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The Amy Jackson Law - A Look at the Constitutionality of North Carolina's Answer to Megan's Law

Nikki Gfellers

Kimberly S. Lewis

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THE AMY JACKSON LAW\textsuperscript{1} — A LOOK AT THE CONSTITUTIONALITY OF NORTH CAROLINA’S ANSWER TO MEGAN’S LAW

I. INTRODUCTION

Imagine that a house next to you in your neighborhood is empty and a “for sale” sign is in the yard. You and your family live in a nice area of town where there is little crime. In most instances, you would have some anxiety about the type of people that could potentially live in this home. You might be wondering if they will be friendly, if your children will play together. It would be highly unlikely, however, that your worry would be whether this new neighbor will be a convicted sex offender.

However, this has occurred many more times than people wish to admit. One of the most famous cases regarding an unknown sex offender as a neighbor is that of Megan Kanka, who was sexually assaulted and then murdered by her neighbor, a convicted sex offender, on July 29, 1994.\textsuperscript{2} In response to the public outcry, New Jersey enacted legislation on October 31, 1994, mandating notification to communities when certain convicted sex offenders take up residence nearby.\textsuperscript{3}

New Jersey, however, is not the first nor the only state to enact legislation concerning convicted sex offenders. California has required sex offenders to register since the mid-1940’s.\textsuperscript{4} North Carolina, in response to the great number of convicted sex offenders and out of public concern for repeat crimes by released offenders, enacted the Amy Jackson Law.\textsuperscript{5} This piece of legisla-

\begin{itemize}
  \item 1. This law was named by North Carolina senator Hugh Webster in honor of an eleven year old Caswell County girl who was killed in July 1995 by Archie Billings, who had a previous record for assault and secret peeping. \textit{Bill Requires Sex Offenders to Register}, Greensboro News & Record (Greensboro, North Carolina), July 20, 1995, at B2.
  \item 3. N.J. STAT. ANN. § 2C:7-8 (West 1995).
  \item 5. The original registration act was found at N.C. Gen. Stat. §§ 14-208.5 to -208.13 (Supp. 1995). This act was made ineffective by N.C. Gen. Stat. §§ 14-208.5 to -208.15 (Supp. 1997) (effective April 1, 1998). The current act contains
\end{itemize}

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tion recognizes the potential for recidivism of sex offenders after supervision is terminated and provides for a registry to facilitate communication between law enforcement agencies and for the protection of the citizens of North Carolina.6

In every state in America there have been reports of convicted sex offenders repeating their crimes with new victims. While there have not been many cases to receive the publicity that the Megan Kanka case did, other states have recently realized a growing need for similar legislation designed to protect their citizens from dangers in the community. North Carolina, for example, convicts nearly 1,100 sex offenders each year and releases 800 from prison.7 Just recently, the local news in Wake County, North Carolina reported that a convicted sex offender who had been released from a North Carolina prison in May 1997 had been arrested on Thursday, August 21, 1997 for yet another sex offense perpetrated on young boys.8

This comment will first explore the complexities of North Carolina's Amy Jackson Law. Second, it will discuss the statutory response to sex offender recidivism by other states as compared to North Carolina, with a focus on New Jersey. This will include an analysis on the constitutionality of these statutes. Finally, the comment will review any expected ramifications, both legal and to the community, of this North Carolina legislation.

II. THE AMY JACKSON LAW: NORTH CAROLINA'S SEXUAL OFFENDER REGISTRATION STATUTE9

A. Purpose Behind Statute10

The North Carolina "Sexual Offender Registration Program" statutes were implemented:

to assist law enforcement agencies' efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law

an offenses against minors registration requirement, a sexual predator registration requirement and a juvenile registry that were not contained in the prior law. Both of these new registration requirements are beyond the scope of this comment. See Criminal Law Survey, 20 Campbell L. Rev. ___ (1998).

6. § 14-208.5.
8. Channel 17 Morning News (NBC television broadcast, August 22, 1997).
10. § 14-208.5.
enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, and to authorize the access to necessary and relevant information about those offenders to others . . . .

Said the New Jersey Supreme Court of the need for such a law: "In cases of sex offenders, as compared to other criminals, the propensity to commit crimes does not decrease over time." Rather, registration statutes such as this are deemed necessary because there is a high rate of recidivism among sex offenders. Although the purpose behind the registration statutes is purportedly clear - to better protect communities, and assist in the investigation and apprehension of sex offenders - critical to the constitutionality of these laws is that the effect of the statutes is regulatory rather than punitive. This will be further examined in Sections III and IV.

B. Those Required to Register

There are two requirements for having to register under the sexual offender statutes in North Carolina: 1) the person must be a resident of the State; and 2) the person must have a reportable conviction. Reportable convictions include offenses against minors and sexually violent offenses. A sexually violent offense is a final conviction for first degree rape, second degree rape, first degree sexual offense, second degree sexual offense, attempted rape or sexual offense, intercourse and sex-

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11. § 14-208.5.
13. Id.
16. § 14-208.7.
20. § 14-27.3.
23. § 14-27.6. (This offense is still enumerated in the list of reportable convictions, but § 14-27.6, which sets forth the elements for the crime, has been repealed. 1994 N.C. SESS. LAWS 14).
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ual offense with certain victims,\textsuperscript{24} incest between near relatives,\textsuperscript{25} employing or permitting a minor to assist in offenses against public morality and decency,\textsuperscript{26} first degree sexual exploitation of a minor,\textsuperscript{27} second degree sexual exploitation of minor,\textsuperscript{28} third degree sexual exploitation of a minor,\textsuperscript{29} promoting prostitution of a minor,\textsuperscript{30} participating in prostitution of a minor,\textsuperscript{31} or taking indecent liberties with children.\textsuperscript{32} Also, if a resident of North Carolina has a final conviction in another state that would have been a reportable conviction in North Carolina, that too will meet the requirements of registration.\textsuperscript{33}

C. Time and Place of Registration\textsuperscript{34}

If a convicted sex offender falling into one of the above categories moves into North Carolina from another state, he has ten (10) days from establishing residency in which to register.\textsuperscript{35} A person currently residing in North Carolina has ten (10) days from his release from any penal institution or arrival in any county to register, or, if imprisonment was not mandated by the court, registration must occur immediately following conviction.\textsuperscript{36} An individual must register with the sheriff of the county in which the offender resides, and registration is maintained for a period of ten (10) years.\textsuperscript{37}

