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# From Innocent Boys to Dirty Old Men: Why the Sex Offender Registry Fails

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**FROM INNOCENT BOYS TO DIRTY OLD MEN:  
WHY THE SEX OFFENDER REGISTRY FAILS\***

**Elizabeth B. Megale<sup>+</sup>**

**Abstract**

This Article surveys the requirement of registration as a sex offender and ultimately concludes that the registry fails to protect children and society from individuals who commit sex-related crimes; furthermore, it concludes that the registry fails to prevent sex crimes from occurring. The author studies the legislative history of various acts related to sex crimes as well as statistics on sex crimes to surmise that Congress in large part relied on myths about sex offenders in enacting legislation like the Adam Walsh Act. As a result, the registry is incapable of preventing the commission of sex offenses. The author further resolves that the registry endorses and perpetuates hatred toward sex offenders by creating a stigma whereby sex offenders are unable to reintegrate into society and lead productive lives. The Article concludes by proposing that the registry is counterproductive as it causes great harm to individuals without offering a positive benefit to society as a whole.

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**I. INTRODUCTION**

Jaycee Dugard was rescued from her kidnapper in August 2009, eighteen years after Phillip Garrido abducted her.<sup>1</sup> From 1991 until 2009, Garrido repeatedly sexually abused Jaycee Dugard and even fathered her two children.<sup>2</sup> Garrido was a convicted felon, a known danger to his community, and a registered sex offender.<sup>3</sup> He kidnapped Jaycee Dugard when she was eleven years old and imprisoned her in a compound he built in his backyard. During this time he was subject to supervision under the probation and parole system of California.<sup>4</sup> While he held her captive, parole officers saw Jaycee Dugard and at least one of her daughters on more than one occasion when they visited Garrido’s home, yet no one questioned the young girls’ presence.<sup>5</sup>

Jaycee Dugard should never have been abducted, and she should never have been raped and tortured during the course of those eighteen years. All of the safeguards our society designed to protect her – sex offender registries, probation, parole, police (to name just a few) – failed Jaycee Dugard. She was saved only because of a random encounter with a particularly

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<sup>1</sup> CNN Justice, Parole Officers Talked to Jaycee Dugard During Captivity, <http://www.cnn.com/2010/CRIME/07/08/california.dugard.settlement/index.html?iref=allsearch> (last visited June 29, 2010) [hereinafter *During Captivity*].

<sup>2</sup> Aliyah Shahid, CA Officials Spoke With Jaycee Lee Dugard and Kidnapper, Phillip Garrido, But Failed to Follow Up, DAILY NEWS, [http://www.nydailynews.com/news/national/2010/07/08/2010-07-08\\_ca\\_officials\\_spoke\\_with\\_jaycee\\_lee\\_dugard\\_and\\_kidnapper\\_phillip\\_garrido\\_but\\_fail.html](http://www.nydailynews.com/news/national/2010/07/08/2010-07-08_ca_officials_spoke_with_jaycee_lee_dugard_and_kidnapper_phillip_garrido_but_fail.html) (last visited June 28, 2010).

<sup>3</sup> Shahid, *supra* note 2. Phillip Garrido was convicted of rape and placed on parole in 1988. *Id.*

<sup>4</sup> Shahid, *supra* note 2.

<sup>5</sup> Shahid, *supra* note 2.

concerned citizen who paid attention. What was the problem? It took eighteen years for someone to just pay attention.<sup>6</sup>

At the other extreme, a seventy-nine year old man who was mistaken for a registered sex offender was bludgeoned to death with a baseball bat in May 2010.<sup>7</sup> Robert Pascale entered the home of Hugh Edwards for the purpose of killing him because he believed Edwards was a sex offender.<sup>8</sup> Michael Garay, a friend who had spent the afternoon drinking with Pascale and other neighbors and friends, allegedly told Pascale that Edwards was a registered sex offender.<sup>9</sup> During that conversation, Pascale grabbed a baseball bat and went next door to beat Edwards to death. The victim had a similar name and birth date as a person listed on the sex offender registry; however, this Hugh Edwards did not actually have any criminal record at all.<sup>10</sup> For Edwards, the registry failed him as well, but in a wholly different way than it failed Jaycee

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<sup>6</sup> Shahid, *supra* note 2. Officials at the University of California took notice of Jaycee Dugard and her daughters when Phillip Garrido brought them onto campus. Finding the circumstances suspicious, these officials contacted Garrido's parole officer to report the encounter with Garrido and the young girls. Soon thereafter Jaycee Dugard was rescued from her abductor. *Id.* On April 29, 2011, Garrido took a plea deal and pleaded guilty to kidnapping and thirteen counts of sexual assault. Maura Dolan, Couple Take Plea Deal in Jaycee Dugard Kidnapping, *L.A. Times*, <http://articles.latimes.com/2011/apr/29/local/la-me-garridos-20110429> (last visited June 30, 2011). He was sentenced to 431 years in prison. *Id.*

<sup>7</sup> News4Jax.com, Man Mistaken For Sex Offender Killed: Suspect Found Lying In Pond With Only Mouth Exposed, <http://www.news4jax.com/news/23553940/detail.html> (last visited June 22, 2011) [hereinafter *Mistaken Sex Offender*]. Hugh Edwards is not the only victim of this sort of vigilantism. In April 2005, Stephen Marshall killed two registered sex offenders after searching Maine's sex offender registry; one of his victims was a registered sex offender because as a nineteen-year-old boy he had consensual sexual relations with a fifteen-year-old girl. John R. Ellement & Suzanne Smalley, Sex Crime Disclosure Questioned: Maine Killings Refuel Debate Over Registries, *Boston Globe*, Apr. 18, 2006, [http://www.boston.com/news/local/maine/articles/2006/04/18/sex\\_crime\\_disclosure\\_questioned/](http://www.boston.com/news/local/maine/articles/2006/04/18/sex_crime_disclosure_questioned/). (last visited June 20, 2011). Outside of Seattle, two registered sex offenders were killed in 2005. Law enforcement suspected vigilantism motivated the killing. Jonathan Martin & Maureen O'Hagan, Killings of 2 Bellingham Sex Offenders May Have Been Vigilante, *Police Say*, *Seattle Times*, Aug. 30, 2005, at A1. In 2004, Lawrence Trant attempted to murder two registered sex offenders listed on the New Hampshire sex offender registry. Brian MacQuarrie, Man Defends Attacks on Sex Offenders Crusader Gets Jail Term, *Boston Globe*, Dec. 5, 2004, at A1.

<sup>8</sup> *Mistaken Sex Offender*, *supra* note 7.

<sup>9</sup> *Mistaken Sex Offender*, *supra* note 7.

<sup>10</sup> *Mistaken Sex Offender*, *supra* note 7.

Dugard.<sup>11</sup> Because of the inadequacies of the sex offender registry system, both Edwards and Dugard have lost innocence and life that cannot be replaced.<sup>12</sup>

Contrast these two tragedies with that of James Birch. Mr. Birch, after consuming a six-pack of beer with some friends, rode to the local Taco Bell where he ordered food just before the restaurant was closing.<sup>13</sup> He needed to use the restroom, but the facilities had already been closed to the public for the evening.<sup>14</sup> When he returned to his car, he discreetly relieved himself by standing near his car and facing a retaining wall.<sup>15</sup> Unbeknownst to him, officers in an unmarked car were watching him; they arrested Mr. Birch and he entered a plea of guilty to the charge of lewd and dissolute conduct in a public place.<sup>16</sup> As a result of his conviction for a misdemeanor, urinating in public, Mr. Birch was required to register as a sex offender.<sup>17</sup>

The modern era has been called “the Information Age.”<sup>18</sup> In this era, society is inundated with information intended to empower people to make better decisions and live better lives.<sup>19</sup> Information, however, can also create a false sense of security because it provides confidence in human abilities to use that information responsibly.<sup>20</sup> People feel safer as a result of having more information; quantity of information alone, however, does not necessarily lead to better

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<sup>11</sup> Mistaken Sex Offender, supra note 7.

<sup>12</sup> The State of California recently approved a \$20 million dollar settlement to compensate Jaycee Dugard for the failures of the California probation and parole system. During Captivity, supra note 1.

<sup>13</sup> *In re Birch*, 515 P.2d 12, 13 (Cal. 1973).

<sup>14</sup> *In re Birch*, 515 P.2d at 13.

<sup>15</sup> *In re Birch*, 515 P.2d at 13.

<sup>16</sup> *In re Birch*, 515 P.2d at 13.

<sup>17</sup> On appeal, Mr. Birch was permitted to withdraw his plea because he had not been advised of the collateral consequence of sex offender registration upon entry of his plea. *In re Birch*, 515 P.2d at 17.

<sup>18</sup> Brent Muirhead, Attitudes Toward Interactivity in a Graduate Distance Education Program: A Qualitative Analysis. 22 (1999).

<sup>19</sup> See generally Human Rights Initiative, Our Rights Our Information: Empowering People to Demand Rights Through Knowledge. Available at [http://www.humanrightsinitiative.org/publications/rti/our\\_rights\\_our\\_information.pdf](http://www.humanrightsinitiative.org/publications/rti/our_rights_our_information.pdf) (last visited June 30, 2011).

<sup>20</sup> Human Rights Initiative, supra note 19.

decision-making.<sup>21</sup> Information itself is not power;<sup>22</sup> information empowers individuals only when they understand how to use the information as a tool in their lives.

Herein rests the fundamental problem with the current operation of the sex offender registry system. The system was created primarily as a readily-available database of information for the public;<sup>23</sup> the public, however, is ill-equipped to valuably use this information on a day-to-day basis. At best, the registry solely informs; it does not safeguard potential victims like Jaycee Dugard. At worst, it enables a reckless member of society to irresponsibly use the information resulting in more harm than good; this is how Hugh Edwards managed to lose his life so violently. Caught in the crosshairs are numerous individuals like Mr. Birch who may have committed some arguably “sex-related” offense, but who do not truly present a danger to society as a whole.

In this Article, I explore how the sex offender registry fails to protect society. Part II below details the history of the sex offender registry exposing its reactionary nature, speculative underpinnings, and the resulting inherent flaws. Part III dissects the problems that perpetuate the failures inherent in the sex offender registry system. Particularly, the registry does not provide practical information to empower the public to protect itself from dangerous offenders. Additionally, because the term “sex offender” is so broadly defined, the sheer number of registrants creates an inefficient dilution of resources and numbs the public as to any potential dangers presented by anyone labeled sex offender. Part IV proposes elimination of the label “sex

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<sup>21</sup> Eldar Shafir, Behavioral Decision Making and Policy, Case Study: Which Shall I Choose? More Information Doesn't Ensure Better Decision-Making, <http://psych.princeton.edu/psychology/research/shafir/case.php> (last visited June 30, 2011).

<sup>22</sup> Shafir, *supra* note 21.

<sup>23</sup> “SORNA established a national sex offender registry with the hope that sex offenders could not evade detection merely by moving from one state to another. It also sought to eliminate discrepancies among state registration and notification systems that might hinder public safety.” Sex Offender Notification and Registration Act (SORNA): Barriers to Timely Compliance by States Hearings Before the Committee on the Judiciary, 111th Congress (2009) at 157 [hereinafter SORNA Hearings].

offender” as well as total elimination of the registry. This Article concludes by proposing the government concentrate resources on the education and rehabilitation of both victims and persons convicted of sex-related offenses rather than on a sex offender database that perpetuates hatred toward individuals labeled sex offender.

## **II. THE SEX OFFENDER REGISTRY: RATIONAL OR REACTIONARY?**

The year 1994 marked the beginning of focused encouragement by the federal government upon states to enact legislation aimed at identifying, monitoring, and controlling sexual offenders.<sup>24</sup> Since then, numerous laws targeting sex offenders have been enacted.<sup>25</sup> The laws are allegedly intended to further three main purposes: (1) deter sex offenders from reoffending; (2) provide law enforcement with suspects when a sex crime is committed or suspected; and (3) inform members of the general public about dangerous sex offenders living in their communities.<sup>26</sup> These laws, however, are flawed because the legislature enacted them in reaction to extraordinary events such as the abduction, rape, or murder of a child.<sup>27</sup> Moral rage and media distortion have fueled Congress’ enacting sweeping sex offender regulations,<sup>28</sup> and

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<sup>24</sup> Pub. L. No. 103-322, 108 Stat. 2038 (1994) (to be codified at 42 U.S.C. 1471 (2006)) (establishing guidelines for state sex offender programs).

