

2003

Jacob's Legacy: Sex Offender Registration and Community Notification Laws, Practice and Procedure in Minnesota

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Recommended Citation

Wayne A. Logan, *Jacob's Legacy: Sex Offender Registration and Community Notification Laws, Practice and Procedure in Minnesota*, 29 *WM. MITCHELL L. REV.* 1287 (2003),
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**JACOB'S LEGACY: SEX OFFENDER REGISTRATION AND
COMMUNITY NOTIFICATION LAWS, PRACTICE, AND
PROCEDURE IN MINNESOTA**

Wayne A. Logan[†]

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I. INTRODUCTION

Triggered in significant part by the October, 1989, abduction of eleven-year-old Jacob Wetterling in rural St. Joseph, Minnesota, Americans during the 1990s were beset by a “moral panic” over convicted sex offenders living in their midst.¹ To be sure, this

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1. See PHILLIP JENKINS, MORAL PANIC: CHANGING CONCEPTS OF THE CHILD MOLESTER IN MODERN AMERICA 1-19, 196-206 (1998). The phrase, if not the concept, was introduced by sociologist Stanley Cohen in describing the acute social anxiety inspired by British youths in the 1960s. See STANLEY COHEN, *FOLK*

panic in itself was not unprecedented in American history. At regular intervals throughout the twentieth century, heinous sexual victimizations, of women and children in particular, preoccupied the nation, often after receiving intense media attention.² The 1990s panic, however, was unique in its force and scope, taking tangible form in what has been aptly called a “‘legislative’ panic.”³ As a result of converging social and political forces, including the increasingly influential victims’ rights, child welfare, and women’s movements, augmented by media attention of unprecedented influence,⁴ legislatures nationwide fixated on “sexual predators.”⁵

These legislative efforts included laws designed to extend the government’s physical control over sex offenders, both by means of significantly enhanced prison terms,⁶ and the resurrection of dormant provisions allowing involuntary civil commitment.⁷ These

DEVILS AND MORAL PANICS: THE CREATION OF THE MODS AND ROCKERS (1972).

2. See JENKINS, *supra* note 1, at 1-19; see also Edwin H. Sutherland, *The Diffusion of Sex Psychopath Laws*, 56 AM. J. SOC. 142, 144 (1950) (noting potent interactive effect of anxiety over sex crimes and intensified media attention that “produces a widespread uneasiness which, given a few local incidents, readily bursts into hysteria”).

3. Deborah W. Denno, *Life Before the Modern Sex Offender Statutes*, 92 NW. U. L. REV. 1317, 1320 (1998).

4. See Jonathan Simon, *Megan’s Law: Crime and Democracy in Late Modern America*, 25 LAW & SOC. INQUIRY 1111, 1135 (2000) (noting same).

5. As Phillip Jenkins notes, prior to the early 1990s the term “predator” appeared mainly in news accounts of sharp corporate dealings and in the work of sensationalist mystery writers. See JENKINS, *supra* note 1, at 193-94. In the 1990s, for the first time, the phrase acquired its now-accepted sexual and violent connotation, becoming a mainstay in political rhetoric and popular media descriptions of sexual offending. *Id.* at 194-96.

6. See Anne Wall, *Sexual Offenses in Minnesota: Recent Changes to Sentencing and Post-Sentencing Provisions*, 10 FED. SENTENCING REP. 79 (1997) (discussing major statutory enhancements added in Minnesota). See also Nora V. Demleitner, *First Peoples, First Principles: The Sentencing Commission’s Obligation to Reject False Images of Criminal Offenders*, 87 IOWA L. REV. 563, 571-74 (2002) (discussing national increases in sex offender penalties). Cf. Tatjana Hornle, *Penal Law and Sexuality: Recent Reforms in German Criminal Law*, 3 BUFF. CRIM. L. REV. 639, 666-71 (2000) (discussing penal increases in Germany in response to spate of child abductions and killings). In Minnesota, between 1980-1995 the number of sex offenders in State prisons increased 230%. *Community Notification*, SESS. WKLY, Vol. 12, no. 13, at 7 (Minn. H.R. 1995). One out of every five Minnesota prisoners was incarcerated for a sex offense. *Id.*

7. See generally Samuel J. Brackel & James L. Cavanaugh, Jr., *Of Psychopaths and Pendulums: Legal and Psychiatric Treatment of Sex Offenders in the United States*, 30 N.M. L. REV. 69 (2000) (discussing historical genesis, gradual desuetude, and eventual return of “sexually violent predator” commitment laws); Eric S. Janus, *Sexual Predators*, in ENCYCLOPEDIA OF CRIME AND JUSTICE 1475 (Joshua Dressler ed., 2002) (same).