D. Required Information\textsuperscript{38}

The registration form requires information such as the offender’s name, aliases, date of birth, sex, race, address, the type

\textsuperscript{24} § 14-27.7. Certain victims are persons assuming a parental role, persons having custody of a child, and agents or employees of any persons or institutions (private, charitable, or governmental) having custody of a child.
\textsuperscript{25} § 14-178.
\textsuperscript{26} § 14-190.6.
\textsuperscript{27} N.C. GEN. STAT. § 14-190.16 (Supp. 1997).
\textsuperscript{28} N.C. GEN. STAT. § 14-190.17 (1993).
\textsuperscript{29} § 14-190.17A.
\textsuperscript{30} N.C. GEN. STAT. § 14-190.18 (Supp. 1997).
\textsuperscript{31} N.C. GEN. STAT. § 14-190.19 (1993).
\textsuperscript{32} § 14-202.1.
\textsuperscript{33} N.C. GEN. STAT. § 14-208.6 (Supp. 1997).
\textsuperscript{34} § 14-208.7.
\textsuperscript{35} § 14-208.7(a).
\textsuperscript{36} § 14-208.7(a). Alternatively, the person is to register whenever the person has been present in the North Carolina for 15 days, whichever is first.
\textsuperscript{37} § 14-208.7(a).
\textsuperscript{38} § 14-208.7(b).
of offense for which convicted, date of conviction, sentence imposed, photograph (taken at the time of registration) and fingerprints. This information is sent to the Division of Criminal Statistics of the Department of Justice. Copies are to be maintained by the sheriff in order to compile a county registry.

E. Must Notify Offender of Duty to Register

Before a convicted sex offender is released from a penal institution, he is to be notified by an official of the institution of his duty to register. If imprisonment is not required, the sentencing court is responsible for notifying the defendant of the duty to register. The statutes also contain a provision requiring an offender to notify officials if he changes his address, so that this information may be forwarded to the Division of Criminal Statistics.

F. General Public Entitled to Access Registration Information

A central issue with regard to registration statutes and the focus of this Comment is who should be entitled to access this information. The North Carolina Act provides that the offender's name, sex, address, physical description, picture, conviction date, offense, and sentence are all public record and shall be available for public inspection. Anyone may obtain a copy of an offender's registration form to learn if a particular individual is a registered sex offender. To do so, the requester must simply give to the sheriff a written request form. If the requester so desires, the requester may even obtain a copy of the entire county registry.

39. § 14-208.7(b).
40. § 14-208.7(c).
41. § 14-208.7(c).
42. § 14-208.8.
43. § 14-208.8(a)(1).
44. § 14-208.8(b).
45. § 14-208.9.
46. § 14-208.10.
47. § 14-208.10(a).
48. § 14-208.10(b).
49. § 14-208.10(b). The prior registration act required the requester to provide certain information about the offender in order to obtain the registration form, such as a name, sex, and physical description. No such requirements are contained in the new act.
50. § 14-208.10(b).
Anyone may also search the registration registry via the internet.\textsuperscript{51}

\textbf{G. Failing to Register is a Crime}\textsuperscript{52}

An offender who fails to register is guilty of a Class F felony.\textsuperscript{53} With the North Carolina sexual offender registration statutes in mind, this Comment will now take a narrow look at one particular constitutional question that has arisen in other jurisdictions: whether it is constitutional to require previously convicted sex offenders to register in conformance with the state statutes. To begin the process, we will first look at the constitutional analysis under the ex post facto clause followed by the statutory responses by the varying states.

\section*{III. CONSTITUTIONAL ANALYSIS OF SEX OFFENDER REGISTRATION STATUTES}

Article I, Section 10 of the United States Constitution forbids the states from enacting any ex post facto law.\textsuperscript{54} One of the most often cited challenges to the new registration statutes asserted by convicted sex offenders is that the law contravenes this prohibition against ex post facto laws. This is arguably so because the statutes apply retroactively, thereby requiring previously convicted sex offenders to register, as well as those who have been convicted since the statutes were enacted. The reasoning behind requiring previously convicted sex offenders to register, however, is so that the registration will have an immediate and beneficial impact. "[I]f the law did not apply to previously convicted offenders, notification would provide practically no protection now, and relatively little in the near future."\textsuperscript{55}

The Supreme Court has provided the basis for a proper ex post facto analysis. "[A] law violates the ex post facto prohibition if it \textit{changes the punishment}, and inflicts a \textit{greater punishment},

\begin{itemize}
  \item \textsuperscript{51} North Carolina Sex Offender & Public Protection Registry (visited April 8, 1998) <http://sbi.jus.state.nc.us/sor/>. This internet sight first appeared on April 1, 1998, and in the first week of its existence more than 200,000 searches were performed.
  \item \textsuperscript{52} § 14-208.11.
  \item \textsuperscript{53} § 14-208.11(a).
  \item \textsuperscript{54} U.S. CONST. art. I, § 10.
  \item \textsuperscript{55} Doe v. Poritz, 662 A.2d 367, 373 (N.J. Sup. Ct. 1995).
\end{itemize}
than the law annexed to the crime, when committed.” The Court set forth three elements to establish if a particular law violates the ex post facto clause: if it “1) punishes as a crime an act previously committed, which was innocent when done; 2) makes more burdensome the punishment for a crime, after its commission; or 3) deprives one charged with a crime of any defense available according to the law at the time the act was committed.”

The real question stemming from the constitutional attacks is whether requiring registration by sex offenders who were convicted prior to the statutory enactment is an additional punishment for that crime and therefore a violation of the constitutional prohibitions against ex post facto laws. The ex post facto analysis herein will focus on the Supreme Court’s second element — whether registration makes the punishment for a crime after its commission more burdensome.

In order to determine if the statute is punishment, a court must first look to the intent of the legislature. Where the intent cannot be clearly determined, a court must use the factors set forth in *Kennedy v. Mendoza-Martinez*. If, on the other hand, the intent is clearly non-punitive, then the court must determine if any punitive effect of the statute negates the intent of the legislature.

