services*), the Maryland Court of Appeals ruled that the state could not require the registration of people who committed their crimes before the registry database was established.
  - In 2017 (*Commonwealth v. Muniz*), the Pennsylvania Supreme Court ruled that Pennsylvania's retroactive application of SORNA penalties violated the ex post facto provisions of both the U.S. and Pennsylvania constitutions and additionally violated the Pennsylvania constitutionally protected freedom of reputation.
- ***Cruel and unusual punishment***: The Eighth Amendment to the U.S. Constitution states that no one shall be subjected to cruel and unusual punishment. The four principles used to determine if a punishment is cruel and unusual are whether the punishment 1) is degrading to human dignity, 2) is inflicted in an arbitrary fashion, 3) is clearly rejected throughout society, and 4) is unnecessary. Arguments against registries claim that placing someone on a registry is, in fact, cruel and unusual punishment, because the public's access to registries results in registrants and their families being subjected to verbal and physical harassment, loss of housing and jobs, and other penalties.

Rulings in this area of law are mixed and still too few in number to show any kind of trend.

- In 2018 (*In re C.K.*), the New Jersey Supreme Court found that requiring juveniles to register as sex offenders for life was unconstitutional.
  - In 2019 (*People v. Interest of T.B.*), the Colorado Court of Appeals remanded the case for further proceedings to determine whether lifetime registration for juveniles is unconstitutional.
  - In 2019 (*Doe v. Idaho Sex Offender Registry*), the 9<sup>th</sup> U.S. Circuit Court rejected a lawsuit challenging the Idaho Sex Offender Registry Act as being cruel and unusual punishment and a violation of due process, and upheld the law as valid and constitutional.
  - As of 2019 (*In re G.M.C.*), a case is making its way through the court system regarding the involuntary waiver of a juvenile to adult court for committing a sexual offense. The lawsuit challenges New Jersey's requirement that juveniles older than 14 must register under Megan's Law for at least 15 years after being adjudicated as delinquent. The lawsuit states that being registered triggers more than 600 federal, state, and local consequences and creates a "minefield of collateral effects" for the person.
- ***Equal protection and due process:*** The Fourteenth Amendment to the U.S. Constitution provides that no state shall deprive any person of life, liberty, or property without due process of law. Due process requires that governments must respect all of a person's constitutional rights when investigating them, charging them, or sentencing them for a crime. A violation of due process occurs when a government does not follow this requirement and a person is harmed as a result. Arguments against registries claim that placing someone on a registry deprives that person of liberty and/or property without due process.

Rulings in this area of law have supported most challenges to sex offender registries.

- In 2001 (*State v. Bani*), the Hawaii Supreme Court ruled that Hawaii's sex offender registration statute violated the due process clause of the state's constitution. The court determined that the law authorized public notification of the potential registrant's status as a convicted sex offender without notice, an opportunity to be heard, or any preliminary determination of whether and to what extent a potential registrant actually represented a danger to society.
- In 2003 (*Connecticut Department of Public Safety v. Doe*), the U.S. Supreme Court ruled that Connecticut's sex offender registration



statute did not violate procedural due process. It left open, however, the question of whether Connecticut's law violates substantive due process principles.

- In 2014 (*In re J.B., L.A.D., D.E., K.O.H., A.M., J.T., and D.T.*), the Pennsylvania Supreme Court ruled that the state's sex offender registry for juvenile offenders was unconstitutional and that the state, by making an irrefutable presumption about adults' behavior based on crimes they committed as teens, violated their constitutional right to due process.
- In 2017 (*Millard et al. v. Rankin*), the U.S. District Court in Colorado found that the state's registration and notification system violated both the Eighth and Fourteenth Amendments of the U.S. Constitution.
- In 2018 (*People v. Temelkoski*), the Michigan Supreme Court ruled that retroactive application of a sex offender registration statute to a man who pleaded guilty to a sex offense under a state diversionary statute violated his right to due process under the state and federal constitutions.

## **ADDITIONAL CHALLENGES**

In 2019, the Liberty and Justice Coalition (an organization whose goal is improving public safety by reforming sex offender laws) notified sheriffs throughout New Mexico that it will file a tort claim against any county sheriff's department that violates the New Mexico Sex Offender Notification and Registration Act by imposing additional requirements on registrants beyond those allowed and specified within the statute. Examples of additional requirements cited by the Coalition include requiring registrants to provide advance notice and an itinerary of travel outside the state, requiring registrants to make contact with the sheriff's office more frequently than required by statute, providing more information to employers about their convictions than required in statute, and restricting participation in holiday activities. As this effort proceeds, organizations in other states may choose to follow a similar process for challenging local enforcement variations of state and federal registration laws.

## **SUMMARY OF LEGAL CHALLENGES**

Since states' laws and their application of the federal Sex Offender Registration and Notification Act (SORNA) vary, challenges to registration laws generally must take place on a state-by-state basis. This limits the application of court decisions to residents of one jurisdiction or to plaintiffs in narrow circumstances. Changing laws

throughout the United States through legal challenges will necessarily require years of casework and a multitude of rulings.

During the past decade, however, some trends have emerged. Rulings on challenges to sex offender registration laws appear to be moving toward increased support for registrants' free speech rights and toward banning retroactive placement of individuals on registries. Rulings on challenges to registries based on cruel and unusual punishment, equal protection, and due process do not yet show a clear trend.

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