<sup>25</sup> The typical pattern of new legislation begins with a sexually motivated crime, usually of a child, and generally involving a murder. Richard G. Wright, Parole and Probation: Sex Offender Post-Incarceration Sanctions: Are There Any Limits? 34 *New Eng. J. on Crim. & Civ. Confinement* 17, 19 (2008). Often times, the suspect is someone previously convicted of a sex crime, but the victim’s parents did not know about the offender’s presence. *Id.* at 19-20. Next, media attention surrounds the case at both a local and national level. *Id.* at 20. Following the attention, a legislator becomes involved, speaks with the victim’s family, and proposes legislation aimed at controlling sex offenders to prevent such heinous crimes from recurring. *Id.*

<sup>26</sup> Kelsie Tregilgas, Sex Offender Treatment in the United States: The Current Climate and an Unexpected Opportunity for Change, 84 *Tul. L. Rev.* 729, 731-32 (2010).

<sup>27</sup> “The legislator’s discourse in large part reveals an almost visceral repulsion and disgust reaction to an imagined toxic threat, rather than an articulated concern based on rational, dispassionate assessment of a known social risk.” Mona Lynch, Pedophiles and Cyber-predators as Contaminating Forces: The Language of Disgust, Pollution, and Boundary Invasions in Federal Debates on Sex Offender Legislation, 27 *Law & Soc. Inquiry* 529, 557 (2002).

<sup>28</sup> Understanding the social context surrounding the enactment of these laws is crucial to understanding the purpose and goals of these laws. It is also central to understanding how these laws are not capable of accomplishing the stated purposes, but rather are evidence of a concentrated effort to identify a cultural pollutant (i.e., the sex offender) and eliminate this contaminant from our society. Lynch, *supra* note 27, at 538-40. “Penal laws and institutions are always proposed, discussed, legislated, and operated within definite cultural codes. They are framed in languages, discourses, and sign systems which embody specific cultural meanings, distinctions, and sentiments, and which must

even the very names of the acts reflect Congress' reactionary efforts to vindicate the victims of crime.<sup>29</sup>

Because strong emotions were at play while the laws were being drafted, legislators necessarily lost objectivity in their creation, thereby compromising the integrity of the legislative process and resultant laws.<sup>30</sup> Numerous victims of sexually-motivated crimes testified at the hearings, detailing their individual stories.<sup>31</sup> Their testimony served to create an urban legend: the idea that the typical sex offender is a dangerous man lurking outside the home and poised to kidnap and rape innocent women and children.<sup>32</sup> Rather than relying on empirical data and practical solutions, Congress latched onto the myth of the lurking man and adopted the position that "sexual deviance [is] qualitatively unique"; this led to a largely disproportionate effect upon legislative decisions.<sup>33</sup>

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be interpreted and understood if the social meaning and motivations of punishment are to become intelligible." David Garland, *Punishment and Modern Society: A Study in Social Theory* 198 (1990).

<sup>29</sup> The Jacob Wetterling Act was named for Jacob Wetterling "from Minnesota, who disappeared on his way home from a video store and has never been found." Megan's Law was named for "Megan Kanka, ... the victim of convicted sex offender Jesse Timmequedas' sexual assault and homicide in New Jersey." Lynch, *supra* note 27, at 549. The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 was named for a real estate agent who was brutally assaulted while showing a house in Houston. Office of Justice Programs, Bureau of Justice Assistance, "Background Information on the Act and Its Amendments" available at <http://www.ojp.usdoj.gov/BJA/what/2a2jwactbackground.html> (last visited June 30, 2011). The Adam Walsh Child Protection and Safety Act of 2006 was named for a 6-year old Florida boy who was abducted at a mall and murdered. "Adam Walsh Child Protection and Safety Act of 2006" (PL 109-248, July 27, 2006). U.S. Department of Justice, available at <http://www.justice/criminal/ceos/Adam%20Walsh.pdf> (last visited June 30, 2011.)

<sup>30</sup> The various "studies" cited during the debates remained unnamed and legislators typically referred to statistical data that were patently false. Lynch, *supra* note 27, at 544-46. For example, "Congressman McCollum described the recidivism rate of registerable sex offenders at, '10 times greater than other criminals.'" Lynch, *supra* note 27, at 545 (citing Cong. Rec. 1996b, H11132). In reality, sex offenders recidivate at a rate substantially less than other criminals. See Part III; see also *infra* note 80.

<sup>31</sup> SORNA Hearings, *supra* note 23; see also *infra* note 40.

<sup>32</sup> Lynch, *supra* note 27, at 560.

<sup>33</sup> Melissa Hamilton, *Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws*, 83 *Temple L. Rev.* (forthcoming 2011). Society as a whole tends to fear and loathe sex offenders more than any other criminal, and because the registry now exists, awareness of sexually motivated crimes is both increased and distorted. *Id.*; see also Wright, *supra* note 25, at 26-27.

Congressional hearings are replete with examples of erroneous assumptions and data fabrication.<sup>34</sup> For instance, some data indicate that the general public believes sexual violence has increased and become more pervasive when it has actually decreased “by about one-third between 1998 and 2007.”<sup>35</sup> Many individuals assume that sex offenders always reoffend or recidivate, although no empirical studies support this conclusion.<sup>36</sup> Perhaps most interesting, the general public believes sex offenses are most commonly committed by strangers.<sup>37</sup> In reality, most sex offenses are committed by members of the family or close family friends, not a “dangerous lurking man.”<sup>38</sup> Congress relied on these and other false assumptions during the debates surrounding passage of the various sex offender acts.<sup>39</sup>

Significantly, during the debates the only objections to the passage of these acts addressed the federal question issue. Representative Ron Paul cautioned that creation of a sex offender registry and other federal sex offender laws represent serious violations of federalism and threats to constitutionally-protected freedoms in America.<sup>40</sup> Although he recognized that to the majority of Congress “[i]t seem[ed] to no longer even matter whether governmental programs actually accomplish their intended goals,”<sup>41</sup> he failed to focus his objection on the equally disturbing problem that Congress was reacting to emotional stories of victims rather than objectively evaluating data to determine strategies to realistically combat sex-related crimes. In fact, the entire evolution of the various federal acts targeted at identifying, controlling, and monitoring

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<sup>34</sup> Lynch, *supra* note 27.

<sup>35</sup> Hamilton, *supra* note 33, at 5.

<sup>36</sup> Wright, *supra* note 25, at 26 (Massachusetts study in 1999 found recidivist rate of sex offenders to be the lowest when compared with non-sexual offenders).

<sup>37</sup> Hamilton, *supra* note 33, at 12-13; Wright, *supra* note 25, at 22-23.

<sup>38</sup> Hamilton, *supra* note 33, at 12-13; Wright, *supra* note 25, at 22-23.

<sup>39</sup> Lynch, *supra* note 27. Also, Part III below provides detailed statistical data in support of this conclusion.

<sup>40</sup> 144 Cong. Rec. 4491, 4499 (1998). Representative Paul and Congressman Watt both recognized the federal criminal legislation as Congress’ obvious violation of federalism by enacting criminal laws, an area specifically reserved to the states by the Founding Fathers. *Id.*

<sup>41</sup> Lynch, *supra* note 27, at 556.

sex offenders “reveal[s] the discourse of disgust used by U.S. lawmakers to rhetorically sell ... restrictions and sanctions directed at sex offenders”<sup>42</sup> that are not likely to accomplish any of these purposes.<sup>43</sup>

A. The history of the various federal acts reflects Congress’ emotional approach to enacting sex offender legislation.

In 1994 Congress passed the first federal legislation targeted at sex-related crimes, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (“Wetterling Act”), which incentivized states to implement rigorous sex-offender registration programs.<sup>44</sup> Three years later Congress enacted the Jacob Wetterling Improvements Act (“Improvement Act”), the primary focus of which was to encourage states to established procedures for registering out-of-state sex offenders.<sup>45</sup>

In 1996, between the passage of the Jacob Wetterling Act and the Improvements Act, Congress adopted both Megan’s Law and the Pam Lyncher Act.<sup>46</sup> Megan’s Law required states to make information on sex offenders available to the public.<sup>47</sup> Among other requirements,

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<sup>42</sup> Lynch, supra note 27, at 532.

<sup>43</sup> The consistent enactment of legislation targeted at sex offenders reveals the legislature’s perceived need to eradicate the source of contamination (“sex offenders”) and protect purity (children). This systematic approach is reminiscent of the Nazis’ attempt to eradicate the “vermin” represented by the Jewish nation. See Lynch, supra note 27, at 539-40. For this reason, these acts are a dangerous expansion of political power.

<sup>44</sup> 42 U.S.C. § 14071. States were strongly encouraged to adopt this Act because failure to do so would result in a ten percent forfeiture of federal funds for state and local law enforcement under the Byrne Grant Program of the United States Department of Justice. 42 U.S.C. § 14071(g)(2). Thus, even though Congress could not constitutionally require states to implement a sex-offender registry, it achieved its goal of having all fifty states and Washington, D.C. employ a sex offender registry by simply tying receipt of federal funds to passage of the Act. Center for Sex Offender Management, Goals of Registration, <http://www.csom.org/pubs/sexreg.html> (last visited Aug. 17, 2010) (stating as of 1999 all fifty states and the District of Columbia had “enacted some type of community notification”).

<sup>45</sup> The Jacob Wetterling Improvement Act required offenders who moved out of state to register within the new state. Pub. L. No. 105-119, 111 Stat. 2440 (1997) (codified as amended in scattered sections of 42 U.S.C. § 1471 (2006)). It also required offenders to register within the states where they worked or attended school. Id.

<sup>46</sup> The substance of these acts is not particularly relevant in this Article as these acts have been repealed and replaced by newer legislation. Analysis of the newer legislation is the focus of this Article, and the author only mentions the previous acts to serve as general background information for the reader.

<sup>47</sup> Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified as amended at 42 U.S.C. §14071(e) (2006)). In particular, the law provided that “the information collected under a State registration program may be disclosed for any purpose

Megan’s Law called for the maintenance of “an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.”<sup>48</sup> Also in 1996, Congress passed the Pam Lyncher Sex Offender Tracking and Identification Act of 1996 to create a federal FBI database for sex offenders.<sup>49</sup> Just three years after the Improvements Act, in 2000, the Campus Sex Crimes Prevention Act was passed requiring sex offenders to report their enrollment at or employment by any institutions of higher education.<sup>50</sup> All of this legislation enacted from 1994 through 2000 focused on informing the public of the location and activities of potentially dangerous sex offenders. More importantly, each act was a reaction predicated by a tragic event whereby Congress attempted to plug holes in the existing law.<sup>51</sup>

In 2006 Congress voted to repeal the Wetterling Act<sup>52</sup> and replace it with the Adam Walsh Child Protection and Safety Act of 2006.<sup>53</sup> The Walsh Act represents an overhaul of sex offender registration requirements with the goal of “strengthen[ing] registration and notification

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permitted under the laws of the State.” 42 U.S.C. §14071(e)(1). Only information relevant to protecting the public and about the specific person required to register is authorized for release under Megan’s Law; the victim’s identity is not to be released. § 14071(e)(2).

<sup>48</sup> 42 U.S.C. § 14071(e)(2) as amended in 108 P.L. 21, Title VI, § 604(b), 117 Stat. 688Pub. L. No. 108-21, 117 Stat. 650 (2003) (codified as amended at 42 U.S.C. § 14071(e)(2) (2006)). Via grants awarded by the U.S. Attorney General, states receive funding to improve the reporting of unidentified and missing persons; failing to comply reduces federal funding by ten (10%) percent. 42 U.S.C. §14071(i)(1)(A).

<sup>49</sup> Pub. L. No. 104-236, 110 Stat. 3093 (1996) (to be codified at 42 U.S.C. § 14072 (2006)).

<sup>50</sup> Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended at 42 U.S.C. § 14071(j) (2006)). Many other acts regarding sex offenders were passed following the Jacob Wetterling Act; the details of those acts are not relevant to understanding the analysis developed in this Article.

<sup>51</sup> For example, when Megan Kanka was abducted, the government was blamed for failing to protect her by making sex offender information available to the general public. 104 Cong. Rec. S4921, 1 (May 9, 2009), available at Thomas (Library of Congress), <http://www.gpo.gov:80/fdsys/pkg/CREC-1996-05-09/pdf/CREC-1996-05-09-pt1-PgS4921-3.pdf#page=1> (last visited June 29, 2011). In response, Congress passed Megan’s Law requiring states to inform the general public about sex offenders. *Id.*

<sup>52</sup> “The former Wetterling Act is currently entitled the Jacob Wetterling, Megan Nicole Kanka, Pam Lychner Sex Offender Registration and Notification Program.” Wright, *supra* note 25, at 32.