In order to analyze how other states have handled such inquiries, it is first necessary to illustrate the different types of registration statutes. As a result of the passage of the Violent Crime Control and Law Enforcement Act, and in response to

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57. Id.
58. Id. at 390.
59. 372 U.S. 144, 168-69 (1963). The factors are:
   [1] (w)ether the sanction involves an affirmative disability or restraint,
   [2] whether it has historically been regarded as a punishment,
   [3] whether it comes into play only on a finding of scienter,
   [4] whether its operation will promote the traditional aims of punishment—retribution and deterrence,
   [5] whether the behavior to which it applies is already a crime,
   [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and
   [7] whether it appears excessive in relation to the alternative purpose assigned.

Id.

60. Ward, 869 P.2d at 1068.
61. 42 U.S.C. § 14071 (1994). This is typically called the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It requires sex offenders to register a current address with a state agency for 10
public outcry, many states have enacted legislation dealing with sex offenders. These statutes vary as to their scope and effect. The various state statutes fall into three basic categories. First, there is legislation that requires the offender to register, but only allows the information to be released to law enforcement agencies. Next, there are statutes which allow for limited access to the information by some segments of the public. Finally, there are statutes that allow for some type of notification, which span from allowing the public to access this information through writing, to requiring law enforcement to notify neighbors and school officials, to requiring the offender to notify persons in the community themselves. Each of these types will be outlined below.

A. Access Only to Law Enforcement

The underlying reason for enacting laws requiring the registration of sex offenders is to enable law enforcement to quickly apprehend such offenders if recidivism occurs, thus promoting public protection. Therefore, as many as eighteen states as of 1996 had enacted legislation permitting only law enforcement officials access to the information provided by these sex offenders. New Hampshire, for example, does not allow the release of information to the public because the information is considered confidential within law enforcement.

years after conviction or release. It also contains a provision providing for public notification and requires states to enact registration programs. This statute also permits information which is collected pursuant to this statute to be disclosed for "any purpose permitted under the laws of the state.” § 14071(e).

62. See supra notes 2-8 and accompanying text.


64. North Carolina is an example of this type of notification. N.C. GEN. STAT. § 14-208.10(a) (1995).


In New Hampshire v. Costello, the Supreme Court of New Hampshire held that requiring a convicted sex offender to register with local law enforcement "did not violate the constitutional provisions against ex post facto laws." The defendant had been convicted in Massachusetts and his probation was subsequently transferred to New Hampshire where the sex offender registration statute operated retrospectively to the defendant. The defendant failed to register after being advised of his duty to do so, and a misdemeanor complaint was filed against him. The defendant argued that application of the statute violated the prohibitions against ex post facto laws under the State and Federal Constitutions. The court stated that "[e]ven though the law may disadvantage the defendant, unless it also provides greater punishment, its application to him is not ex post facto."

In line with proper ex post facto analysis the court first turned to the purpose of the statute and found that it was clearly regulatory. In determining the effect of the statute, the court stated that if a statute has both a regulatory and punitive effect the statute will be construed as regulatory as long as that was the "evident purpose of the legislature." The court stated that the overriding purpose of enacting the law was regulatory and that the punitive effect, if any, was "de minimis." Therefore, since no greater punishment was conferred upon the defendant, there was no ex post facto violation.

In Illinois v. Adams, involving an Illinois registration scheme, a defendant claimed that the registration requirement

70. U.S. CONST. art. I, § 10. The Constitution of the United States prohibits legislation from being enacted which proscribes punishment for an act which was not punishable when the act was committed or which increases the amount of punishment for the crime at the time it was committed. The specific argument for why requiring sex offenders to register should violate the ex post facto clause of the Constitution are beyond the scope of this article.
71. Costello, 643 A.2d at 532.
72. Id.
73. Id.
74. Id. at 532-33.
75. Id. at 533.
76. Id. (citing Trop v. Dulles, 356 U.S. 86, 95-96 (1958) (plurality opinion)).
77. Costello, 643 A.2d at 533.
constituted cruel and unusual punishment\textsuperscript{79} under the Eighth Amendment of the United States Constitution.\textsuperscript{80} The court began its Eighth Amendment inquiry the same as a court would for an ex post facto analysis – by looking at the intent of the legislature.\textsuperscript{81} "Specifically, the legislature sought to create an additional method of protection for children from the increasing incidence of sexual assault and sexual abuse."\textsuperscript{82} The court declined to consider the \textit{Mendoza} factors because the legislative intent was clear on its face. "[T]he intent with respect to the Registration Act is clearly non-penal in nature, focusing not on the burden to any particular defendant, but rather on the advantages given to law enforcement agencies in the protection of children."\textsuperscript{83}

The defendant, however, argued that registration is punitive because it will make him more susceptible to police questioning when a sex offense occurs.\textsuperscript{84} The court rejected this, noting that the defendant had not lost any of his constitutional rights and these rights "will still be in place to protect him from unwarranted police harassment."\textsuperscript{85} Also assisting the court was the fact that the statutes did not attempt to correct the behavior of sex offenders.\textsuperscript{86} Its purpose was clearly for assisting law enforcement agencies and protecting the public.\textsuperscript{87} Based on these findings the court concluded that the Registration Act did not constitute cruel and unusual punishment under the Eighth Amendment.\textsuperscript{88}

In both \textit{Adams} and \textit{Costello}, the registration information was to be held confidential by law enforcement agencies. Said the Illinois court in \textit{Adams}, "the law enforcement community is prohibited from disseminating the information to the public at large on pain of criminal sanctions."\textsuperscript{89} The Illinois court reasoned that because this information is not passed on to the general public,

\textsuperscript{79} The defendant also claimed that the registration requirement denied equal protection and due process required by the Fourteenth Amendment of the United States Constitution and the Illinois Constitution.
\textsuperscript{80} U.S. \textsc{Const.} amend. VIII.
\textsuperscript{81} \textit{Adams}, 581 N.E.2d at 640.
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} \textit{Id.} at 641.
\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} \textit{Id.}
\textsuperscript{87} \textit{Adams}, 581 N.E.2d at 641.
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} \textit{Id.}
"no stigma attaches" and therefore the statute failed to impose the "cruel" aspect of cruel and unusual punishment. The New Hampshire court in Costello did not dwell on the confidentiality issue. However, by limiting offender information to law enforcement officials the regulatory end of assisting law enforcement was met. Widespread dissemination, on the other hand, seems more intrusive to the offender while at the same time losing connection to the stated goal. Thus, it seems that a limited release of information is a helpful tool in withstanding constitutional attack.