institution-based strategies, however, failed to address safety concerns presented by offenders at large in communities. It was out of this gap-filling need that sex offender registration and community notification provisions arose. Registration seeks to enhance the capacity of law enforcement to monitor the whereabouts of released sex offenders and facilitate their re-arrest should they commit a subsequent sex offense. Notification seeks to increase awareness of registrants among community members so that they can take self-protective steps and help in the monitoring of registrants. Today, all U.S. jurisdictions have registration and notification laws in effect, prompted by the federal government's threat in the *Jacob Wetterling Act* (1994)⁸ and *Megan's Law* (1996)⁹ to withhold funding if they failed to enact laws. Collectively, the laws exercise control over an excess of four hundred thousand individuals nationwide.¹⁰

As it was in the vanguard of states to experiment with "sexual psychopath" involuntary commitment laws, in the 1930s,¹¹ Minnesota was a forerunner with respect to sex offender registration and community notification. While California is credited with instituting the nation's first registry dedicated exclusively to sex offenders, in 1947,¹² Minnesota was among the

8. See The Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act, Pub. L. No. 103-322, 108 Stat. 1796, 2038 (1994) (codified as amended at 42 U.S.C. § 14071(g)(2)(A)).

9. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending 42 U.S.C. § 14071(d) (1994)). A third federal law, named after a sexual assault victim later killed in a plane crash, required lifetime registration for certain offenders and created a federal database intended to combine and make accessible registration data from across the nation. See The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093 (codified as amended at 42 U.S.C. § 14072 (Supp. IV 1998)).

10. See Klaas Kids Foundation, <http://www.klaaskids.org/pg-legmeg.htm> (last visited Nov. 7, 2002) (providing a state-by-state summary of registries).

11. See Brackel & Cavanaugh, *supra* note 7, at 71 (noting that while Minnesota is often identified as the first state to enact a sexual psychopath commitment law, Michigan actually was the first to do so (in 1937), followed shortly by Minnesota and a handful of other states). For discussion of the historical origins and evolution of Minnesota's sexual psychopath commitment law in particular see Eric S. Janus & Nancy H. Walbek, *Sex Offender Commitments in Minnesota: A Descriptive Study of Second Generation Commitments*, 18 BEHAV. SCI. & L. 343 (2000).

12. See Elizabeth A. Pearson, *Status and Latest Developments in Sex Offender Registration and Notification Laws*, in NATIONAL CONFERENCE ON SEX OFFENDER REGISTRIES 45 (U.S. Bureau of Justice Statistics ed., 1998). Criminal registration laws more generally trace their U.S. origins back to at least the 1930s. See Note, *Criminal Registration Ordinances: Police Control Over Potential Recidivists*, 103 U. PA. L. REV. 60, 61-64 (1954); Note, *Criminal Registration Law*, 27 J. CRIM. L. &

first states to adopt a new-era registration law in 1991.¹³ In 1996, Minnesota joined the then-handful of U.S. jurisdictions with community notification laws, following Washington's initiative in 1990.¹⁴ Today, over 10,000 Minnesotans are subject to registration, and over 900 are potentially subject to some form of community notification.¹⁵

This symposium issue of the *William Mitchell Law Review* provides a timely opportunity to reflect upon Minnesota's ongoing experiment with registration and community notification, some ten years after registration was first implemented. Home to the Wetterling family and the influential Jacob Wetterling Foundation, credited with playing a major role in bringing the problem of child victimization to the nation's attention, Minnesota's experience with registration and notification is at once unique and quite similar to that of other jurisdictions. The following pages provide an overview of the development of Minnesota's laws, examine how Minnesota's laws compare to those of other jurisdictions, and offer some insights into emerging research needs and likely developments with regard to the laws in the years to come.

II. THE GENESIS AND EVOLUTION OF SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN MINNESOTA

A. *The Early Years (1991-1994)*

On Sunday, October 22, 1989, eleven-year-old Jacob Wetterling was returning home on his bicycle from a convenience store with his younger brother and a friend.¹⁶ When the boys were about half-way home a man carrying a pistol, and wearing a mask, dark clothing, and black boots, emerged from a driveway and told

CRIMINOLOGY 295 (1936-1937).

13. See *infra* Part II.A. See also CENTER FOR SEX OFFENDER MANAGEMENT, *Sex Offender Registration: Policy Overview and Comprehensive Practices* 1 (Oct. 1999) (observing that the "vast majority of states have enacted registration laws within the last 15 years. Since 1991, 38 of the 50 states (and the District of Columbia) have passed laws."). In 1996, Massachusetts became the final U.S. jurisdiction to enact a registration law. See Doris Sue Wong, *Weld Signs Bill Creating Sex-Offender Registry—Those Convicted Have to Register*, BOSTON GLOBE, Aug. 15, 1996, at B2.