<sup>53</sup> Wright, *supra* note 25, at 32 (“The Adam Walsh Act is a response to the sexual assaults and murders of seventeen people which occurred over the last seventeen years: Jacob Wetterling (Minn., 1989), Megan Kanka (N.J., 1994) Pam Lychner (Tex., 1993); Jetseta Gage (Iowa, 2005), Dru Sjodin (N.D., 2003), Jessica Lunsford (Fla., 2005), Sarah Lunde (Fla., 2005), Amie Zyla (Wis., 1996), Christy Fornoff (Ariz., 1984), Alexandra Zapp (Mass., 2002), Polly Klaas (Cal., 1993), Jimmy Ryce (Fla., 1995), Carlie Brucia, (Fla., 2004), Amanda Brown (Fla., 1998), Elizabeth Smart (Utah, 2002), Molly Bish (Mass., 2000), and Samantha Runnion (Cal. 2002).”).

in various ways.”<sup>54</sup> Although the Adam Walsh Act has improved the sex offender registry somewhat, it fails to satisfactorily accomplish the goals of identifying, monitoring, and controlling sex offenders.<sup>55</sup> These failures are more fully explained in Part III below.

One of the improvements is a tiered approach to registration permitting a person convicted of a sex offense to register for a period of time less than life.<sup>56</sup> Title I, known as SORNA, the Sex Offender Registration and Notification Act, encompasses this three-tiered approach to sex offender registration as represented in the following table:<sup>57</sup>

TIER	DEFINITION	SCOPE	DURATION
I	Considered to be the least heinous sexually motivated offenses and defined as not a Tier I or Tier II offender.	Once a year, jurisdiction permitted to verify address and take a current photograph. Failure to register is a felony offense.	15 years (minimum)
II	Includes convictions for the following crimes: <ul style="list-style-type: none"> <li>• Sex trafficking</li> <li>• Coercion and crimes of enticement</li> <li>• Transportation with the intent to engage in criminal sexual activity</li> </ul>	Every six months, jurisdiction permitted to verify address and take a current photograph. Failure to register is a felony offense.	25 years (minimum)

<sup>54</sup> Wayne A. Logan, *Sex Offender Registration and Community Notification: Past, Present, and Future*, 34 *New Eng. J. on Crim & Civ. Confinement* 3, 6 (2008).

<sup>55</sup> One of the reasons for this failure is that “[t]he underlying goal appears to be the reassertion of a traditional patriarchal [paternalistic] model of society . . . [which] reveal[s] a gendered rhetoric about protecting women and children through these legislative efforts.” Lynch, *supra* note 27, at 560.

<sup>56</sup> 42 U.S.C § 16918(a) (2006). As more fully explained below, the tiered approach continues to present problems because not all states are implementing the tiers. Additionally, the tiered approach does not readily account for the individual nor does it use likelihood of reoffense as a measuring tool to determine the registration requirement. Rather, it focuses on the nature of the offense and the length of sentence.

<sup>57</sup> 42 U.S.C. § 16911(1)-(4) (2006). The hallmarks of the Adam Walsh Act include classifying sex-offenders into one of three tiers and broadening public access to registry information. 42 U.S.C § 16918(a) (2006). The statute provides:

(a) In General.—Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by The Attorney General.

Id.

	<ul style="list-style-type: none"> <li>• Abusive sexual contact</li> <li>• Use of a minor in a sexual performance</li> <li>• Solicitation of a minor to practice prostitution</li> <li>• Production or distribution of child pornography</li> </ul>		
III	<p>Considered to be the most heinous sexually motivated offenses such as:</p> <ul style="list-style-type: none"> <li>• Aggravated sexual abuse (or conspiracy to commit)</li> <li>• Sexual abuse (or conspiracy to commit)</li> <li>• Abusive sexual contact against child under thirteen</li> <li>• Non-parental kidnapping of a minor</li> </ul>	<p>Every three months, jurisdiction permitted to verify address and take a current photograph. Failure to register is a felony offense.</p>	Life

Although the Walsh Act is the latest federal legislation on sex crimes, many states have yet to implement its requirements.<sup>58</sup> Moreover, states are not required to comply with all conditions of the Act to be in substantial compliance;<sup>59</sup> this leads to circumstances wherein states choose to implement the more stringent requirements of the Act (i.e. Tier III) without also adopting the more lenient requirements (Tiers II and I). In other words, a state could theoretically be in substantial compliance with the Walsh Act without actually implementing a three tiered system.<sup>60</sup>

<sup>58</sup> As of July 7, 2011, the Territory of Guam and only eight states have implemented the Sex Offender Registration and Notification Act: Louisiana, Delaware, Florida, Michigan, Nevada, Ohio, South Dakota, and Wyoming. National Conference of State Legislatures, Adam Walsh Child Protection and Safety Act, <http://www.ncsl.org/?tabid=12696> (last visited Sept. 4, 2011).

<sup>59</sup> SORNA requires all jurisdictions to adopt registration requirements that are at least as strict as those established by SORNA. U.S. Dep't of Just., Review of the Department of Justice's Implementation of the Sex Offender Registration and Notification Act 12 (2008), <http://www.justice.gov/oig/reports/plus/e0901/final.pdf>. (last visited June 18, 2011.) Thus, so, as long as each state requires at least or more than the minimum registration period, the state is in compliance. Id.

<sup>60</sup> For example, the state of Florida has implemented the most stringent requirements of the Act, directing a sex offender to "maintain registration with the department for the duration of his or her life, unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying a sexual offender for purposes of registration." Fla. Stat. § 943.04354 (11). Nonetheless, Florida was one of the first states to be considered "in compliance" with the Adam Walsh Act despite its failure to

B. Sex offender registries at the state level are inherently flawed because state legislatures are blindly adopting the reactionary acts proposed by Congress.

Today, eight of the fifty states maintain a registry of sex offenders that follows the minimum guidelines set forth by the Adam Walsh Child Protection Act.<sup>61</sup> Forty-eight states have registries that require automatic lifetime registration for certain first-time offenders.<sup>62</sup> Additionally, forty-four states maintain registries permitting registration for some period of time less than life.<sup>63</sup> Remarkably, thirty-four states require offenders to register after conviction for misdemeanor crimes.<sup>64</sup> Although many states require all sex offenders to register only after

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implement the three-tiered system. (As of May 14, 2010, only Delaware, Ohio, and Florida had substantially implemented the Sex Offender Registration and Notification Act. National Conference of State Legislatures, Adam Walsh Child Protection and Safety Act, <http://www.ncsl.org/?tabid=12696> (visited Aug. 17, 2010)).

<sup>61</sup> National Conference of State Legislatures, *supra* note 58.

<sup>62</sup> Both Idaho and Massachusetts do not require lifetime registration unless the offender is a recidivist. Idaho Code Ann. §18-8310 (2010); Mass. Ann. Laws ch. 6, § 178G (LexisNexis 2010). In Idaho, a recidivist is “an individual convicted two (2) or more times of any offense as part of a comprehensive evaluation of an offender.” Idaho Code Ann. §18-8310(14) (2010). In addition, Massachusetts a recidivist is a person convicted of two or more sex offenses committed on different occasions. Mass. Ann. Laws ch. 6, § 178G (LexisNexis 2010). Six states including Alabama, California, Florida, Missouri, Montana, and South Carolina require lifetime registration for all sex offenders. Ala. Code § 15-20-33(a) (LexisNexis 2010); Cal. Penal Code § 290(b) (Deering 2010); Fla. Stat. Ann. § 775.21(6)(l) (2010); Mo. Rev. Stat. § 589.400(3) (2010); Mont. Code Ann. § 46-23-506(1) (2010); S.C. Code Ann. § 23-3-460(A) (2009).

<sup>63</sup> Del. Code Ann. tit 11, § 4121(e)(1)(b)-(c) (2010); Vt. Stat. Ann. tit. 13, § 5407(e) (2010); Me. Rev. Stat. Ann. tit. 34, § 11225-A (1)-(2) (2009); 42 Pa. Stat. Ann. § 9795.1(1) (2010); Okla. Stat. tit. 57, § 583(c)(1)-(2) (2010); 730 Ill. Comp. Stat. Ann. 150/7 (2010); Ark. Code Ann. §12-12-919(b) (2010); Ariz. Rev. Stat. § 13-3821(D) (2010); Alaska Stat. § 12.63.020(a)(2) (2010); Mass. Ann. Laws ch. 6, § 178G (2010); Ind. Code Ann. § 11-8-8-19(a) (2010); Colo. Rev. Stat. § 16-22-113(1) (2009); Conn. Gen. Stat. § 54-251(a) (2010); Haw. Rev. Stat. Ann. § 846E-10(c)-(d) (LexisNexis 2010); Idaho Code Ann. § 18-8310(1) (2010); Iowa Code § 692A.106(1) (2010); Kan. Stat. Ann. § 22-4906(b) (2010); Ky. Rev. Stat. Ann. § 17.520(3) (2010); La. Rev. Stat. Ann. § 15:544(A)-(B) (2010); Mich. Comp. Laws Serv. § 28.725(7) (LexisNexis 2010); Md. Code Ann., Crim. Proc. § 11-707(a)(4) (LexisNexis 2010); Minn. Stat. § 243.166 (2010); Miss. Code Ann. § 45-33-47(2)(a) (2010); N.C. Gen. Stat. § 14-208.7(a)(2) (2010); N.D. Cent. Code, § 12.1-32-15(8)(a)-(b) (2010); N.J. Stat. Ann. § 2C:7-2(f) (2010); N.M. Stat. Ann. § 29-11A-4(L)(2) (LexisNexis 2010); Nev. Rev. Stat. Ann. § 179D.490(2) (LexisNexis 2010); N.Y. Correct Law § 168-h(1) (Consol. 2010); Ga. Code Ann. § 42-1-19 (LexisNexis 2010); Ohio Rev. Code Ann. § 2950.07(B)(2)-(3) (LexisNexis 2010); Or. Rev. Stat. § 181.820 (2010); R.I. Gen. Laws § 11-37.1-4(a) (2010); Neb. Reb. Stat. Ann. § 29-4005(1)(b) (LexisNexis 2010); Wash. Rev. Code Ann. § 9A.44.140(1), (2) (2010); N.H. Rev. Stat. Ann. § 651-B:6(II) (LexisNexis 2010); S.D. Codified Laws § 22-24B-19 (2010); Tenn. Code Ann. § 40-39-207(a)(1) (2010); Tex. Code Crim. Proc. art. 62.101(c) (2010); Utah Code Ann. § 77-27-21.5(12)(a) (2010); Va. Code Ann. § 9.1-910(a) (2010); W. Va. Code § 15-12-4(a)(1) (2010); Wis. Stat. Ann. § 301.45 (2010); Wyo. Stat. Ann. § 7-19-304(a) (2010).

<sup>64</sup> Mo. Rev. Stat. § 589.400(2) (2010); Del. Code Ann. Tit. 11, § 4121(6) (2010); 42 Pa. Cons. Stat. § 9795.1(a)(1) (2010); 730 Ill. Comp. Stat. Ann. 150/2(B)(1) (LexisNexis 2010); Ariz. Rev. Stat. § 13-3821(A)(17) (LexisNexis 2010); Alaska Stat. § 12.63.020(a)(1)(B) (2010); Colo. Rev. Stat. § 16-22-103(5) (2009); Cal. Penal Code § 290(c) (Deering 2010); Ala. Code § 15-20-21(4)(e) (LexisNexis 2010); Conn. Gen. Stat. § 54-250(2) (2010); Haw. Rev.

conviction, twenty-one states require registration where an individual has been found not guilty by reason of insanity or mental defect.<sup>65</sup>

The definition of “sex offense” in many states is overbroad. Offenses such as public urination, streaking, adult prostitution, and consensual sex between teenagers<sup>66</sup> may result in

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Stat. Ann. § 846E-10(d)(1) (2010); Iowa Code § 692A.102(1)(a)(5) (2010); Kans. Stat. Ann. § 22-4902(a)(4)(C) (2009); Ky. Rev. Stat. Ann. § 17.500(3) (LexisNexis 2010); Mich. Comp. Laws Serv. § 28.722(c)(x) (LexisNexis 2010); Md. Code Ann., Crim. Proc. § 11-701(c)(4) (LexisNexis 2010); Miss. Code Ann. § 45-33-23(g)(xii) (2010); Mont. Code Ann. § 46-23-502(9)(a) (2010); N.C. Gen. Stat. § 14-208.6(4) (2010); N.D. Cent. Code, § 12.1-32-15(2)(c) (2010); N.M. Stat. Ann. § 29-11A-3(e)(2) (LexisNexis 2010); N.Y. Correct. Law § 168-a(2) (Consol. 2010); Ohio. Rev. Code Ann. § 2950.01(A)(1) (LexisNexis 2010); Or. Rev. Stat. § 181.594(5) (2010); R.I. Gen. Laws § 11-37.1-2(e)(4) (2010); Neb. Rev. Stat. Ann. § 29-4003(1) (LexisNexis 2010); Wash. Rev. Code Ann. § 9A.44.096(2) (LexisNexis 2010); N.H. Rev. Stat. Ann. § 651-B:1(V)(a) (LexisNexis 2010); S.C. Code Ann. § 23-3-430(C) (2009); Tenn. Code Ann. § 40-39-202(20)(A)(vii) (2010); Tex. Code Crim. Proc. Ann. art. 62.001(5)(f) (2010); Utah Code Ann. § 77-27-21.5(n) (2010); Va. Code Ann. § 9.1-902(B) (2010); Wyo. Stat. Ann. § 7-19-301(a)(iv)(D) (2010).