B. States with Limited Access by the Public

The next type of statute is one that only allows access to a limited portion of society. This is also consistent with the underlying goals of the registration requirements, in that the information is given to agencies or entities such as schools and day care facilities. For example, Indiana's statute provides that the sex offender registry shall be available on a computer disk. The statute does not specifically address whether this information is confidential to the public at large; it does specify that a hard copy of the registry is to be provided to the following agencies:

1) all school corporations; 2) all nonpublic schools; 3) a state agency that licenses individuals who work with children; 4) the state personnel department to screen individuals who may be hired to work with children; 5) all child care facilities licensed by or registered in the state of Indiana; and 6) all other entities that: provide services to children or request the registry.

While the latter part of the statute appears somewhat vague as to public access, the use of the word "entity" does not apply to individuals and does not provide for release of this information except for agency usage.

Another example of this type of statute is in Delaware, where employers who plan to hire someone in a child-related job can find out if that particular person is on the registry. However, other information on the registry is confidential and is accessible only to law enforcement officials. As noted earlier, these type of statutes, like those where the public is given no access to registration

90. Id.
91. Id.
92. IND. CODE § 5-2-12-11 (1994).
93. § 5-2-12-11.
95. § 4120.
information, seem to be more consistent with the goals behind registration of sex offenders: protection of that portion of the public in which the offender may have direct contact with children.

Two cases, *Arizona v. Noble*96 and *Washington v. Ward*97 show how a "limited access" statute plays a part in an ex post facto challenge. In *Noble,*98 the Supreme Court of Arizona addressed the question of whether requiring an offender to register as a sex offender under a statute that was not in effect at the time he committed his offense violated the prohibition against ex post facto laws of the Federal and State Constitutions. Vacating the court of appeals' decision, the court held that the sex offender registration statute was regulatory and therefore constitutional. In reaching this decision, the court examined the prohibitions laid out in *Calder v. Bull*99 to determine if the Arizona statute enacted a "law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime, when committed."100 The court first determined that the law had a retrospective application to the defendant, which in fact was "directly contrary to a primary purpose of the ex post facto clause -'to assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.'"101

The case then centered on the issue of whether the statute constituted punishment. To begin its ex post facto analysis, the court began with a look into the legislative purpose - "whether the legislative aim was to punish [an] individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation."102 If the intent was found to be non-punitive, the inquiry would continue to determine whether the statute had such a punitive effect as to negate the regulatory legislative purpose.103

In *Noble,* the legislative history did not yield a discernable answer, so the court turned to the *Mendoza* factors.104 These factors have been utilized in cases where the court determines that

97. 869 P.2d 1062 (Wash. 1994).
98. 829 P.2d 1217.
99. 3 U.S. 386 (1798).
100. *Id.* at 390.
102. *Id.* at 1221 (quoting *De Veau v. Braisted,* 363 U.S. 144, 160 (1960)).
103. *Id.*
104. See supra note 59.
the legislative intent is unclear.\textsuperscript{105} The court weighed and analyzed four of the \textit{Mendoza} factors finding that: registration was not an affirmative disability or restraint; registration has traditionally been viewed as punitive, although in this case limiting public access to the registration information lessened its harsh/punitive effect; the registration requirement served, at least somewhat, as a deterrent, which is a traditional aim of punishment; and, finally, the legitimate purpose of registration was not outweighed by any limited punitive impact.\textsuperscript{106} The court gave the most weight to the legitimate legislative purpose. Without providing analysis on how the other factors were weighed, the court held that the statute did not constitute punishment and did not contravene the ex post facto clause of either the Federal or State Constitutions.\textsuperscript{107}

Furthermore, reasoning that each individual still holds his constitutional rights, the court rejected defendant's argument that registration would subject him to harsher punishment under the laws. "Registration assists law enforcement officers in locating past sex offenders when new crimes are committed, but registration does not, and could not, diminish registrants' general right to be free from unconstitutional law enforcement practices."\textsuperscript{108} The court did, however, qualify its holding to state that the statute is not excessive in relation to offenses of child molestation and sexual misconduct with a minor. It elected not to consider the "excessiveness" question in relation to other offenses.\textsuperscript{109}

In \textit{Washington v. Ward}\textsuperscript{110} the Supreme Court of Washington faced the same issue of whether the retroactive application of the sex offender registration statute violated the constitutional prohibitions against ex post facto laws. This court, like the \textit{Noble} court, recognized that the central issue was "whether the law alters the standard of punishment which existed under prior law."\textsuperscript{111} The court found that the statute was retroactive and began its ex post facto analysis by examining the legislative purpose.\textsuperscript{112}

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\begin{tabular}{l}
\textsuperscript{105} \textit{Noble}, 829 P.2d at 1221. \\
\textsuperscript{106} \textit{Id.} at 1222-23. \\
\textsuperscript{107} \textit{Id.} at 1224. \\
\textsuperscript{108} \textit{Id.} at 1223. \\
\textsuperscript{109} \textit{Id.} at 1224. \\
\textsuperscript{110} 869 P.2d 1062. \\
\textsuperscript{111} \textit{Id.} at 1068. \\
\textsuperscript{112} \textit{Id.} at 1067.
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\end{flushleft}
Unlike the Arizona legislature, the Washington legislature had clearly set forth its purpose: to assist law enforcement agencies in their efforts to protect the community.\footnote{113} Despite the clear intent, however, the next question faced by the court was "whether the actual effect of the statute [was] so punitive as to negate the Legislature's regulatory intent."\footnote{114} The court turned to the \textit{Mendoza} factors to help decipher whether the effect of the statute was regulatory or punitive. The court noted that these factors are traditionally utilized when the intent of the legislature is unclear, but nevertheless applied four (4) of the factors in favor of a finding that the Washington statute was regulatory and not punitive.\footnote{115}