14. See Roxanne Lieb et al., *Sexual Predators and Social Policy*, 23 CRIME & JUST. 43, 55-56 (1998).

15. See *infra* notes 265-69 and accompanying text.

16. Pat Doyle, *St. Joseph Boy, 11, Kidnapped at Gunpoint*, MINNEAPOLIS STAR TRIB., Oct. 24, 1989, at 1A.

them to get off their bicycles or he would shoot them.¹⁷ The boys were then ordered to lie down in a ditch, asked their ages, and, with the exception of Jacob, instructed to run into the woods as fast as they could.¹⁸ After several minutes, Jacob's companions mustered the courage to look back at the abduction scene and saw that Jacob was gone.¹⁹

The abduction inspired a massive search in the Minnesota countryside.²⁰ Volunteers from surrounding areas, as well as students from two nearby colleges, joined the Stearns County Sheriff's Department and the Federal Bureau of Investigation in the effort.²¹ Soon law enforcement was inundated with offers of help.²²

To date, Jacob Wetterling has not been found, and his abductor has not been held to account.²³ The tragedy, however, served as a potent catalyst for change. As a result of highly effective lobbying efforts of the Jacob Wetterling Foundation (created in February 1990), and emotional testimony from Jacob's mother, Patty, both chambers of the Minnesota Legislature entertained sex offender registration bills in the 1991.²⁴ The House version, sponsored by Representative Kathleen Vellenga, DFL-St. Paul, required that convicted kidnappers and sex offenders, whose victims were minors, furnish current addresses to their community corrections agents upon release from prison, and maintain the accuracy of such information for ten years.²⁵ Vellenga's bill was drafted in response to recommendations made by the Task Force on Missing Children, created in July 1990, and provided that failure to comply with registration requirements would be a misdemeanor, punishable by a maximum of ninety days in jail and a \$700 fine.²⁶ Vellenga's bill also provided that registration would be discretionary, at the time of sentencing, based on an assessment of whether "there is a significant risk that the offender may" re-

17. *Id.*

18. *Id.*

19. *Id.*

20. Steve Berg, *Jacob's Mom Backs Proposal in Congress to Keep Track of Molesters*, MINNEAPOLIS STAR TRIB., Aug. 1, 1991, at 3B.

21. *See* Doyle *supra* note 16, at 1A.

22. *Id.*

23. *See* Berg, *supra* note 20.

24. *See* Associated Press, *Bill Requiring Child Molesters to Register "A Really Good Start," Jacob's Mother Says*, ST. PAUL PIONEER PRESS, Aug. 1, 1991, at 3B.

25. JOURNAL OF THE HOUSE, 77th Leg. Sess., 1685-86 (Minn. Apr. 15, 1991).

26. *Id.* at 1686.

offend.²⁷ Critics of the bill contended that registration should be decided at the time of community release because a determination made at sentencing “rejects the possibility of rehabilitation.”²⁸

Senator Joe Bertram, Sr., DFL-Paynesville, advanced a counterpart registration bill in the Senate.²⁹ Unlike Vellenga’s bill, Bertram’s proposal made ten-year registration mandatory for any person convicted of enumerated child-related offenses, including criminal sexual conduct, kidnapping, and false imprisonment, as well as solicitation of a child for prostitution and child pornography.³⁰ Failure to register under the Senate proposal would be a gross misdemeanor, not a misdemeanor, and could result in an additional five-year registration period.³¹ Furthermore, Bertram’s bill encompassed both future eligible offenders and those released within the past ten years,³² and proposed appropriation of \$250,000 to the BCA to maintain the registration system.³³ Finally, Bertram’s bill provided that only law enforcement officials would have access to registrant information because, as Bertram stated: “There’s a real concern for repeat offenders, . . . [b]ut it’s not going to affect a person’s ability to get a job.”³⁴ Responding to critics of mandatory registration, Bertram stated: “We’re not doing this as an infringement on their rights; we’re doing this as a protection for the children.”³⁵

Senator Allan Spear, DFL-Minneapolis and Chair of the Senate Judiciary Committee, proposed that registration apply to those sentenced after August 1, 1991, rather than those released from prison after that date.³⁶ Spear also opposed mandatory registration and endorsed the House approach of permitting sentencing judges to decide which offenders should register based upon assessed likelihood of recidivism.³⁷ Senator Thomas Neuville, IR-Northfield, expressed concern that registration was contrary to the idea that

27. *Id.* at 1685.

28. *Id.*

29. JOURNAL OF THE SENATE, 77th Leg. Sess., 1586-87 (Minn. Apr. 22, 1991).

30. *Id.* at 1587.