<sup>65</sup> Mo. Rev. Stat. § 589.400 (2010); Del. Code Ann. tit. 11, § 4121(a)(2) (2010); 730 Ill. Comp. Stat. Ann. 150/2(A)(1) (LexisNexis 2010); Ark. Code Ann. § 12-12-905 (2010); Mass. Ann. Laws ch. 6, § 178C (LexisNexis 2010); Cal. Penal Code § 290.004 (Deering 2009); Ala. Code § 15-20-21(8) (LexisNexis 2010); Fla. Stat. Ann. § 775.21(4)(d) (2010); Haw. Rev. Stat. Ann. § 846E-1 (LexisNexis 2010); La. Rev. Stat. Ann. § 15:541(7) (2010); Minn. Stat. § 243.166(d) (2009); Miss. Code Ann. § 45-33-25(1)(a) (2010); N.D. Cent. Code, § 25-03.3-01(8) (2010); N.J. Stat. Ann. § 2C:7-2(a) (2010); Wash. Rev. Code Ann. § 9A.44.130(1)(a) (LexisNexis 2010); N.H. Rev. Stat. Ann. § 651-B:1 (LexisNexis 2010); S.C. Code Ann. § 23-3-430(a) (2009); Utah Code Ann. § 77-27-21.5(n)(ii)(B)(v) (2010); Va. Code Ann. § 9.1-901(b) (2010); W. Va. Code Ann. § 15-12-2(b) (LexisNexis 2010); Wis. Stat. § 301.45(1g)(c) (2010);

<sup>66</sup> Analysis of the numerous problems associated with juvenile sex offender laws is beyond the scope of this particular article. Notably, however, forty-one states currently require juvenile sex offenders to register, although only thirteen states have special juvenile sex offender registries. 730 Ill. Comp. Stat. Ann. § 150/3-5 (LexisNexis 2010); Ark. Code Ann. § 9-27-356 (h)-(i) (2010); Ala. Code § 15-20-33(b) (2010); Fla. Stat. Ann. § 943.0435 (LexisNexis 2010); Idaho Code Ann. § 18-8410 (2010); Kan. Stat. Ann. § 22-4906(h) (2010); Md. Code Ann., Crim. Proc. § 11-707(a)(4)(iii) (LexisNexis 2010); Miss. Code Ann. § 45-33-47(2)(f) (2010); N.C. Gen. Stat. § 14-208.30 (2010); Or. Rev. Stat. § 181.823(1)(a) (2010); R.I. Gen. Laws § 11-37.1-4(j) (2010); Wash. Rev. Code Ann. § 9A.44.140(4) (2010); N.H. Rev. Stat. Ann. § 651-B:6(IV) (2010); Mo. Ann. Stat. § 589.400(1)(6) (2010); Okla. Stat. tit 10A, § 2-8-102 (2010); Del. Code Ann. tit 11, § 4121(4)(a)-(b) (2010); Me. Rev. Stat. Ann. tit 34-A, § 11202(1) (2010); 42 Pa. Con. Stat. Ann. § 9795.1(a)(1) (2010); Ariz. Rev. Stat. § 13-3821(f) (LexisNexis 2010); Alaska Stat. § 12.63.100(3) (2010); Mass. Ann. Laws ch. 6, § 178C (LexisNexis 2010); Ind. Code Ann. § 11-8-8-4.5(b) (LexisNexis 2010); Colo. Rev. Stat. § 16-22-103(4) (2010); Cal Penal Code § 290.008(a) (Derring 2009); Conn. Gen. Stat. Ann. § 54-252(a) (2010); Iowa Code § 692A.102(1)(a) (2010); Ky. Rev. Stat. Ann. § 635.505(2) (LexisNexis 2010); La. Rev. Stat. Ann. § 15:542(a) (2010); Mich. Comp. Laws Serv. § 28.724(2) (LexisNexis 2010); Minn. Stat. § 243.166 (2010); Mont. Code Ann. § 46-23-502(10) (2010); N.D. Cent. Code, § 12.1-32-15(e) (2010); N.J. Stat. Ann. § 2C:7-2(a)(1) (2010); N.M. Stat. Ann. § 29-11A-3(D) (LexisNexis 2010); Nev. Rev. Stat. Ann. § 62F.220(1) (2010); Ohio Rev. Code Ann. § 2950.01(E)(3) (LexisNexis 2010); S.C. Code Ann. § 23-3-430(a) (2010); Utah Code Ann. § 77-27-21.7(b)(ii)(c) (2010); Va. Code Ann. § 9.1-901(a) (2010); W. Va. Code Ann. § 15-12-2(b) (LexisNexis 2010); Wis. Stat. § 301.45 (1g) (2010); 730 Ill. Comp. Stat. Ann. 150/3-5 (LexisNexis 2010); Ark. Code Ann. § 9-27-356 (h)-(i) (2010); Ala. Code § 15-20-33(b) (2010); Fla. Stat. Ann. § 943.0435 (LexisNexis 2010); Idaho Code Ann. § 18-8410 (2010); Kan. Stat. Ann. § 22-4906(h) (2010); Md. Code Ann., Crim. Proc. § 11-707(a)(4)(iii) (LexisNexis 2010); Miss. Code Ann. § 45-33-47(2)(f) (2010); N.C. Gen. Stat. § 14-208.30 (2010); Or. Rev. Stat. § 181.823(1)(a) (2010); R.I. Gen. Laws § 11-37.1-4(j) (2010); Wash. Rev. Code Ann. § 9A.44.140(4) (2010); N.H. Rev. Stat. Ann. § 651-B:6(IV) (2010). Currently “[t]he Amie Zyla expansion

mandatory sex offender registration in some jurisdictions.<sup>67</sup> However, these “offenders” are not likely to escalate their crimes to commit “the horrific crimes that motivated the institution of registration requirements and community notification in the first place.”<sup>68</sup> The diversion of police resources to supervise these individuals who do not actually present a threat to society as a whole is counterproductive to the intent of the registry and in and of itself presents a danger to the public.<sup>69</sup> Moreover, providing limited<sup>70</sup> yet overreaching<sup>71</sup> information to the public dilutes the value of the information and in fact encourages complacency and a false sense of security.<sup>72</sup> The public is unable to accurately comprehend the complete context of the limited information provided by the registry. Therefore, members of the public cannot make informed rational decisions about their own safety and the safety of their children. This structure forces the public into a position of trusting the government to keep society safe rather than encouraging individuals to take responsibility for their own safety.<sup>73</sup>

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[under the Adam Walsh Act] requires the mandatory inclusion of juveniles in a state sex offender registry.” Wright, supra note 25, at 33.

<sup>67</sup> In a 2007 survey, at least thirteen states required registration for public urination, and at least twenty-nine states required registration for consensual sex between teenagers. *Id.*

<sup>68</sup> Tregilgas, supra note 26, at 732; Wright, supra note 25, at 42; Hamilton, supra note 33, at 26.

<sup>69</sup> Wright, supra note 25, at 36-37; Hamilton, supra note 33, at 12.

<sup>70</sup> Presently, only ten states permit full disclosure regarding sex offenders and their cases. Okla. Stat. Ann. tit. 57, § 584(l) (2010); 730 Ill. Comp. Stat. Ann. 152/120(a) (LexisNexis 2010); Ark. Code Ann. § 12-12-913(b)-(c) (2010); Ind. Code Ann. § 36-2-13-5.5(a)-(b) (LexisNexis 2010); Fla. Stat. Ann. § 775.21(7)(a) (LexisNexis 2010); Haw. Rev. Stat. Ann. § 846E-3(b) (LexisNexis 2010); Iowa Code § 692A.121(b)(1) (2010); Kan. Stat. Ann. § 22-4909(a) (2009); Ohio Rev. Code Ann. § 2950.081(A) (LexisNexis 2010); S.D. Codified Laws § 22-24B-15 (2010).

<sup>71</sup> Privacy laws throughout the nation limit the substance of the information available to the public.

Notwithstanding, this limited information is available about 705,000 “sex offenders.” National Association for Missing & Exploited Children, Map of Registered Sex Offenders in the United States, [http://www.missingkids.com/en\\_US/documents/sex-offender-map.pdf](http://www.missingkids.com/en_US/documents/sex-offender-map.pdf) (last visited June 29, 2011). The vast majority of these individuals labeled “sex offender” do not provoke the image of a “dangerous lurking man” that Congress had in mind when it passed the sex offender acts. See Lynch, supra note 27, at 557.

<sup>72</sup> By taking a paternalistic approach, Congress encourages innocents (i.e., women and children) to trust the government to create a protective zone of “safety and purity” against dangerous men lurking outside the home. The “dangerous lurking man,” however, is largely a myth propagated by the misuse and fabrication of false data to support federal sex offender legislation. In fact, innocents “face much greater risks and dangers within their homes at the hands of family and friends.” Because sex offender laws distort the reality of risks and dangers in this context, the public is led to embrace a false sense of security leading to greater risk of harm. Lynch, supra note 27, at 560.

<sup>73</sup> This proposition may seem somewhat counterintuitive since one argument for passing Megan’s Law was that parents needed information from the registries to protect themselves. Notwithstanding, the debates surrounding passage of these sex offender acts focused on “a traditional patriarchal model of society.” Lynch, supra note 27, at

This legislative history reveals a convoluted hodgepodge of poorly written legislative acts culminating in the passage of the Adam Walsh Act. This most recent Act, though somewhat improving some aspects of sex offender laws, continues to be entirely inadequate to address the real issues sex offenders present to communities. Ultimately, these various acts have failed because they are premised upon misinformed and false assumptions about the psychology of sex offenders and the nature of the danger they present.<sup>74</sup> Furthermore, they represent Congressional reactions to morally reprehensible acts rather than representing thoughtful and considered measures calculated to control a small minority of individuals that are dangerous sexual predators.

### **III. DEBUNKING THE MYTH OF THE LURKING MAN**

For centuries, the “dangerous lurking man” was presumed the most common perpetrator of child sexual abuse, and this myth endured even once Freud asserted in scholarly papers “the widespread incidence of childhood sexual abuse by parents or adult caretakers.”<sup>75</sup> Due to a lack of empirical studies and data, Freud almost immediately began recanting his statements despite recognition of their apparent truth.<sup>76</sup> Although awareness of child sex abuse may have increased since Freud’s time, the myth of the “dangerous lurking man” still abounds and empirical studies producing reliable data remain largely nonexistent.<sup>77</sup>

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560. Additionally, during the “debates women, ‘the children,’ and even the elderly [were] not at all conceived of as being capable of ... protect[ing] themselves from contagious and corrupting forces [that is, sex offenders] in the larger world.” *Id.*

<sup>74</sup> Wright, *supra* note 25, at 26.

<sup>75</sup> Ruby Andrew, *Child Sexual Abuse and the State: Applying Critical Outsider Methodologies to Legislative Policymaking*, 39 *U.C. Davis L. Rev.* 1851 (2006).

<sup>76</sup> Andrew, *supra* note 75.

<sup>77</sup> Patrick, *infra* note 89.

Since the passage of the Adam Walsh Act, several articles have been written concerning some of the shortcomings of the statute.<sup>78</sup> The authors of these articles have done a commendable job of collecting and analyzing the little available empirical data; this Article relies on the same empirical data to debunk the misconception of the “dangerous lurking man.” Central to understanding why the registry has failed involves analysis of the misconceptions about sex offenses generally.

The following subsections examine these studies and the empirical data collected over the last twenty years on recidivism and reoffense, victimology, and the rate of sexually violent crime. The numbers fail to support the myth of the “dangerous lurking man” and illustrate the incredibly biased and tainted approach associated with the creation of the sex offender registry. Although these statistical figures may seem contradictory at times, the results are in fact consistent.<sup>79</sup> This is so because each study employs varying factors and measures to produce its conclusion. However, the outcomes are harmonious and their consistency is apparent when the variables are deconstructed and removed from the overall equation.<sup>80</sup>

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<sup>78</sup> Hamilton, *supra* note 33; Tregligas, *supra* note 16; Wright, *supra* note 25; Farley, *supra* note 43; Nastassia Walsh & Tracy Velasquez, Registering Harm: The Adam Walsh Act and Juvenile Sex Offender Registration, 33 *Champion* 20 (2009); Steven J. Constigliacci, Protecting Our Children From Sex Offenders: Have We Gone Too Far?, 46 *Fam. Ct. Rev.* 180 (2008).