The court found that since the statute limited the dissemination of information to the public, it did not impose any additional punishment. The Washington statute stated that "[p]ublic agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection."\footnote{116} The court held "that a public agency must have some evidence of an offender's future dangerousness, likelihood of re-offense, or threat to the community, to justify disclosure to the public in a given case. This statutory limit ensured that disclosure occurred to prevent future harm, not to punish past offenses."\footnote{117} Important here is that the information is \textit{only} disseminated to the public if there is a legitimate threat to community safety. Further, the Washington statute applies only to felony sex offenders\footnote{118} and limits the proximity in which the information will be released – the closer the offender, the more information provided.\footnote{119} The court concluded that "the appropriate dissemination of \textit{relevant} and \textit{necessary} information does not constitute punishment for purposes of \textit{ex post facto} analysis."\footnote{120}

The \textit{Ward} court, when considering deterrence as punishment, noted that the actual conviction and punishment might be the deterrence rather than the registration requirement. However,
even if registration were a deterrent, the court held that the effects were not punitive given its primary effect of aiding law enforcement agencies and protecting the public.\textsuperscript{121}

Lastly, the court, again examining the \textit{Mendoza} factors, determined that the registration statute was not excessive in relation to its purpose. It noted, as did the \textit{Noble} court, that offenders express concern over being a prime suspect in every sex crime investigation. However, consistent with \textit{Noble}, the court stated that the offender still retained all of his constitutional rights.\textsuperscript{122} "While a known sex offender living in a community where another sex offense occurs may well be a suspect, he has all of the due process and constitutional protections enjoyed by any other citizen and cannot be arrested simply because of his past conviction."\textsuperscript{123}

The court concluded that retroactive application of the statute was not punishment and therefore there was no violation of the prohibitions against ex post facto laws.\textsuperscript{124} "Although a registrant may be burdened by registration, such burdens are an incident of the underlying conviction and are not punitive for purposes of ex post facto analysis."\textsuperscript{125}

\section{Statutes Allowing Broad Public Access to Information}

While the states discussed in section B of this article give access to certain information, this is mostly limited to agencies that work with or around children or the elderly. The states that have statutes authorizing some form of unlimited access to the public have aroused controversy in recent years. While some proponents of these statutes argue that people have a right to know when a convicted sex offender moves into their neighborhood and demand that legislation of this type be adopted,\textsuperscript{126} others fear that public access will lead to vigilantism and vandalism,\textsuperscript{127} or that the statute will be declared unconstitutional.

Perhaps the most debated sex offender registration and notification statute in America is New Jersey’s Megan’s Law, which was enacted a few months after the highly publicized murder of a

\begin{flushleft}
\textsuperscript{121} \textit{Id.} at 1073.
\textsuperscript{122} \textit{Ward}, 869 P.2d at 1073.
\textsuperscript{123} \textit{Id.}
\textsuperscript{124} \textit{Id.} at 1074.
\textsuperscript{125} \textit{Id.}
\textsuperscript{126} Jerusalem, \textit{supra} note 63 at 220.
\textsuperscript{127} \textit{Report Reveals Little Harassment}, Portland Oregonian, April 9, 1995 at 19.
\end{flushleft}
young New Jersey girl by a convicted sex offender.\textsuperscript{128} This is perhaps the most comprehensive sex offender statute in the United States and has been the subject of widespread debate and litigation, because law enforcement is actually required to notify the public concerning certain sex offenders.\textsuperscript{129}

1. The New Jersey Statute

After the death of Megan Kanka, the recidivism of child sexual abusers was thrust into the limelight. The state of New Jersey reacted quickly, finding that the danger of recidivism of sex offenders mandated that a system of registration be implemented to protect the public and to assist law enforcement in "preventing and promptly resolving incidents involving sexual abuse and missing persons."\textsuperscript{130} The statute required that anyone who has been "convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense" is required to register.\textsuperscript{131} A sex offense under this statute was defined as aggravated sexual assault, sexual assault, aggravated criminal sexual assault, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, endangering the welfare of a child, luring or enticing, or attempt of these above enumerated crimes.\textsuperscript{132} It also included criminal restraint, kidnapping, and false imprisonment if the victim is a minor.\textsuperscript{133} The offender was required to register upon release from incarceration, relocation from another state, or after a conviction where an active sentence was not imposed.\textsuperscript{134} The statute also provides that a person previously convicted, but not presently incarcerated or subject to supervision\textsuperscript{135} may be required to register.\textsuperscript{136}

\textsuperscript{128} Petrucci, supra note 2 at 1127.
\textsuperscript{129} N.J. STAT. ANN. § 2C:7-8(c)(3) (West 1994).
\textsuperscript{130} § 2C:7-1.
\textsuperscript{131} § 2C:7-2(b)(2).
\textsuperscript{132} § 2C:7-2(b)(2).
\textsuperscript{133} § 2C:7-2(b)(2). For false imprisonment to apply the victim must be a minor and the offender is not the parent of the victim.
\textsuperscript{134} § 2C:7-2(c).
\textsuperscript{135} This means that a person previously convicted, who was not in prison or subject to the restrictions of probation or parole may still be required to register. This would seem to leave the statute vulnerable to an \textit{ex post facto} attack.
\textsuperscript{136} § 2C:7-2(c).
The New Jersey statute departed from most state statutes by requiring notification to the public of certain offenders. The offenders were classified into one of three categories contingent upon their potential for recidivism. This was determined by factors which include, but are not limited to:

1) conditions of release that minimize risk of re-offense such as supervised probation, parole, counseling, or a structured home that provides guidance; 2) physical factors such as age or illness; 3) criminal history factors indicating a high risk of re-offense which include: a. whether the behavior was characterized by repetitive and compulsive behavior, b. whether the maximum term was served, and, c. whether the offense was against a child; 4) other criminal factors including, a. relationship between the offender and the victim, b. whether the offense involved violence, and, c. the number, date and nature of prior offenses; 5) whether psychiatric profile indicates a potential for recidivism; 6) offender's response to treatment, 7) recent behavior, including behavior while under supervision and in the community; and 8) recent expressions of intent to commit a future crime.