31. *Id.*

32. *Id.*

33. Bill McAllister, *Senate Approves Sex Offenders Bill*, ST. CLOUD TIMES, May 14, 1991, at 7C.

34. Jim Ragsdale, *Panel Oks Molester Registration Bill*, ST. PAUL PIONEER PRESS, Apr. 18, 1991, at 4D.

35. McAllister, *supra* note 33, at 7C.

36. *Id.*

37. *Id.*

released offenders had paid their debt to society, and asserted that registration “tends to deprive people of their freedom of movement and freedom of privacy.”³⁸ Neuville argued that lawmakers could avoid potential constitutional challenges by requiring that individuals remain under extended community supervision—rather than registering for the ten-year period.³⁹ For his part, Governor Arne Carlson also expressed concern over the constitutionality of registration.⁴⁰

Beyond legal considerations, critics contended that registration would prove impractical due to the difficulty of maintaining accurate information on registrants.⁴¹ Concern also existed over whether registration would detract from the educative efforts of parents.⁴² In the words of one editorial writer, “in all likelihood laws such as tracking addresses probably will do little to capture demented individuals including the one who kidnapped Jacob Wetterling. The first line of prevention still must rest with educating youths to be wary of strangers and unfamiliar situations.”⁴³

Despite criticism, the “Predatory Offender Registration Act” ultimately enjoyed near-unanimous support in the House and Senate,⁴⁴ and received Governor Carlson’s signature on June 1, 1991.⁴⁵ With the law’s passage, Minnesota became the fifteenth state with a registration requirement for sex offenders,⁴⁶ well ahead of efforts by Congress starting in 1994 to pressure states to enact registration laws under threat of losing federal funds.⁴⁷

Under the Act, any person released from prison after August 1, 1991 was subject to registration for a period of ten years following release,⁴⁸ if they had been convicted of any of the following:

38. Associated Press, *Bill Requiring Child Molesters to Register “a Really Good Start,” Jacob’s Mother Says*, ST. PAUL PIONEER PRESS, Aug. 1, 1991, at 3B.

39. *Id.*

40. *Fortify Molester Registration Law*, ST. CLOUD TIMES, Mar. 8, 1992, at 4D.

41. *Kidnapping Bill Impractical*, RED WING REPUBLICAN EAGLE, Mar. 18, 1991, at 2B.

42. *Id.*

43. *Id.*

44. JOURNAL OF THE HOUSE, 77th Leg. Sess., 6910 (Minn. May 20, 1991) (noting 130-1 margin); JOURNAL OF THE SENATE, 77th Leg. Sess., 4396 (Minn. May 14, 1991) (noting 63-0 margin).

45. JOURNAL OF THE SENATE, 77th Leg. Sess., 5550 (Minn. May 14, 1991).

46. Associated Press, *Bill Requiring Child Molesters to Register “A Really Good Start,” Jacob’s Mother Says*, ST. PAUL PIONEER PRESS DISPATCH, Aug. 1, 1991, at 3B.

47. *See supra* notes 8-9 and accompanying text.

48. MINN. STAT. § 243.166 subd. 6 (Supp. 1991).

kidnapping a minor; criminal sexual conduct toward a minor; solicitation of a minor to engage in sexual conduct; use of minor in a sexual performance; or solicitation of a minor to practice prostitution.⁴⁹ The law required that the commissioner of corrections inform statutorily eligible persons of the duty to register before release from confinement, and obtain their expected post-release addresses, which would then be forwarded to the BCA and law enforcement where registrants were to reside.⁵⁰ Eligible offenders already in the community had fourteen days to register,⁵¹ and any changes in residence must be reported within ten days.⁵² Violators of the registration requirement risked being charged with a misdemeanor,⁵³ and an additional five years of registration.⁵⁴

Preoccupied with major budget deficits, legislators did not address registration during the 1992 session, despite emerging concerns over its application.⁵⁵ But their attention was drawn again in 1993, when Senator Bertram spearheaded reform efforts aimed primarily at expanding the array of criminal behaviors sufficient to trigger registration.⁵⁶ On May 20, 1993, Governor Carlson signed the omnibus crime bill, encompassing many provisions of Bertram's bill. The new law expanded registration beyond persons *convicted* of enumerated offenses, requiring registration of persons

49. *Id.* at subd. 1(1).

50. *Id.* at subd. 2.

51. *Id.* at subd. 3(a). Under the law, registration information consisted of "a statement in writing signed by the person, giving information required by the bureau of criminal apprehension, and a fingerprint card and photograph of the person if these have not already been obtained in connection with the offense that triggers registration." *Id.* at subd. 4.

52. *Id.* at subd. 3(b).

53. *Id.* at subd. 5.

54. *Id.* at subd. 6(b).