<sup>79</sup> Some studies seek simply to reconcile these seemingly contradictory finds. Center for Sex Offender Management, Issues In Measurement of Sex Offender Recidivism, <http://www.csom.org/pubs/sexreg.html> (last visited June 13, 2011).

<sup>80</sup> In depth analysis of each of the factors affecting the statistical studies and sex offender recidivism is beyond the scope of this Article. For a very detailed analysis of the various studies on sex offender recidivism and an explanation of base rates and comparisons, see Hamilton, *supra* note 33, and Wright, *supra* note 25.

## A. Recidivism and Reoffense<sup>81</sup>

Recidivism rates contemplate any crime regardless of sexual motivation, whereas reoffense means the commission of a new sexually-motivated offense.<sup>82</sup> Recidivism may be measured by subsequent arrest, subsequent conviction, or subsequent incarceration.<sup>83</sup> Measuring recidivism by subsequent arrest will result in a higher recidivism rate because individuals may be arrested for any number of reasons, even if those arrests are unrelated to new offenses (such as a technical violation of probation) or do not ultimately result in conviction (such as in the case of acquittal).<sup>84</sup> Statistics based upon subsequent conviction tend to be much lower, but these statistics are perceived as more reliable, generally, because of the nature of the adversarial process requiring reporting, investigation, prosecution, and resolution of crimes.<sup>85</sup> Subsequent incarceration as a measure of recidivism does not appear to be the most reliable measure of whether a sex offender has reoffended with a new offense since it includes incarceration for technical violations of probation and other arguably non-criminal acts.<sup>86</sup> An offender may be returned to prison if any condition of probation or parole is violated, including conditions that have absolutely nothing to do with any new criminal offense at all (i.e., consumption of alcohol

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<sup>81</sup> In order to understand any statistics on recidivism and rates of reoffense, these terms must be clarified for the reader. The terms “recidivism” and “re-offense” require definition because “words of everyday language, like the concepts they express are always susceptible of more than one meaning, and the scholar employing them in their accepted use without further definition would risk serious misunderstanding.” Emile Durkheim, *Suicide: A Study in Sociology*, 41 (Free Press 1951) (1897). Additionally, some studies employ the use of the terms “recidivism” and “re-offense” differently. Hence, providing a definition of these terms for the purposes of this Article is not superfluous.

<sup>82</sup> In interpreting the data as presented by the Center for Sex Offender Management as well as numerous other studies, this characterization is typical although not mandatory.

<sup>83</sup> Center for Sex Offender Management, *Defining Recidivism*, <http://www.csom.org/pubs/sexreg.html> (last visited Aug. 17, 2010) [hereinafter *Defining Recidivism*].

<sup>84</sup> *Defining Recidivism*, supra note 83.

<sup>85</sup> *Defining Recidivism*, supra note 83.

<sup>86</sup> *Defining Recidivism*, supra note 83.

when prohibited by court order).<sup>87</sup> Therefore, the reliability of the data depends on whether the study measures technical violations, new convictions, or both.<sup>88</sup>

Only approximately 5.3% of registered sex offenders reoffend by committing a sex-related crime.<sup>89</sup> This means that 94.7% of sex offenders are typically first-time offenders, at least for sex-related crimes.<sup>90</sup> Studies further show that convicted criminals often do not transition to committing sex-related crimes after conviction for non-sex-related crimes.<sup>91</sup> In other words, most sex offenders are first-time offenders.

By comparison, non-sex offenders have a rearrest rate twenty-five percentage points higher than sexual offenders.<sup>92</sup> Specifically, burglars reoffend at a rate of 74.0%;<sup>93</sup> thieves reoffend at a rate of 78.8%;<sup>94</sup> violent criminals including those convicted of murder, assault, and robbery reoffend at a rate of 61.7%;<sup>95</sup> released drug offenders reoffend at a rate of 66.7%.<sup>96</sup> Overall, studies reflect that sex offenders recidivate and reoffend at much lower rates than other types of offenders. Significantly, they are not likely to reoffend by committing a new sex offense, if they even reoffend at all.<sup>97</sup>

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<sup>87</sup> Center for Sex Offender Management, *supra* note 79.

<sup>88</sup> Defining Recidivism, *supra* note 83.

<sup>89</sup> Patrick A. Langan et al., Bureau of Justice Statistics: Recidivism of Sex Offenders Released From Prison in 1994, 7 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf> (last visited June 19, 2011.)

<sup>90</sup> Langan et al., *supra* note 89. A 1994 study found “[t]he more prior arrests [the sex offender] had, the greater their likelihood of being rearrested for another sex crime after leaving prison. Released sex offenders with 1 prior arrest (the arrest for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime.” *Id.*

<sup>91</sup> Patrick et al., *supra* note 89.

<sup>92</sup> Patrick et al., *supra* note 89. Non-sex offenders are rearrested at a rate of 68% whereas sex-offenders are rearrested at a rate of only 43%.

<sup>93</sup> Patrick et al., *supra* note 89.

<sup>94</sup> Patrick et al., *supra* note 89.

<sup>95</sup> Patrick et al., *supra* note 89.

<sup>96</sup> Patrick et al., *supra* note 89.

<sup>97</sup> Langan, *supra* note 68, at 1 (study finding 95% of released sex offenders do not sexually reoffend); Geneva Adkins et al., Iowa Dep’t Hum. Rts, The Iowa Sex Offender Registry and Recidivism 10 (2000) (defining recidivism as reconviction or parole violation with a sample of over 400 sex offenders released or probationers), [http://www.iowa.gov/dhr/cjjp/images/pdf/01\\_pub/SexOffenderReport.pdf](http://www.iowa.gov/dhr/cjjp/images/pdf/01_pub/SexOffenderReport.pdf). (study in Iowa finding recidivism rate of sex offenders to be 3% after four years).

## B. Victimology

Even though society fears the largely mythical “dangerous lurking man,” research indicates family or close friends of family commit the vast majority of sex offenses.<sup>98</sup> In other words, victims usually know their offenders.<sup>99</sup> A study conducted in 1999 estimated 150,000 children were at the time abducted.<sup>100</sup> An overwhelming 78% of those children had been taken by family members while only 22% were taken by non-family members (including both strangers and friends of family).<sup>101</sup> Only 115 of the 150,000 abducted children were victims of the type of kidnapping associated with sex-offender cases, just 7.7%.<sup>102</sup> In another study of adult women and men who reported being sexually abused as children, only 15.7% of men and 10.8% of women reported that a stranger committed the childhood rape.<sup>103</sup> Still, another study reported that 90% of child rape victims are abused by a non-stranger.<sup>104</sup>

Among adults, victims are also more likely to know their abuser. In a 1995-1996 study, 61.9% of women reporting rape claimed an intimate partner violated them.<sup>105</sup> Other reports showed overwhelmingly that adult victims of rape knew their attackers. In fact, in this study only 16.7% of women and 28.4% of men reported being raped by strangers.<sup>106</sup>

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<sup>98</sup> Hamilton, *supra* note 33, at 12.

<sup>99</sup> Hamilton, *supra* note 33, at 12; Wright, *supra* note 25, at 21.

<sup>100</sup> Wright, *supra* note 25, at 22.

<sup>101</sup> Andrea J. Sedlak et al., Office of Juvenile Justice and Delinquency Prevention, NISMART: National Estimates of Missing Children: An Overview 5 (2002), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/196465.pdf> (last visited June 13, 2011). No study measures just strangers.

<sup>102</sup> Wright, *supra* note 25, at 22.

<sup>103</sup> Wright, *supra* note 25, at 23.

<sup>104</sup> Lawrence Greenfield, U.S. Dep't of Justice, Sex Offenses & Offenders: An Analysis of Data on Rape and Sexual Assault 18 (1997), available at <http://www.mincava.umn.edu/documents/sexoff/sexoff.pdf> (last visited June 13, 2011).

<sup>105</sup> Wright, *supra* note 25, at 22-23. Although figures vary among studies, the numbers fall within an appropriate margin of error; that is responses “in a number sufficiently large to yield a statistically significant result with respect to the target universe,” or those in “a number of sufficient size to permit the calculation of confidence intervals.” *Albert v. Warner-Lambert Co.*, 234 F. Supp. 2d 101, 105 (D. Mass. 2002).

<sup>106</sup> Wright, *supra* note 25, at 23.

### C. Rate of Sexually Violent Crime

Between 1998 and 2007, a study the U.S. Department of Justice conducted shows that the rate of rape and sexual assaults had declined by about one third as compared to previous years.<sup>107</sup> Among reported child sexual abuse cases, the rate declined by about 40% between 1992 and 2000.<sup>108</sup> According to the researchers, several factors may explain the decline. Actual incidents of child sexual abuse may have dropped.<sup>109</sup> However, some suggest the figures probably have declined because of other reasons such as fear of continued victimization, reluctance to engage in the criminal prosecution process, or reliance upon the abuser for financial or other support.<sup>110</sup> To the extent these other factors play a role in the declining numbers, they illustrate the fundamental flaws with legislation targeted at sex offenders. If victims are reluctant to report abuse because they fear the consequences of entering “the system,” then “the system” is failing.

### D. Problems Particular to the Sex Offender Registry

Although the Adam Walsh Act attempts to improve sex offender laws, in particular related to the sex offender registry, it still embraces some of the fundamental problems inherent in all of the acts since the passage of the Jacob Wetterling Act. First, the Adam Walsh Act continues Congress’ reactionary trend of enacting legislation in response to tragedy. In this case the abduction and murder of Adam Walsh, for whom the Act is named, prompted the legislation.<sup>111</sup> The Adam Walsh Act does not require states to offer detailed information through the registry regarding the public’s use of the information, and in fact Congress sanctions the provision of limited details leading to confusion about the nature of the crimes reported and any

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<sup>107</sup> Michael R. Rand, U.S. Dep’t. of Justice, Criminal Victimization 3 (Dec. 2008), <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv07.pdf>. (last visited June 17, 2010.)

<sup>108</sup> Wright, supra note 25, at 21.

<sup>109</sup> Wright, supra note 25, at 21-22.

<sup>110</sup> See Wright, supra note 25; see generally Part III of this Article.

<sup>111</sup> Wright, supra note 25; see also supra note 53.

potential resulting danger.<sup>112</sup> Additionally, the registry fails to protect the public because it defines the term “sex offender” in an overly-broad manner resulting in the labeling and classification of individuals who do not all represent a danger to society. The registry, therefore, numbs society to any dangers presented by persons labeled sex offender and at the same time stigmatizes convicted sex offenders.

Although the registry in many ways operates as continued punishment for a crime,<sup>113</sup> this Article focuses its analysis only upon the practical aspects of the registry independent of any constitutional questions posed by the existence of the registry itself.

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<sup>112</sup> Thirty-eight states employ varying degrees of privacy regarding the sex offender providing protection of some personal information while disclosing “relevant” information to the general public. Mo. Rev. Stat. § 589.402 (2010); Del. Code Ann. tit 11, § 4121(a)(3) (2010); Vt. Stat. Ann. tit 13, § 5411(2) 2010); Me. Rev. Stat. Ann. tit. 34-A, § 11255(1) (2009); 42 Pa. Cons. Stat. Ann. § 9798.1(c) (2010); Ariz. Rev. Stat. § 13-3827(a)-(d) (LexisNexis 2010); Alaska Stat. § 18.65.087(b) (2010); Mass. Ann. Laws ch. 6, § 178J(c) (LexisNexis 2010); Colo. Rev. Stat. § 16-22-112(2) (2009); Cal. Penal Code § 290.46(a) (Deering 2010); Ala. Code § 15-20-25(b)-(c) (LexisNexis 2010); Conn. Gen. Stat. § 54-255(a) (2010); Idaho Code Ann. § 18-8323(b) (2010); La. Rev. Stat. Ann. § 15:546(A) (2010); Mich. Comp. Laws Serv. § 28.730(3) (LexisNexis 2010); Md. Code Ann., Crim. Proc. § 11-717(b) (LexisNexis 2010); Miss. Code Ann. § 45-33-49(1) (2010); Mont. Code Ann. § 46-23-508(1)(b)(i) (2010); N.C. Gen. Stat. § 14-208.10(a) (2010); N.D. Cent. Code § 12.1-32-15(13) (2010); N.J. Stat. Ann. § 2C:7-12 (2010); N.M. Stat. Ann. § 29-11A-5.1(c) (LexisNexis 2010); Nev. Rev. Stat. Ann. § 179B.250(7) (LexisNexis 2010); N.Y. Correct. Law § 168-q(1) (Consol. 2010); Ga. Code Ann. § 42-1-12(o) (2010); Or. Rev. Stat. § 181.592(2)(a) (2010); R.I. Gen. Laws § 11-37.1-11(b)(3) (2010); Neb. Rev. Stat. Ann. § 29-4009(7) (LexisNexis 2010); Wash. Rev. Code Ann. § 4.24.550(3) (LexisNexis 2010); N.H. Rev. Stat. Ann. § 651-B:7 (LexisNexis 2010); S.C. Code Ann. § 23-3-490(A) (2009); Tenn. Code Ann. § 40-39-206(e)(1) (2010); Tex. Code Crim. Proc. Ann. art. 62.005 (2010); Utah Code Ann. § 77-27-21.5(21) (2010); Va. Code Ann. § 9.1-913 (2010); (35) W. Va. Code § 15-12-5; Wis. Stat. § 301.46(5)(a)(4) (2010); Wyo. Stat. Ann. § 7-19-303(c)(3) (2010). Only twenty-nine states specifically protect the privacy of the victims of sexually-based crimes even though the Adam Walsh Act provides that “the identity of the victim shall not be released.” Eleven states have statutory schemes that protect the privacy of juvenile sex offenders. 730 Ill. Comp. Stat. Ann. 152/121 (LexisNexis 2010); Ariz. Rev. Stat. § 13-3825(j) (LexisNexis 2010); Ala. Code § 15-20-28(g)-(h) (LexisNexis 2010); Iowa Code § 692A.121(2) (2010); N.C. Gen. Stat. § 14-208.29(a) (2010); N.M. Stat. Ann. § 29-11A-5.1(E) (LexisNexis 2010); Ohio Rev. Code Ann. § 2950.081(B) (LexisNexis 2010); Or. Rev. Stat. § 181.592(2)(b) (2010); N.H. Rev. Stat. Ann. § 651-B:7(III)(c)(5) (LexisNexis 2010); S.C. Code Ann. § 23-3-490(D)(3)(4) (2009); Tex. Code Crim. Proc. Ann. art. 62.352(b) (2010).