Based upon these and other factors, a determination was then made about the potential recidivism of the particular offender. This information was used to determine the scope of notification. If the risk were low, then only law enforcement agencies likely to encounter the subject were notified; but if the risk were moderate or high, the number of persons notified increased. Under moderate risk guidelines, certain agencies such as schools, religious, and youth organizations were notified, while under high risk guidelines the public was to be notified where persons were likely to come in contact with the offender. The prosecutor in the county where the offender resides determines the risk of re-offense after consulting with local law enforcement.

2. Litigation of Megan’s Law

Even with its varying degrees of disclosure and notification, Megan’s law has been subject to much litigation. One of the most

137. § 2C:7-6.
138. § 2C:7-8(c).
139. § 2C:7-8(3-8).
140. § 2C:7-8(c).
141. § 2C:7-8(1).
142. § 2C:7-8(c)(2).
143. § 2C:7-8(8)(3).
144. § 2C:7-8(d)(2).
visible cases, *Doe v. Poritz*,145 found the registration statute constitutional.

In *Doe*,146 the defendant challenged Megan's Law under several different theories.147 First, the defendant claimed that the public exposure of his home address, together with other information provided in the registry, was a violation of his Fourteenth Amendment Due Process rights.148 All of the information on the registry was a matter of public record, but the information was not readily accessible and would have taken great efforts to compile, since it was located in different places.149 The court expressed concern here, stating:

(w)e believe a privacy interest is implicated when the government assembles those diverse pieces of information into a single package and disseminates that package to the public, thereby ensuring that a person cannot assume anonymity - in this case, preventing a person's criminal history from fading into obscurity and being wholly forgotten. Those convicted of crime may not have any cognizable privacy interest inherent in their conviction, but the Notification Law, given the compilation and dissemination of information, nonetheless implicates a privacy interest. The interest in privacy may fade when the information is a matter of public record, but it is not non-existent.150

Despite the court finding a limited privacy interest, it used factors set out in other cases to determine if the disclosure was justified by the state in this situation.151 Based on these factors,


146. *Id.*

147. The defendant in this case also asserted that the registration and/or notification were punishment and therefore subject to constitutional claims of violation of ex post facto, double jeopardy, bill of attainder, and cruel and unusual punishment.

148. U.S. *CONST.* amend. XIV.

149. *Doe*, 662 A.2d at 409.

150. *Id.* at 411.

151. The factors used by the court were: 1) the type of records requested; 2) the information it does or might contain; 3) the potential for harm in any subsequent nonconsensual disclosure; 4) the injury from disclosure to the relationship in which the record was generated; 5) the adequacy of safeguards to prevent unauthorized disclosure; 6) the degree of need for access; and 7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access. Faison v. Parker, 823 F. Supp. 1198, 1201 (E.D. Pa. 1993) (citing United States v. Westinghouse Elec. Corp., 638 F.2d 570, 578 (3d Cir. 1980)).
the interest in the state outweighed the defendant’s privacy interest because of the strong state interest in public disclosure due to the high rate of recidivism of sex offenders.\textsuperscript{152} Key in this determination for the court was the fact that notification was dependent on the risk of re-offense determined by the county prosecutor.\textsuperscript{153} The court also came to the same conclusion under the New Jersey Constitution, finding that “the state interest in protecting the public is legitimate and substantial.”\textsuperscript{154}

However, the court found that since the Registration and Notification Laws “implicate protectible liberty interest in privacy and in reputation,” the defendant was still entitled to procedural due process.\textsuperscript{155} The court weighed several factors to determine that a hearing was required prior to notification under the top classifications of re-offense\textsuperscript{156} due to both constitutional considerations and under New Jersey’s doctrine of fundamental fairness, which “serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental \textit{procedures} that tend to operate arbitrarily.”\textsuperscript{157} Therefore, the court found that a hearing was required before notification under moderate or high risk levels.\textsuperscript{158}

Another claim by the defendant involved the ex post facto argument. Constitutionally, the New Jersey Registration Act\textsuperscript{159} had notable differences from those previously examined. First, all convicted sex offenders after the effective date of the statute were required to register, but only those “whose conduct was found to be repetitive and compulsive” to register if they were convicted prior to the enactment of the statute.\textsuperscript{160} Second, there was a Community Notification Law\textsuperscript{161} that is broken into three tiers:

(1) If risk of re-offense is low, law enforcement agencies likely to encounter the person registered shall be notified;

\textsuperscript{152} Doe, 662 A.2d at 411-12.
\textsuperscript{153} Id. at 412.
\textsuperscript{154} Id.
\textsuperscript{155} Id. at 420.
\textsuperscript{156} These top classifications are Tier II (notification to certain agencies) and Tier III (public notification) which, as noted earlier, are determined by the county prosecutor under advisement of law enforcement.
\textsuperscript{157} Doe, 662 A.2d at 421 (emphasis added).
\textsuperscript{158} Id. at 440.
\textsuperscript{159} N.J. STAT. ANN. §§ 2C:7-1 to 7-5.
\textsuperscript{160} Doe, 662 A.2d at 377. See also N.J. STAT. ANN. § 2C:7-8(3)(a).
\textsuperscript{161} § 2C:7-8(c).
(2) If risk of re-offense is moderate, organizations in the community including schools, religious and youth organizations shall be notified in accordance with the Attorney General's Guidelines, in addition to the notice required by paragraph (1) of this subsection; (3) If risk of re-offense is high, the public shall be notified through means in accordance with the Attorney General's Guidelines designed to reach members of the public likely to encounter the person registered, in addition to the notice required by paragraphs (1) and (2) of this subsection.\textsuperscript{162}

All registrants, at the very least, had to register under the Tier One notification.\textsuperscript{163}

As with the previous cases, the \textit{Doe} court began with a look into the legislative intent and effect of the statutes. "[W]here the alleged punitive effect is not intended as such, but rather is an inevitable consequence of a law that is clearly regulatory, there is no punishment."\textsuperscript{164} The court stated that "[w]hat counts . . . is the purpose and design of the statutory provision, its remedial goal and purposes, and not the resulting consequential impact, the 'sting of punishment,' that may inevitably, but incidentally, flow from it."\textsuperscript{165} The court realized that registration may be burdensome, but given the purpose of the statute, it determined that the minimal inconvenience was too insignificant to constitute punishment.\textsuperscript{166}