55. See, e.g., *Fortify Molester Registration Law*, ST. CLOUD TIMES, Mar. 8, 1992, at 4D (expressing concern over the fact that registration violations were only a misdemeanor and that the law allowed two-week delay in required registration); Donna Halvorsen, *Crime-Fighting Focus Seems Headed Toward Protecting Citizens*, MINNEAPOLIS STAR TRIB., Dec. 30, 1991, at 1A (noting concern by Attorney General Skip Humphrey that victimizers of adults were not subject to registration). Eventually, the 1992 Legislature did attempt to extend registration to those whose crimes were committed against adults. SESS. WKLY, Vol. 9, no. 7 at 13 (Minn. H.R. 1992). However, by the time the House of Representatives passed its \$12.5 million anti-crime bill, the provision had been dropped from the package. SESS. WKLY, Vol. 9, no. 11 at 4 (Minn. H.R. 1992).

56. Associated Press, *Crime Prevention Committee Passes Expanded Sex-Offender Registration Bill*, MINNEAPOLIS STAR TRIB., Apr. 13, 1993, at 2B.

“*charged* with a felony violation of or an attempt to violate” an enumerated crime, “and convicted of that offense *or of another offense arising out of the same set of circumstances*.”⁵⁷ The amended law also extended registration to persons convicted of sexual offenses with adult victims, including murders committed in the course of criminal sexual conduct,⁵⁸ and persons judicially designated as patterned or predatory sex offenders.⁵⁹ In addition, the law made it the responsibility of the sentencing court, not the commissioner of corrections, to inform individuals of their duty to register, and ensure that those subject to the law have read and signed a form stating that the requirement has been explained.⁶⁰ Finally, the 1993 legislation required registration of offenders entering Minnesota from other states pursuant to interstate compact, in the event they satisfied Minnesota registration requirements.⁶¹

In 1994, the Legislature revisited the scope of eligibility criteria for registration. This time it expanded registration to juveniles “petitioned for” or “adjudicated delinquent” of enumerated crimes.⁶² All forms of criminal sexual conduct were also made subject to registration.⁶³ Furthermore, the Legislature increased the penalty for failing to register to a gross misdemeanor, and inserted a provision making it a violation to “intentionally provide” false registration information to authorities.⁶⁴

Prompted by the imminent release from prison of recidivist sex offender Dennis Linehan, the Legislature gathered for a special session in 1994 and further tinkered with registration.⁶⁵ Section 243.166 subd. 3(b) was amended to require that registrants inform authorities of any intended change of residence at least five days before such a move, in lieu of prior law that afforded ten days and possibly permitted notice to be provided after the address change.⁶⁶

57. MINN. STAT. § 243.166 subd. 1(1) (Supp. 1993) (emphasis added).

58. *Id.* at subd. 1(1)(i).

59. *Id.* at subd. 1(2).

60. *Id.* at subd. 2.

61. *Id.* at subd. 9.

62. MINN. STAT. § 243.166 subd. 1(1) (1994).

63. *Id.*

64. *Id.* at subd. 5.

65. Jim Ragsdale, *New Law Would Let Neighbors Know if Molester Moves in But Some Are Concerned About Bill's Constitutionality*, ST. PAUL PIONEER PRESS, Jan. 9, 1995, at 1A.

66. MINN. STAT. § 243.166 subd. 3(b) (1995).

*B. The Maturation of Registration and Inception of Notification
(1995-2000)*

While registration came to enjoy considerable popularity, concerns soon arose over the lack of information on registrants being provided to community members. This concern was translated into action in the wake of the 1994 abduction, sexual assault and murder in New Jersey of seven-year-old Megan Kanka by her adult neighbor, a twice-convicted child sex offender. In the wake of the tragedy states quickly enacted community notification laws, using as their template a law enacted by Washington State in 1990.⁶⁷

In Minnesota, in 1995, Representative Dave Bishop, IR-Rochester, took the lead on community notification.⁶⁸ Modeled after Washington's law, Bishop's community notification bill required local law enforcement to provide community members with registrants' identifying information, including home addresses.⁶⁹ Police would have the discretion to decide both who in the community would receive registrants' information and the geographic scope of notification,⁷⁰ permitting disclosure as deemed "necessary to protect the public and to counteract the offender's dangerousness."⁷¹ Like Washington's law, Bishop's House bill provided for three different levels of community notification, based on perceived dangerousness: level I—targeting offenders of least risk to the community, requiring that registrants' information be provided only to local law enforcement; level II—targeting offenders of moderate risk to re-offend, triggering release of registrants' information to schools and other entities working with vulnerable populations; and level III—targeting high-risk offenders, calling for dissemination of registrants' information to community members by means of handbills, community meetings, and newspaper notices.⁷²

67. See generally Alan R. Kabat, Comment, *Scarlet Letter Sex Offender Databases and Community Notification: Sacrificing Personal Privacy for a Symbol's Sake*, 35 AM. CRIM. L. REV. 333, 334-35 (1998) (discussing proliferation of laws in the wake of the Kanka victimization based on the Washington model).