<sup>113</sup> Arguably, since prison or probation serves as punishment and rehabilitation for a crime, continued punishment by way of registration for conviction of a sex offense may be unconstitutional. The United States Supreme Court rejected this argument in *Kansas v. Hendricks*, 521 U.S. 346, 371 (1997), at least in terms of civil commitment of sex offenders, commonly known as Jimmy Ryce laws. This author disagrees with the notion that the sex offender registry is not a form of continued punishment, and is currently writing an essay critiquing the Court’s decision in *Hendricks*. Notably, the Ohio Supreme Court recently held that reclassification of sex offenders under the three-tier system established by the Adam Walsh Act is unconstitutional under the ex post facto clause of the Constitution. *State v. Bodyke*, 126 Ohio St.3d 266 (2010).

1. *The registry fails to ensure public safety.*

The registry purports to maintain public safety in three ways: (1) serving as a deterrent; (2) functioning as a tool in the investigation of sex crimes; and (3) providing information to the public so individuals can protect themselves from dangerous sex offenders.<sup>114</sup> The registry fails in each of these categories. First, the registry does not deter sex offenders from committing sex crimes either initially or as a reoffense. Second, the sparse information contained on the registry is often confusing to both police and members of society, which makes it difficult, if not impossible, to predict who is likely to reoffend. Third, most sex offenders are already known to their victims, and therefore the registry is not really providing any information about a dangerous, unknown sexual predator. This myth of the “dangerous lurking man” is hyperbole that evokes strong emotions but should not be taken literally.<sup>115</sup>

Several more recent studies throughout the nation suggest that the sex offender registry, notification policies, and residency restrictions serve no actual deterrent effect.<sup>116</sup> A New Jersey study reported no correlation with registration and a reduction in reoffense rates.<sup>117</sup> A New York study reached similar conclusions finding no significant reduction in sex crimes by first-time or repeat offenders as a result of mandatory sex offender registration.<sup>118</sup>

The registry also fails to provide pertinent information in an understandable format so that the public can use the information to stay safe. Few details other than the charge and the offender’s current address are made available on the registry.<sup>119</sup> Furthermore, the registry

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<sup>114</sup> Tregilgas, *supra* note 26, at 731-32.

<sup>115</sup> Wright, *supra* note 25, at 21-22; Hamilton, *supra* note 33, at 4.

<sup>116</sup> Tregilgas, *supra* note 26, at 736.

<sup>117</sup> Tregilgas, *supra* note 26, at 736.

<sup>118</sup> Tregilgas, *supra* note 26, at 733.

<sup>119</sup> “The information available on the website about any given offender depends on the state, but all listings contain offenders’ names; aliases if any; photographs; dates of birth; and physical descriptions. All contain some description of the offender’s sex crime(s), some of which are nothing more than the name given the offense in the state’s penal law or a vague reference such as ‘sex offense, second degree.’ Others are a bit more detailed – for

database is organized around an offense-based classification system and is devoid of any strategies or advice to the general public explaining how to use the information to protect itself.<sup>120</sup> What is more, even if the registry provided more complete information, the public would still find difficulty in protecting itself because of the unpredictability of future behavior. Even law enforcement is ill-equipped to gauge which offenders are most likely to reoffend, much less reoffend by abusing a stranger.<sup>121</sup>

In addition, while the registry may inform people as to which of their neighbors are registered sex offenders, it cannot advise as to the precise location of a sex offender at any particular moment in time.<sup>122</sup> Hence, parents may be able to instruct their children to avoid playing in front of a particular house or on a particular street, but parents are unable to prevent their child from coming into contact with the same registered sex offender at the local supermarket, library, or gas station. Since registered sex offenders are not prohibited from leaving their homes, the registry cannot adequately protect the public by informing society of the address of a particular offender. The available information can never be sufficient to actually enable the public to protect itself.

Statistics have shown that, comparatively, most victims of sex crimes know their abusers.<sup>123</sup> Public perception is distorted in this regard because of the sensational media

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instance, ‘Mr. \_\_\_\_ forcibly raped an adult female who was unknown to him’ or ‘Subject had sexual contact with 15 year old.’ Most listings contain offenders’ addresses and vehicle information, including make, model, color, and license plate number. Some also contain links to an online map pinpointing the exact location of the offender’s address.” Charles Patrick Ewing, *Justice Perverted*, 83 (2011).

<sup>120</sup> Jill S. Levenson & Leo P. Cotter, *The Effect of Megan’s Law on Sex Offender Reintegration*, 21 *J. Contemp. Just.* 49, 51-52 (2005). Citizens actually report increased anxiety because they do not know how to use the information on the registry effectively. *Id.*

<sup>121</sup> Tregilgas, *supra* note 26, at 733.

<sup>122</sup> There are limits to technology. Even GPS tracking isn’t precise or practical to track any one person all of the time. See generally Renee McDonald Hutchins, *Tied Up in Knots? GPS Technology and the Fourth Amendment*, 55 *UCLA L. Rev.* 409 (2007).

<sup>123</sup> Hamilton, *supra* note 33, at 12; Wright, *supra* note 25, at 21-22.

attention received in the wake of horrific sexual offenses against children by strangers.<sup>124</sup>

Although these types of cases are rare, the public is keenly aware of them. This awareness has led to a national “moral panic.”<sup>125</sup> In addition, since most victims know their attackers, the registry is inadequate to protect them from sexual abuse because they are already familiar with the offenders who have access to them.<sup>126</sup> Rather than being able to use the information to protect themselves, individuals often react by harassing, victimizing, discriminating against, and fearing registered sex offenders.<sup>127</sup>

The focused hatred toward individuals listed on the registry creates an environment where offenders would want to hide their status to avoid harassment and discrimination.<sup>128</sup> Sex offenders are more likely to isolate themselves when they are victimized because of their status on the registry.<sup>129</sup> Isolated from valuable support systems, sex offenders are more likely to engage in criminal activity, amplifying any potential danger to the public.<sup>130</sup> Thus, the sex offender registry is counterproductive to its purpose of protecting the public.

Legislators and lobbyists advocate laws like the Adam Walsh Act in an attempt to prevent sociopaths like Garrido from snatching children, but as explained in Part II above, this reactionary approach to legislation is fundamentally flawed.<sup>131</sup> Each time a tragic kidnapping occurs, Congress tries to plug a perceived loophole with a new law. The problem, however, is not that the acts contain loopholes; the problem is that sex offender registration laws are insufficient to deter sex offenders from committing crimes.

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<sup>124</sup> Tregilgas, *supra* note 26.

<sup>125</sup> Wright, *supra* note 25, at 20.

<sup>126</sup> Hamilton, *supra* note 33, at 12.

<sup>127</sup> Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 *J. Contemp. Crim. Just.* 67, 68 (2005).

<sup>128</sup> Tewksbury, *supra* note 127, at 68.

<sup>129</sup> Tewksbury, *supra* note 127, at 68.

<sup>130</sup> Tewksbury, *supra* note 127, at 76.

<sup>131</sup> Wright, *supra* note 25, at 20.

In considering these sweeping acts,<sup>132</sup> Congress has routinely ignored data and evidence contradicting the “dangerous lurking man” myth. Rather, Congress members, apparently focusing on re-election,<sup>133</sup> adopt the popular tales of tragedy perpetuating urban legend in response to public outcry.<sup>134</sup> Members of the public feel vindicated when an act is named for a child victim, ensuring job security for the Congress member who supported the bill.<sup>135</sup> Conversely, not a single member of Congress has denounced any of these laws for being premised on false information, in large part because opposition to any of these laws sends a message of sympathy for sex offenders rather than child victims.<sup>136</sup>

## 2. *The registry creates social stigma.*

Although SORNA itself does not impose residency restrictions as part of the registration scheme, some sort of residency restriction is nearly always involved as local governments often prohibit sex offenders from living near schools and other areas where children congregate.<sup>137</sup> Thus, while one purpose of the registry may be to shame offenders to discourage them from reoffending, the stigma of this shame often results in isolation causing offenders to engage in socially risky behaviors more likely to lead to recidivism or reoffense.<sup>138</sup> In fact, the dynamics of the registry stigma typically result in creating a feeling of helplessness in the offender and increasing the probability of reoffending.<sup>139</sup> Moreover, from a psychological perspective, sex offenders who engage in what could be considered sexually deviant behaviors often do so

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<sup>132</sup> See supra note 30.

<sup>133</sup> Criminologist Elliot Currie has commented on the number of “times [he has] sat in some office or hearing room in some state capital and has had legislators tell him [they] agree with 87 percent of what [he is] saying, but that they would never get re-elected if they did so.” Elliot Currie, *Against Marginality: Arguments for a Public Criminology*, 11 *Theoretical Criminology* 175, 178 (2007).

<sup>134</sup> Lynch, supra note 27.

<sup>135</sup> See Part II of this Article.

<sup>136</sup> Lynch, supra note 40.

<sup>137</sup> Hamilton, supra note 33, at 9.

<sup>138</sup> Tewksbury, supra note 42, at 68.

<sup>139</sup> Tewksbury, supra note 42, at 69.

because they have unmet emotional needs or have themselves suffered some form of abuse which has not been treated.<sup>140</sup> They are individuals who are already isolated and experience feelings of shame.<sup>141</sup> Since shame contributes to the commission of the original criminal act, creating more shame through a registry requirement is counterproductive.

At least two researchers<sup>142</sup> have noted that while some positive benefits may arise because of sex offender registries and notification procedures, the vast majority of sex offenders feel despair, lose the ability to provide for their families, and suffer harassment alongside their entire families.<sup>143</sup> The stigma goes beyond just the sex offender to include their wives, children, and other family.<sup>144</sup> In other words, the negative impact far outweighs any potentially positive result.

Take, for example, the case of Charles McGonagle. He testified before the U.S. House of Representatives' subcommittee on Crime, Terrorism, and Homeland Security about the negative impact of the social stigma associated with being a registered sex offender.<sup>145</sup> McGonagle was convicted in 1985 following a consensual sexual interaction (which fell short of intercourse) with a woman at a party when he was twenty years old.<sup>146</sup> He did not know she was under the age of eighteen. More than ten years after his conviction, he was informed for the first time of his requirement to register as a sex offender.<sup>147</sup> At this point, his life began to fall apart. His wife, who previously knew nothing of the 1985 conviction, divorced him and sued for sole custody of their children and child support.<sup>148</sup> As a direct result, McGonagle lost his home and was forced

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<sup>140</sup> Tewksbury, *supra* note 42, at 62.

<sup>141</sup> Ewing, *supra* note 119.

<sup>142</sup> Levenson & Cotter, *supra* note 120; see also Tewksbury, *supra* note 127.

<sup>143</sup> Levenson & Cotter, *supra* note 120, at 52.

<sup>144</sup> Levenson & Cotter, *supra* note 120, at 52.

<sup>145</sup> SORNA Hearings, *supra* note 23.