Rather than utilizing the \textit{Mendoza} test to determine if the statutes had a regulatory or punitive impact, the New Jersey court stated that "[t]he test of punishment [is] whether the statute or sanction can ‘fairly be characterized’ as remedial or punitive . . . ."\textsuperscript{167} It expressly rejected the applicability of the \textit{Mendoza} test and held that the New Jersey Registration and Notification Acts are regulatory.\textsuperscript{168} The court stated:

the laws before us today not only have a regulatory purpose, and solely a regulatory purpose, but also have implementing provisions that are similarly solely regulatory, provisions that are not excessive but are aimed solely at achieving, and, in fact, are likely to achieve, that regulatory purpose. The fact that some deterrent punitive impact may result does not, however, transform those

\begin{itemize}
  \item \textsuperscript{162} § 2C:7-8(c).
  \item \textsuperscript{163} \textit{Doe}, 662 A.2d at 378.
  \item \textsuperscript{164} \textit{Id.} at 391.
  \item \textsuperscript{165} \textit{Id.} at 396.
  \item \textsuperscript{166} \textit{Id.} at 397.
  \item \textsuperscript{167} \textit{Id.} at 398.
  \item \textsuperscript{168} \textit{Id.} at 403.
\end{itemize}
provisions into 'punishment' if that impact is an inevitable consequence of the regulatory provision, as distinguished from an impact that results from 'excessive' provisions, provisions that do not advance the regulatory purpose.\textsuperscript{169} Legislative intent, therefore, overrides any minimal punitive effect that registration and notification may cause.

IV. PROBLEMS FACING NORTH CAROLINA'S AMY JACKSON LAW

In its current state, North Carolina's Amy Jackson law faces several problems. First, the statute provides the way for vigilantism, where people use the released information to harass the offender. Second, businesses that hire the offenders may find themselves in a financial hardship. Finally, and most importantly, the Amy Jackson law faces tough constitutional burdens.

A. Potential Vigilantism

A major problem with sex offender registration and notification laws is the potential for vigilantism by persons in the community. While the purpose of the law is to protect citizens, there exists the possibility that a sector of society might use the information to torture and terrorize registered sex offenders that relocate to a certain neighborhood. A study in Oregon recently found that fewer than 10% of their 237 registered sex offenders experienced harassment because of community notification.\textsuperscript{170} While on its face, this appears to be a low number of persons at risk, for the convicted sex offender this risk is real and frightening. As noted before, North Carolina convicts 1,100 sex offenders a year and releases 800 from penal institutions.\textsuperscript{171} If the information reported in Oregon is applied to North Carolina, that means 10% of 1,100 convicted sex offenders could expect to experience some harassment because of community notification.

Even if this seems that very few registrants are being harassed, the experience for these registrants cannot be trivialized. In many cases, the harassment goes beyond just mere verbal harassment. For example, in Seattle a man's home was burned

\textsuperscript{169} Doe, 662 A.2d at 405. See also Verniero, 119 F.3d at 1098 ("We conclude that the Tier 2 and Tier 3 dissemination of information beyond law enforcement personnel is reasonably related to the nonpunitive goals of Megan's Law.").

\textsuperscript{170} Report Reveals Little Harassment, Portland Oregonian, April 9, 1995 at 19.

\textsuperscript{171} Gunter, supra note 7 at 15.
down when he was identified as a convicted sex offender.\textsuperscript{172} This type of crime, committed by scared and angered citizens, is a possibility here in North Carolina, and law enforcement should be prepared to deal with any such harassment that occurs.

Conducive to the threat of vigilantism is that under North Carolina's statute no official means of identifying the person requesting the information is provided for; nor is the person required to state the purpose for which he is requesting the information. This leads to the outcome that while there would be a very accurate record of the sex offender, including his address and other information, for use in case of the commission of a sex crime, the same would not be true of the person requesting the information in reference to the sex offender. If a crime were to be committed against the offender, there is no guarantee that the sheriff would possess sufficient information on the requester to catch the vigilante. Thus, the same protection given to the public when registering sex offenders, accurate information in case of the commission of a crime, is not available to the sex offender himself.

Furthermore, the fact the offender's picture is public record could potentially lead to even more cases of vigilantism. For example, if a sex offender happened to reside with a family member or friend that had the same basic physical description as the offender, this person may face the risk of being physically assaulted because of a mistaken identity.

While the protection of the citizenry is a compelling state interest, this should be balanced with the unfortunate chance that registrants and possibly innocent people could be victimized because of the dissemination of this information. A solution to this problem would be to enact laws making the usage of such information for the purpose of harassing or assaulting registrants or others a felony. This would enable the Amy Jackson Law to fully protect North Carolina children and parents while providing adequate remedies to those registrants and others who would be harassed because of its enactment.

B. Financial Hardships in Community

A final problem with community notification in all states is the potential financial impact on the community. Persons with a felony conviction, whether or not they served active time in a penal institution, have a difficult time obtaining employment.

\textsuperscript{172} NBC NIGHTLY NEWS (NBC television broadcast, June 22, 1996).
Many people would agree that convicted sex offenders should not be employed by any job that requires interaction with children. However, the community notification program may keep convicted sex offenders from maintaining any employment. When the community gains access to information, this information could spread to the offender’s employer, which could possibly lead to the loss of a job, or even a decline in business. For example, a convicted sex offender in Rockland County, New York quit his job at a gas station because business was declining. The reason for the decline was that the community had been notified and had stopped patronizing the business because he was employed there.173 Thus, community reaction could lead to the sex offender not being able to retain employment and then possibly having to be supported by taxpayers. If every county in every state in the United States had a full community notification program, where would these people go and how would they survive?

C. Possible Constitutional Litigation Facing the Amy Jackson Law

Even though Megan’s Law was found to be constitutional,174 the North Carolina statute may not be as fortunate. The largest problem with the statute is the disclosure provision. In New Jersey, community notification was determined by classifications given to each offender based on his risk of re-offense or potential threat to the public.175 The North Carolina statute, however, provides that an individual can write in and request whether anyone is on the list, regardless of their risk of re-offense.176 Nor is concern given to the likely threats to the public.