68. Patricia Lopez Baden, *Proposal Would Require that Sex Offenders Be Identified to Neighbors*, MINNEAPOLIS STAR TRIB., Feb. 13, 1995, at 1A.

69. *Id.*

70. Jim Ragsdale, *Bill Would Let Police Notify Neighbors of Sex Offenders*, ST. PAUL PIONEER PRESS, Jan. 27, 1995, at 4C.

71. JOURNAL OF THE HOUSE, 79th Leg. Sess., 1022 (Minn. Mar. 29, 1995).

72. *Id.*

Risk level determinations would be made thirty days prior to an offender's release into the community, by a committee consisting of the commissioner of corrections, the head of the facility where the offender was confined, the chief law enforcement official where the offender proposed to reside, a sex offender treatment counselor, and the offender's parole officer.⁷³ The bill also afforded immunity to governmental actors from any potential criminal and civil liability associated with the disclosure, or non-disclosure, of registrants' information.⁷⁴

Legislative debates of the time highlighted the motivating reasons for community notification. Representative Bishop's rationale was straight forward: "We can't lock 'em up forever, and treatment doesn't always work. It seems to me the least we can do is let folks know when we turn them loose."⁷⁵ Bishop believed that "people have to have a comfort level in their community . . . otherwise, everybody's going to go and buy guns."⁷⁶ Citing a North Dakota case in which a repeat sex offender was suspected in the disappearance of his neighbor, an eleven-year-old girl, Bishop stated: "This is exactly what North Dakota should have had to save the life of Jeanna North."⁷⁷ Deputy Commissioner of Corrections Jim Bruton referred to community notification as "an invaluable tool."⁷⁸

Bishop's bill also received support from Representative Wes Skoglund, DFL-Minneapolis, Chair of the House Judiciary Committee and head of Minnesota's Task Force on Sexual Predators.⁷⁹ Skoglund believed that "[a]s long as the purpose is public safety – keeping people from becoming victimized – we have a right to do this. If the goal is to harass people forever, I don't think it would be constitutional."⁸⁰ Skoglund asked "Why shouldn't other people have that information? . . . There comes a time when the public should know."⁸¹

Testimony from advocates provided added support for

73. *Id.* at 1021-22.

74. *Id.* at 1023.

75. Baden, *supra* note 68, at 1A.

76. Jim Ragsdale, *New Law Would Let Neighbors Know if Molester Moves in But Some Are Concerned About Bill's Constitutionality*, ST. PAUL PIONEER PRESS, Jan. 9, 1995, at 1A.

77. Ragsdale, *supra* note 70, at 4C.

78. Baden, *supra* note 68, at 1A.

79. Ragsdale, *supra* note 76, at 1A.

80. *Id.*

81. *Id.*

notification. Patty Wetterling told the House Judiciary Committee that community notification was needed to protect children from “unknown dangers in the community.”⁸² Clark Hussey, father of a fifteen-year-old boy abducted and killed by a neighbor in 1993, also urged adoption of notification.⁸³ Eric Johnson, Attorney General Humphrey’s executive assistant, stated that Humphrey favored community notification because “it’s an issue that is sweeping the country.”⁸⁴

St. Paul Police Sergeant Cregg Brackman, of the homicide and sex crimes unit, emphasized that community notification would deprive sex offenders of their favored modus operandi: “Their stock in trade is trust. They spend a lot of time getting people to trust them, getting kids to trust them. They watch kids over long periods of time, so they often go after kids in the neighborhood.”⁸⁵ Brackman warned, however, that notification could lull people into a false sense of security. “People need to bear in mind that the guy on the poster isn’t the only danger out there. Most of them we don’t even know about.”⁸⁶ Lucy Berliner, director of the Harborview Sexual Assault Center in Seattle, and an active participant in the promulgation of Washington’s community notification law, stated: “Thoughtfully carried out and sparingly applied, notification can bring a community together to look out for each other and each others’ children instead of relying on government, which can’t possibly protect you from released offenders.”⁸⁷

Despite its warm reception in the House, community notification fared poorly in the Senate.⁸⁸ Senator Neville, a member of the Task Force on Sexual Predators, acknowledged the difficulty of crafting a bill that would avoid imposing additional punishment on already incarcerated persons in violation of double jeopardy and *ex post facto* prohibitions.⁸⁹ Focusing in particular on the stigmatizing effects of notification, Neville expressed concern

82. Jim Ragsdale, *House Panel Hears Sex Offender Bill, but Senate Cool to Notification Plan*, ST. PAUL PIONEER PRESS, Feb. 28, 1995, at 4B.

83. *Id.*

84. Ragsdale, *supra* note 76, at 1A.

85. Baden, *supra* note 68, at 1A.

86. *Id.*

87. *Id.*

88. Jim Ragsdale, *House Panel Hears Sex Offender Bill, but Senate Cool to Notification Plan*, ST. PAUL PIONEER PRESS, Feb. 28, 1995, at 4B.