<sup>146</sup> Ewing, *supra* note 119 at 70.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

to live in his vehicle for a period of time.<sup>149</sup> Needless to say, he was angry and utterly alone; the stigma of being a sex offender infuriated him and resulted in “some minor trouble with the law in the years directly following [his] initial registration but none that could be considered another sexual crime.”<sup>150</sup>

Although McGonagle has since rebuilt his life and purchased a home, he continues to suffer the stigma of being a registered sex offender. His teenage daughter is not permitted to have friends over to their home, and she is harassed at school.<sup>151</sup> McGonagle experiences intimacy issues with his current wife “because the overwhelming stigma makes [him] feel dirty and worthless.”<sup>152</sup> He has been denounced a sex offender before guests at the restaurant where he works as a chef. Even one of his former neighbors moved away blaming McGonagle for lowering property values in the area.

When offenders are unable to return to normal life activities, they are less likely to reintegrate and positively contribute to society.<sup>153</sup> On the other hand, when offenders are able to reintegrate into society, engage in appropriate activities within their communities, and otherwise escape the social stigma, they are less likely to reoffend.<sup>154</sup> As a result, when sex offenders are stigmatized and alienated from their communities, they are much more likely to engage in anti-social behaviors, including criminal acts.<sup>155</sup> Additionally, the stigma their families are forced to

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<sup>149</sup> Id.

<sup>150</sup> Id. This is consistent with statistical data that reflects sex offenders may recidivate, but do not tend to reoffend by committing a new sex offense.

<sup>151</sup> Id. at 71.

<sup>152</sup> Id.

<sup>153</sup> “[J]ust locking up great numbers of people without making any real effort to help them back into society when they [get] out [is] a recipe for disaster. [L]ittle investment in reintegration [with] only sporadic investment in treatment” creates a much greater crime problem. Currie, *supra* note 133, at 177.

<sup>154</sup> Currie, *supra* note 133, at 177.

<sup>155</sup> Tewksbury, *supra* note 127.

endure can lead to abandonment of the registered offender, further increasing the risk of recidivism.<sup>156</sup> Therefore, the stigma potentially makes registered sex offenders more dangerous.

A 2005 study conducted by Tewksbury measured the stigma experienced by registered sex offenders in a number of categories as represented by the following table:<sup>157</sup>

Negative Experiences Resulting From Registration (in percentages)			
<b>Experience</b>	<b>Total Sample</b>	<b>Metropolitan</b>	<b>Nonmetropolitan</b>
Loss of job	42.7	38.3	47.4
Denial of promotion at work	23.1	20.00	26.3
Loss/denial of place to live	45.3	43.3	47.4
Treated rudely in public place	39.3	33.3	45.6
Asked to leave a business	11.1	8.3	14.0
Lost a friend who found out about registration	54.7	20.0	59.6
Harassed in person	47.0	40.0	54.4
Assaulted	16.2	16.7	15.8
Received harassing/threatening telephone calls	28.2	26.7	29.8
Received harassing/threatening mail	24.8	21.7	28.1

Similar results arose in a study conducted by Levenson.<sup>158</sup> As evidenced by the data, the registry interferes with reintegration, rehabilitation, and deterrence of sex offenders because it prevents the building of healthy relationships between the offender and the offender's friends and family.<sup>159</sup> The offender is also disadvantaged in maintaining employment and housing within the community.<sup>160</sup>

The current model fails because it is focused more on isolation and removal of offenders (through creation of stigma) rather than investment in employment and therapeutic opportunities

<sup>156</sup> Tewksbury, supra note 127.

<sup>157</sup> Tewksbury, supra note 127, at 75.

<sup>158</sup> Levenson & Cotter, supra note 129, at 58.

<sup>159</sup> Hamilton, supra note 44, at 13.

<sup>160</sup> Hamilton, supra note 44, at 13. For example, in Miami sex offenders are corralled and forced to live under a single bridge because the zoning ordinances do not permit their presence in any other neighborhood. Allen, Greg, Sex Offenders Forced to Live Under Miami Bridge, National Public Radio, May 20, 2009. <http://www.npr.org/templates/story/story.php?storyId=104150499> (last visited June 27, 2011.) In addition, Davie, Florida considered a proposed law to allow landlords to be jailed or fined for renting to convicted sex offenders. Susannah Bryan, Davie Law Targets Landlords Renting to Sex Offenders, South Fla. Sun-Sentinel, Jan. 21, 2009, available at [http://articles.sun-sentinel.com/2009-01-21/news/0901200422\\_1\\_sarah-lunde-offenders-and-predators-landlords](http://articles.sun-sentinel.com/2009-01-21/news/0901200422_1_sarah-lunde-offenders-and-predators-landlords).

for them. Although many studies suggest that sex offenders are incurable,<sup>161</sup> no evidence suggests that therapy would not be beneficial to them and society as a whole.<sup>162</sup> Much like an alcoholic who benefits from therapy and integration into a community may never consume alcohol again,<sup>163</sup> a sex offender would benefit from integrating into society and escaping the stigma associated with being labeled a sex offender.<sup>164</sup> Moreover, statistical data supports the conclusion that sex offenders are unlikely to repeat sex-related crimes, and are more likely to recidivate by commission of a non-sex-related crime if they recidivate at all.<sup>165</sup>

Opportunities for reintegration and the creation of community and belonging are important to the safety and protection of society as a whole.<sup>166</sup> The general public should prefer integration of sex offenders into the community rather than isolation because isolation enables the commission of crimes. Isolation is what facilitated the eighteen year horror suffered by Jaycee Dugard. Had her abductor participated in community relationships, Jaycee Dugard likely would have been discovered much sooner; her abduction may even have been preventable. Although Garrido was labeled a sex offender at the time of Jaycee Dugard's abduction, it was not until Garrido ventured out into the community that his deeds were discovered.<sup>167</sup> This example demonstrates why electronic information cannot replace personal knowledge when it comes to the safety of society, and children in particular.

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<sup>161</sup> Center for Sex Offender Management, *supra* note 44.

<sup>162</sup> This statement is not true of psychopaths. Psychopaths who commit sex offenses are not likely to benefit from any form of therapy. In fact, they may become more dangerous through therapy because they learn how to manipulate more and more and become more undetectable. Gregg O. McCrary, *The Unknown Darkness: Profiling the Predators Among Us* 84-85 (2003).

<sup>163</sup> TalkRehab.org: Alcoholism and Support, Can a Recovered Alcoholic Really Never Drink again? Available at <http://talkrehab.org/can-a-recovered-alcoholic-really-never-drink-again/> (last visited June 30, 2011).

<sup>164</sup> Besides, a convicted sex offender is the least likely criminal to recidivate by commission of a sex offense. This implies that once a sex offender is confronted with the deviant behavior, the behavior is not likely to be repeated.

<sup>165</sup> Charles McGonagle's testimony before Congress further supports this conclusion. SORNA Hearings, *supra* note 23, at 31.

<sup>166</sup> SORNA Hearings, *supra* note 23, at 9.

<sup>167</sup> Shahid, *supra* note 6; see also Part I of this Article.

Furthermore, inclusion on the registry itself also presents a danger to a person labeled sex offender because, throughout the nation, vigilantes target registered sex offenders for the purpose of harassing and sometimes even killing them.<sup>168</sup> Hugh Edwards, who was not a sex offender, was brutally beaten with a baseball bat when his neighbor mistakenly believed he was listed on the registry.<sup>169</sup> In Maine, Stephen Marshall killed two registered sex offenders for the sole reason they were listed on Maine's sex offender registry.<sup>170</sup> Outside of Seattle, two registered sex offenders were killed in 2005, and law enforcement suspected vigilantism motivated the killing.<sup>171</sup> In 2004 Lawrence Trant attempted to murder two registered sex offenders listed on the New Hampshire sex offender registry.<sup>172</sup>

Congress cannot continue to endorse a registry system that is capable of prompting such emotionally-charged violent crimes because tolerance of such anarchy is contrary to all notions of a civilized and ordered society. It is irresponsible, therefore, for Congress to permit the existence of the sex offender registry system, much less promulgate it.

### *3. The registry casts its net too broadly.*

Most states requiring sex offenders to register define the term "sex offense" broadly. Relatively minor offenses such as urinating in public or consensual sex with an underage person may result in the labeling of a sex offender.<sup>173</sup> These offenses, however, do not necessarily present a real danger to society. Therefore, the stated goal of protecting the public, and in

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<sup>168</sup> NewsJax.com, supra note 7.

<sup>169</sup> NewsJax.com, supra note 7.

<sup>170</sup> John R. Ellement & Suzanne Smalley, Sex Crime Disclosure Questioned: Maine Killings Refuel Debate Over Registries, Boston Globe, Apr. 18, 2006, available at [http://www.boston.com/news/local/maine/articles/2006/04/18/sex\\_crime\\_disclosure\\_questioned/](http://www.boston.com/news/local/maine/articles/2006/04/18/sex_crime_disclosure_questioned/) (last visited June 13, 2011.)

<sup>171</sup> Jonathan Martin & Maureen O'Hagan, Killings of 2 Bellingham Sex Offenders May Have Been Vigilante, Police Say, Seattle Times, Aug. 30, 2005, at A1.

<sup>172</sup> Brian MacQuarrie, Man Defends Attacks on Sex Offenders Crusader Gets Jail Term, Boston Globe, Dec. 5, 2004, at A1.

<sup>173</sup> Tregilgas, supra note 26, at 732.

particular children, from dangerous sexual predators is not accomplished by requiring all persons convicted of sex-related offenses to register.

Society is afraid of the largely mythical “dangerous lurking man.”<sup>174</sup> The vast majority of registered sex offenders, however, do not fit the profile of the “dangerous lurking man.”<sup>175</sup> The law has reacted as if the “media image of violence committed by the stranger lurking in the bushes [is] the most violent and common form of rape.”<sup>176</sup> By focusing on this image, legislators have created a net so vast that offenders who are not likely to reoffend are nonetheless required to register.

This presents a problem to society as a whole because the registry dilutes the information available about dangerous sex offenders. The sheer amount of information creates difficulty for a person in processing the meaning of it and ultimately numbs the reader, just as too much explicit violence on television numbs viewers to its horror.<sup>177</sup> As expressed by Congress, the purpose of the registry is to provide information to protect members of the public from dangerous sexual offenders.<sup>178</sup> When the information is not particularized, however, the impact is actually to numb the receiver to the information.<sup>179</sup> Additionally, it encourages reliance and faith in the government to provide protection through the dissemination of information rather than encouraging individuals to take responsibility for learning about their surroundings and exercising vigilance in protecting themselves against potentially dangerous situations.<sup>180</sup>

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<sup>174</sup> Wright, *supra* note 25, at 21-22; Hamilton, *supra* note 44, at 4.

<sup>175</sup> Wright, *supra* note 25, at 21-22; Hamilton, *supra* note 44, at 4.

<sup>176</sup> Wright, *supra* note 25, at 24.

<sup>177</sup> American Academy of Child & Adolescent Psychiatry, Children and TV Violence.

[http://www.aacap.org/cs/root/facts\\_for\\_families/children\\_and\\_tv\\_violence](http://www.aacap.org/cs/root/facts_for_families/children_and_tv_violence) (last visited June 13, 2011.)

<sup>178</sup> SORNA Hearings, *supra* note 23; see also *supra* note 40.

<sup>179</sup> Ewing, *supra* note 119.

<sup>180</sup> Lynch, *supra* note 73.

#### IV. SOLVING THE PROBLEM OF THE SEX OFFENDER

##### A. Discarding the Label

The criminal law system is a reflection of society's moral culture,<sup>181</sup> and certain sex acts are deemed morally wrong,<sup>182</sup> and thus criminal. As cultures evolve, the criminal law system may come into conflict with changing beliefs and moral values, resulting in the disparate punishment of certain behaviors that are no longer viewed to be morally wrong.<sup>183</sup> For example, public urination is an act that an individual often commits simply because of the unavailability of a restroom rather than from some deviant sexual urge.<sup>184</sup> Likewise, consensual sex between teenagers is common developmentally-appropriate behavior.<sup>185</sup> These behaviors, admittedly involving exposure of the body, are not "sex offenses" within the context of society's fear. As documented by Congress in the hearings surrounding the adoption of the various acts, society fears a "dangerous lurking man."<sup>186</sup> The term sex offender, however, is applied much more often to an individual who does not in any way fit the profile of the "dangerous lurking man."<sup>187</sup> Thus, the definition of sex offender is overly-broad.

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<sup>181</sup> Cynthia Lee & Angela Harris, *Criminal Law: Cases and Materials* 2 (2d ed. West 2005).

<sup>182</sup> Erich Goode & Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance* 19 (2009).

<sup>183</sup> Goode & Ben-Yehuda, *supra* note 178.

<sup>184</sup> *In re Birch*, 515 P.2d 12, 13 (Cal. 1973).