The first step that a court will take will be to look at the legislative purpose:

to assist law enforcement agencies’ efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies,

and to authorize the access to necessary and relevant information about those offenders to others . . . .\textsuperscript{177}

The Legislative purpose is clearly set forth as regulatory; therefore resort to the \textit{Mendoza} analysis is unnecessary. The effect of the statutes would still be a key factor in determining the constitutionality of the statutes, because a large punitive effect can overturn the stated intent of the legislature.\textsuperscript{178}

In analyzing whether the statute's effect is punitive, it is beneficial to re-examine how other courts have treated statutes with clearly regulatory purposes. The statute in \textit{Illinois v. Adams}\textsuperscript{179} prohibited dissemination of offender information to the public.\textsuperscript{180} Regarding the effect of the statute, the court in \textit{Adams} said that no stigma attached to the offender, because the information was kept confidential on pain of criminal sanctions.\textsuperscript{181} In addition, the offender retained all constitutional rights against any unwarranted police harassment.\textsuperscript{182} The statute was found to be constitutional.

Also found constitutional was New Hampshire's statute, in \textit{New Hampshire v. Costello}.\textsuperscript{183} The statute, similar to that involved in \textit{Adams}, required the offender information to remain confidential.\textsuperscript{184} Because the intent of the legislature was clearly regulatory, and because the statute did not impose greater punishment, the statute was upheld.

New Jersey's Megan's Law also involved a statute evidencing a clear, regulatory intent. This statute placed certain restrictions on the dissemination of information.\textsuperscript{185} As for any punitive effect, the New Jersey Supreme Court stated that such effect was an inevitable consequence of the regulatory aspect of the statute, and that mere punitive effect does not automatically transform a statute into punishment.\textsuperscript{186}

\textsuperscript{177} § 14-208.5.
\textsuperscript{179} 581 N.E.2d 637 (Ill. 1991).
\textsuperscript{180} Id. at 640 (citing former Illinois law now codified at 730 Ill. Comp. Stat. 150/9 (West 1997)).
\textsuperscript{181} Id. at 641.
\textsuperscript{182} Id.
\textsuperscript{183} 643 A.2d 531 (N.H. 1994).
\textsuperscript{184} Id. at 533 (citing N.H. Rev. Stat. Ann. § 632-A:17 (1992)).
\textsuperscript{185} N.J. STAT. ANN. § 2C:7-5 (West 1994).
\textsuperscript{186} Costello, 643 A.2d at 533.
In *Washington v. Ward*, 187 the legislative intent was clearly regulatory. 188 Although the *Mendoza* factors were not mandatory due to the regulatory intent of the legislature, the court used them as a guide in examining the effect of the statute. 189 The statute authorized the release of "relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection." 190 The *Ward* court, using the *Mendoza* factors, found the Washington registration statute to be constitutional.

Another case using the *Mendoza* factors was *Arizona v. Noble*, 191 because the legislative intent, unlike the others, was not clear. In *Noble*, 192 the court placed emphasis on the importance of the statutory limitations restricting public access to information to circumstances that serve a clearly regulatory purpose. 193 The *Noble* court found the statute constitutional.

In all of the above cases, the limitation or denial of dissemination was a factor to be considered when determining if the statute constituted additional punishment outside of that which the defendant was sentenced to serve. It is important that all of these statutes placed some restrictions on the dissemination of information.

North Carolina's statute, on the other hand, states that "[a]ny person may obtain a copy of an individual's registration form . . . by submitting a written request for the information to the sheriff." 194 Granted, the public is not being notified, as in New Jersey's statute, but there does not appear to be any limitation on who can obtain a copy of the registration form. If released, the information would lose all confidentiality. Possibly, the court could interpret the "necessary" and "relevant" language in the statute's expressed purpose 195 to carry over into a requirement for access. However, the clear "any person" language indicates that there are no such requirements. 196

188. Id. at 1069.
189. Id.
190. Id. at 1070 (quoting Wash. Rev. Code § 4.24.550(1) (Supp. 1998)).
192. Id.
193. Id. at 1222.
194. N.C. GEN. STAT. § 14-208.10(b) (Supp. 1997) (emphasis added).
195. § 14-208.5.
196. § 14-208.10(b).
Should this be considered additional punishment placed upon an individual who has already served his sentence, or is it merely a regulatory precaution to protect society from those who statistically are likely to strike again? Whether the courts will view this statutory provision as too broad is unknown at this time. However, it certainly provides a strong basis for the defendant to begin his argument.

Further support for an offender's argument is that the statute provides that the offender's name, sex, address, physical description, picture, conviction date, offense, and sentence are "public record and shall be available for public inspection."\(^{197}\) Again, while matters of public record are not confidential, it is questionable as to whether placing the entire registry in the public record will obviate challenges to the statute. Other jurisdictions seem to set forth the notion that confidentiality, even if limited, serves the purpose of maintaining the intended regulatory intent of the statute.\(^{198}\)

It is important for North Carolina to carefully examine how other sex offender registration statutes have withstood constitutional attack. Equally important is to recognize the differences that currently exist in North Carolina's Amy Jackson Law and to take a good look at the challenges to its validity that are currently available.

V. Conclusion

When looking at the Amy Jackson law in comparison to the sex offender statutes in other states, several shortcomings are apparent. However, due to the expressed purpose underlying the statute, North Carolina courts will make all efforts to uphold the constitutionality of the registration statutes. On the one hand, registration can serve a beneficial purpose in North Carolina communities and aid law enforcement agencies. The compilation of registration information will aid law enforcement authorities, and dissemination will likely aid communities in protecting themselves and their children. On the other hand, however, one must not forget the threat of vigilantism. Furthermore, although the recidivism rate for sex offenders is high, there are still many who are trying to start their life over.

\(^{197}\) § 14-208.10(a).

\(^{198}\) See Section III of this comment.
It seems reasonable that a line be drawn somewhere. Possibly the statute will be interpreted so as to require the information sought to be “necessary and relevant.” If so, that limitation will probably preserve the constitutionality of the statute. However, if anyone may request information about an individual and freely disseminate that to others, the statute begins to take the face of punishment.

Because of the statute’s current form, North Carolina should expect tough legal challenges to the validity of its Amy Jackson Law. Using jurisprudence from other states as a guide, a court might just find the North Carolina law unconstitutional.

Nikki Gfellers
Kimberly Ann Lewis