89. Ragsdale, *supra* note 76, at 1A.

that the law was punitive: "What normal person would want to have a released sex offender living in their apartment house or their neighborhood?"⁹⁰

Other senators' concerns were of a more practical nature. For instance, they worried that the likely unpleasant consequences of notification would prompt offenders to migrate from community to community, thereby undermining the capacity of law enforcement to track them.⁹¹ Vigilantism was also of particular concern. Citing a number of instances of harassment in New Jersey, Senator Spear, Chair of the Senate Crime Prevention Committee, stated that he was not prepared to support notification,⁹² and warned of a possible "circus atmosphere" that would "create an invitation to vigilante justice."⁹³ Spear was also concerned that registrants, when harassed in suburbs and small towns, would flock to and concentrate in the inner city, such as Spear's district, in order to seek greater anonymity.⁹⁴ Spear further worried that notification would interfere with state-funded sex offender treatment programs.⁹⁵ Spear stated that he was:

afraid we're going to create a situation where on one hand, we put money into sexual offense treatment programs, with the assumption that some can be successfully treated. And then we establish a situation where a sex offender who is successfully treated is going to get out of prison and not be able to lead a normal life.⁹⁶

Ultimately, community notification failed to win approval in the Senate.⁹⁷ Legislators did, however, agree to create a Legislative Work Group on Community Notification, comprised of several legislators and representatives from law enforcement, the Attorney General's Office, the State Public Defender, victims' services, and a county prosecutor.⁹⁸ The Work Group solicited input from the Department of Corrections, the Wetterling Foundation, and representatives from probation services, policing, and the

90. *Id.*

91. *Id.*

92. Ragsdale, *supra* note 88, at 4B.

93. Ragsdale, *supra* note 76, at 1A.

94. Ragsdale, *supra* note 88, at 4B.

95. *Id.*

96. Ragsdale, *supra* note 76, at 1A.

97. Patricia Lopez Baden, *House OKs Crime Bill Without Death Penalty*, MINNEAPOLIS STAR TRIB., May 3, 1995, at 2B.

98. See <http://www.doc.state.mn.us/level3/history.htm> (last visited Sept. 24, 2002).

community at large.⁹⁹ There also arose a grassroots effort dedicated to the publicization of registrants' information. *Preventive Measures*, a newsletter containing the names, pictures, and profiles of Minnesotans convicted of sex crimes, was circulated in April 1995.¹⁰⁰ The first issue featured the names and pictures of thirty-five men and women convicted of felony sex crimes in Hennepin County; the second issue was scheduled for May 1995 and was to depict every individual convicted of a felony sex crime in the State during the previous month.¹⁰¹ The publisher of the newsletter, Keith Hammond, made clear his intention to eventually disseminate pictures of all felony sex offenders scheduled to be released from Minnesota prisons on an ongoing basis.¹⁰²

Despite the failure of notification, the 1995 session did manage to make some changes to registration. Pursuant to a recommendation from the Task Force on Sexual Predators,¹⁰³ the legislation required that those convicted of sex offenses in other states register in Minnesota if they were to remain in the State for thirty days or longer, upon proof that the behavior would come within the scope of registration-eligible offenses specified by Minnesota law.¹⁰⁴ The Task Force's proposal that a second conviction for failure to register would be deemed a felony was also enacted into law.¹⁰⁵

99. *Id.*

100. Wayne Wangstad, *Convicted Sex Offenders Find Notoriety in Newsletter; Publication Reveals Names and Photos*, ST. PAUL PIONEER PRESS, May 7, 1995, at 1B.

101. *Id.*

102. *Id.* Hammond was inspired to publish *Preventive Measures* in 1991 when one of his relatives was attacked in a University of Minnesota parking ramp. *Id.* Frustrated that the police were unable to apprehend the attackers, Hammond began contacting people, which led to the formation of a foundation dedicated to publishing a serial book on rape and domestic violence prevention for women. *Id.* The book was originally intended to be an annual registry of the names and pictures of every felony sexual offender in Minnesota; when that took too much time, Hammond got the idea for a newsletter. *Id.* Hammond stated that the goal of the newsletter was to "get the word out . . . I could read names all day long, but if you don't put faces to those names it is just another John Doe." *Id.* According to Hammond: "[m]ore of us want to know this information. It's time for us to take our rights and utilize them to our best advantage. Offenders do." Lisa Grace Lednicer, *Magazine Stirs Up Debate Over Sex Offenders' Rights After the Sentences End, Are Their Neighbors Entitled to Know of Their Crimes?*, ST. PAUL PIONEER PRESS, Dec. 17, 1995, at 1A. An early editorial in *Preventive Measures* inquired: "Why should we be forced to live in fear simply because a judge says that now this offender is out of prison. We should trust that he won't offend again?" *Id.*

103. *Community Notification*, SESS. WKLY, Vol. 12, no. 9, 6 (Minn. H.R. 1995).