<sup>185</sup> "With increasing regularity, child professionals are accumulating evidence that suggests that children (pre-pubertal) are not only displaying more sexual behavior, but are doing so at younger and younger ages.... This increase in sexual behavior should come as no surprise. We are after all, raising a generation of "super-sexualized" young people." Fred Kaesar, *Towards a Better Understanding of Children's Sexual Behavior*, New York University Child Study Center, available at

[http://www.aboutourkids.org/articles/towards\\_better\\_understanding\\_children039s\\_sexual\\_behavior](http://www.aboutourkids.org/articles/towards_better_understanding_children039s_sexual_behavior) (last visited June 30, 2011). In addition, children typically become interested in the mechanics of sexual intercourse around the of age eight. Fred Kaesar, *Helping Children Develop Healthy Sexual Behavior and Attitudes*, New York University Child Study Center, available at

[http://www.aboutourkids.org/articles/helping\\_children\\_develop\\_healthy\\_sexual\\_behavior\\_attitudes](http://www.aboutourkids.org/articles/helping_children_develop_healthy_sexual_behavior_attitudes).

<sup>186</sup> The "dangerous lurking man" is a myth that still endures to this day. Wright, *supra* note 77.

<sup>187</sup> See Part II, Section B, of this Article; see also Lynch, *supra* note 72.

Although scholars may disagree about whether criminal law serves as a punishment or as a deterrent to criminal behavior,<sup>188</sup> the consensus is that criminal law exists to normalize society into certain morally-accepted behavior patterns.<sup>189</sup> Certainly, some individuals engage in grossly inappropriate sexual behavior that should be classified as criminal, but to further classify crimes as sex-related serves only to perpetuate hate and fear rather than resolve a criminal problem. In other words, the goal of societal normalization is not accomplished or promoted by perpetuating the stigma of the sex offender. Certainly, whether a crime is sexually-motivated or involves the sexual violation of another is an important consideration in the treatment and punishment of the offender. Notwithstanding, the act of classifying the offender as a *sex offender* creates a lifelong label that stigmatizes the individual and segregates the person from society.<sup>190</sup> This separation of the sex offender from mainstream society is an act of violence,<sup>191</sup> which will lead not to conformity, but rather is more likely to lead to more extreme antisocial behavior.

Classifying a person as a sex offender permits society to define a person's value based upon what that person has done. Thus, rather than focusing on the behavior and punishing a particular bad act, the person is punished for *being* bad; the individual is redefined and *becomes* the bad act rather than just a person who has *done* a bad act. Once redefined, the individual cannot remove this characteristic; it becomes as intrinsic as the person's sex or ethnicity. The redefinition encourages the dehumanization of individuals who commit sex offenses. Society can too easily jump to judgment considering these individuals to be bad or dangerous rather than objectively evaluating whatever individualized risk a person may present.

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<sup>188</sup> Lee, *supra* note 177at, 6.

<sup>189</sup> Goode & Ben-Yehuda, *supra* note 178.

<sup>190</sup> See Part III of this Article for a discussion of stigma. See also Hamilton, *supra* note 33, at 9.

<sup>191</sup> The method of dichotomous thinking required to create this sort of distinction results in a dominant/subordinate relationship. Thus, although the resulting disposition may appear legitimate, the classification itself is a violent act. Pierre Bourdieu, *In Other Words: Essays Towards a Reflexive Sociology* 73 (1990).

Furthermore, concentrating hate toward the individual for the bad act distracts society from real issues that should be resolved. For example, in committing a criminal sex act, an individual typically is perpetuating an abuse suffered by that same individual. In other words, victims of sex crimes are more likely to commit sex offenses later in life. This suggests that careful and deliberate attention need be paid to the victims of sex offenses so that they receive assistance in overcoming the trauma so as not to later perpetuate the abuse. Additionally, this shows that committing a sex crime is a bad act often prompted by the failure to adequately cope with a trauma. Thus, approaching individuals as if they themselves *are* bad rather than treating them as if they have committed a bad act is not helpful to ensuring it does not reoccur.

While experts may disagree about whether a sex offender can be rehabilitated,<sup>192</sup> no evidence tends to support that classification of a person as a sex offender makes society safer or deters the commission of sex offenses. In fact, statistics tend to reflect that the registry may numb society to real dangers as well as marginalize individuals convicted of sex offenses decreasing their chances of reintegrating and improving their behavior.<sup>193</sup> Therefore, since labeling a person a sex offender does not serve to make society safer or adequately rehabilitate one who has committed a sex offense, government should stop labeling individuals as sex offenders.

#### B. Discarding the List

One argument in favor of maintaining the sex offender registry database is that it provides members of society with a readily-available list of sex offenders.<sup>194</sup> The information provided, however, is available in a more complete form through other sources. Thus,

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<sup>192</sup> See generally Part III of this Article.

<sup>193</sup> See Part III, Section D, 2, of this Article.

<sup>194</sup> SORNA Hearings, *supra* note 23.

eliminating the sex offender registry would not prevent anyone from obtaining information about someone convicted of a sex-related offense.

Notably, court proceedings are generally open to the public<sup>195</sup> and records of those proceedings are also accessible by the public. A concerned citizen can legally access information regarding crimes committed by a particular individual, including sex crimes.<sup>196</sup> Moreover, the quality of information is more thorough and could better equip a concerned citizen to make rational decisions about risks posed by a particular individual. For example, court records would likely include police reports and witness statements, motions and pleadings, and a sentencing order.<sup>197</sup> In contrast, an entry on the sex offender registry typically lists only the crime for which the individual was convicted without the details of the crime itself.<sup>198</sup> As a result, an individual reading the registry entry is ignorant of the underlying facts and circumstances surrounding the conviction and sentencing of the individual. This very ignorance is what leads members of society to make assumptions and act out of anger and hate toward individuals listed on the sex offender registry.

Although searching court records is not the same sort of “one-stop shopping” available through the sex offender registry, it is the better approach because it is more thorough. To the extent that it requires more effort and initiative on the part of the person seeking the information to obtain court records, this type of search should be preferred over a more passive search because it forces the person seeking the information to evaluate the purpose of the search. The information available on the sex offender registry is so limited that it is more likely to encourage

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<sup>195</sup> The U.S. Constitution states that an accused, in a criminal proceeding, has the “right to a speedy and public trial.” U.S. Const. Amend. VI. In addition, both digital audio recordings and all case data are made available by the courts online. Public Access to Court Electronic Records (PACER) [hereinafter PACER], available at <http://www.pacer.gov/> (last visited June 30, 2011)

<sup>196</sup> Pacer, *supra* note 191.

<sup>197</sup> Pacer, *supra* note 191.

<sup>198</sup> Ewing, *supra* 119.

inflammatory inferences promoting hatred toward a perceived sub-class of society. In addition, the focused attention an individual would need when seeking information through court records would facilitate the particular purpose of the investigator rather than incensing passions. Also, when one considers that the majority of sex offenders are not repeat offenders and the majority of reported sex-related crimes are first-time offenses,<sup>199</sup> it makes no sense that a person should rely on the registry list of convicted sex offenders to feel safe. Statistically, those listed on the sex offender registry present a lower risk of harm than someone who has not yet been convicted of a sex-related offense.<sup>200</sup>

Information itself is not power; information empowers individuals only when they understand how to use the information as a tool within their lives.<sup>201</sup> The sparse information available on the registry creates a false sense of security within individuals who mistake information for power.<sup>202</sup> A full record search is the only way to transform the information available about sex-related crimes into a tool that can work to make society safer.

The other argument in favor of maintaining the registry is that it presumably deters sex offenders from committing new sex-related offenses.<sup>203</sup> As the New Jersey and New York studies showed, however, there is no correlation between registration and the decline in rates of sex-related crimes.<sup>204</sup> Thus, while the rate of sex-related crimes appears to be decreasing,<sup>205</sup> the reasons for the decline are not related to the existence of the registry. In fact, reports of sex-related crimes are declining despite the social stigma created by the registry which would tend to encourage recidivism and reoffense. Because victims of sex-related crimes are apparently less

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<sup>199</sup> Hamilton, *supra* note 123.

<sup>200</sup> See Part III, Section A, of this Article.

<sup>201</sup> Tregilgas, *supra* note 26.

<sup>202</sup> Tregilgas, *supra* note 26.

<sup>203</sup> Hamilton, *supra* note 26; see also Part III of this Article.

<sup>204</sup> See Part III of this Article.

<sup>205</sup> See Part III of this Article

inclined to report the abuse because of the long-term consequences of sex-offender registration, the registry is not encouraging either the decline of sexually-motivated crime or victim healing. Furthermore, it serves to marginalize individuals labeled sex offenders, thus making it difficult for them to work, live, and participate in the normal activities of family life.<sup>206</sup> Stigma of this sort does not deter criminal behavior.

Moreover, in the Jaycee Dugard case, the registry itself was incapable of preventing Garrido from kidnapping and imprisoning a little girl and repeatedly raping her over nearly twenty years.<sup>207</sup> For a person determined to reoffend, the registry is not going to prevent the commission of a sex-related offense. A person registered as a sex offender is permitted to leave home and is not subject to continued supervision once probation or parole has been completed. Thus, a resolute individual could easily thwart the system by plotting a crime in a jurisdiction far enough away to cast suspicion aside. In this way, the registry does not serve to aid law enforcement in the investigation of crimes; rather it serves to aid deviant members of society who are resolved to commit a crime with a tool of manipulation. Furthermore, the registry creates an overwhelmingly large and thus bewildering list of suspects. Notably, law enforcement may access criminal records through NCIC, a database containing arrest and conviction information, and can use this database to collect the exact same information available on the sex offender registry.<sup>208</sup> Consequently, law enforcement would not be prejudiced in its manner of conducting investigations by the elimination of the registry.

Because the registry does not make society safer either by deterring the commission of sex-related offenses or by providing individuals with information that will empower them to

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<sup>206</sup> See Part. III, Section D, 2, of this Article.

<sup>207</sup> See Part I of this Article.

<sup>208</sup> Federal Bureau of Investigation, National Crime Information Center.  
<http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm> (last visited June 30, 2011).

protect themselves, it should be discarded. The registry does not accomplish its purported purposes of deterring sex-related crime, aiding law enforcement in the investigation of crime, or providing the public with information valuable to self-protection. Moreover, it creates a social stigma whereby individuals convicted of sex-related crimes are unable to reintegrate into society, raising the likelihood of reoffense. To continue maintenance of this database that can be easily manipulated by a person intent on committing a crime while providing no protection to society as a whole is nonsensical.

## **V. CONCLUSION**

As a civilized society, we should expect to live safely without fear of losing our children to kidnappers and rapists, but as a practical matter, we know that our children face numerous risks from multiple sources on a daily basis. The stark reality, however, is that the risk of being kidnapped and raped by a total stranger with a history of sex offenses is statistically improbable. Moreover, as evidenced by the tragedy of the Jaycee Dugard case, the sex offender registry is inadequate to prevent the “dangerous lurking man” from taking a child. A simple database of information does not alert the public to where a sex offender is at every moment of every day; it also cannot reach out to restrain a person from taking a child if the offender is determined to do so.

Further problematic is the hatred and anger toward individuals fueled by the limited and incomplete information provided by the sex offender registry database. Hugh Edwards is a testament to the risks to society when a person becomes enraged by the information available on the sex offender registry. News of sexually-motivated crimes arouses extreme feelings including hate, disgust, and anger. The registry does not equip the public with tools for managing the information or the emotions that arise as a result of learning about a nearby sex offender. As a

result, society perceives it has a license to hate and protest against the very existence of an individual listed as a sex offender; innocent people may even die, just as Hugh Edwards did.

Americans have historically focused their hatred to target vulnerable stigmatized groups whom they fear. Just as tolerance of slavery fostered hatred toward individuals of African descent and led to the passage of Jim Crow laws after their emancipation, the promulgation of the sex offender registry evidences the government's endorsement of hatred of persons labeled sex offenders. Similarly, like the ancient persecution of witches did not make society safer, but rather resulted in the tragic suffering of hundreds of men and women<sup>209</sup> the endorsement of hate toward sex offenders does not further either individual or societal interests and serves only to create suffering among those labeled sex offenders.

The tragedy is perpetuated by the scope of the label "sex offender" which attaches to individuals like James Birch who have committed a statutory sex-related offense that is not realistically sex-related. The majority of individuals required to register as sex offenders do not fit the myth of the "dangerous lurking man," and the stigma created by the registration scheme destroys the lives of those who are required to register. The fact that the registry itself does not make society safer simply adds insult to injury.

As a tool of social order and control, the sex offender registry is utterly impotent, and therefore it should be eliminated. People cannot be controlled in the way government is attempting to do through implementation of the registry. Resources must be focused on reducing hate, increasing education, and implementing rehabilitation for both victims and offenders. Only in this way can society evolve to a truly safer place.

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<sup>209</sup> See generally Elliot Currie, Crimes Without Criminals, 3 Law & Soc'y Rev. 7 (1968-1969).