104. MINN. STAT. § 243.166, subd. 1(3)(b)(1) (1995).

105. *Id.* at subd. 5.

In 1996, notification advocates renewed their efforts. Senator Randy Kelly, DFL-St. Paul, led the charge in the Senate declaring that “[i]t’s an issue whose time has come. The public is demanding it.”¹⁰⁶ During the first meeting of the Senate Crime Prevention Committee, Kelly stated that his community notification bill “was not designed to be punitive. It is a regulatory bill.”¹⁰⁷

Kelly’s proposal differed from Bishop’s unsuccessful 1995 community notification bill insofar as it proposed that notification discretion reside with an expert panel, not local law enforcement.¹⁰⁸ However, like Bishop’s 1995 bill, Kelly proposed that notification by local law enforcement, and media outlets, would occur only with respect to registrants thought to pose the greatest risk, based on a three-tier risk assessment scale applied by the expert panel to all registrants.¹⁰⁹

Kelly stressed that his bill, like Washington’s law, placed emphasis on educating community members on the responsible use of the information provided.¹¹⁰ Kelly commented: “We’ve had a chance to talk to all the stakeholders this time and benefit from what’s been happening in other states.”¹¹¹ Testifying before the Senate Crime Prevention Committee, Detective Bob Schilling of the Seattle Police Department stressed the importance of educating the community about notification because it will ease community members’ anxieties: “We’ve had good community response to the [Washington] program. Communities are real concerned when they first learn that this person is going to live in their neighborhood, but once educated, they have a better understanding and tend to relax some.”¹¹² Schilling also noted that a well executed notification plan helps to ease registrants’ anxiety: “These offenders know that we’re playing fair, that we will not tolerate any retribution, intimidation or harassment displayed

106. Conrad deFiebre, *Support Builds for Bill to Notify Communities About Sex Offenders*, MINNEAPOLIS STAR TRIB., Feb. 15, 1996, at 1B.

107. SENATE CRIME PREVENTION COMMITTEE, BRIEFLY (Minn. Jan. 19, 1996) (Statement of Sen. Randy Kelly). Also available at <http://www.senate.leg.state.mn.us/briefly/1996/bri119.txt> (last visited Feb. 25, 2003).

108. JOURNAL OF THE SENATE, 79th Leg. Sess., 5310 (Minn. Jan. 18, 1996).

109. *Id.*

110. Associated Press, *Revised Bill Hones Rules on Sex-Offender Notification*, MINNEAPOLIS STAR TRIB., Jan. 18, 1996, at 2B.

111. *Id.*

112. SENATE CRIME PREVENTION COMMITTEE, BRIEFLY (Minn. Jan. 19, 1996) (Statement of Detective Schilling).

against them.”¹¹³

Again, Clark Hussey and Patty Wetterling testified in support of notification.¹¹⁴ Hussey, emphasizing the importance of community education, said that “[u]ntil communities understand the complexity of these issues, we won’t be able to deal effectively with these individuals.”¹¹⁵ Wetterling asserted that community notification “takes away the veil of secrecy, which we know is a very powerful tool for the sexual offender.”¹¹⁶ Senator Spear, Chairman of the Crime Prevention Committee and critic of 1995 community notification effort, said that he would now support notification because it targeted only the most serious sex offenders and afforded less discretion to local law enforcement personnel.¹¹⁷

Kelly’s bill, however, was not lacking in critics. Washington County Attorney Richard Arney felt that despite the bill’s positive objective “there’s got to be a simpler way, a better and more cost effective way, to accomplish this.”¹¹⁸ Senator Gene Merriam, DFL-Coon Rapids, stated that the bill “seems to regulate somebody’s life on previous misconduct and speculation of future misconduct.”¹¹⁹

Reprising his 1995 leadership role in the House, Representative Bishop, along with co-sponsor Representative Skoglund, advanced what they considered a more restrained bill.¹²⁰ In Bishop’s words: “We know we have to assimilate sex offenders back into society. We don’t want to interfere with their rehabilitation. But this is also a major element of community policing, getting people involved in protecting themselves and their families.”¹²¹

Similar in several respects to Bishop’s prior proposal, the bill created three categories of registrants: low, moderate, and high risk.¹²² A committee would be assigned to assess each offender’s

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Jim Ragsdale, *Sex-Offender Release Notice Gains in Legislature; Sponsors Say Bill Preserves Convicts’ Rights*, ST. PAUL PIONEER PRESS, Feb. 15, 1996, at 1D.

118. SENATE CRIME PREVENTION COMMITTEE, BRIEFLY (Minn. Jan. 26, 1996) (Statement of Richard Arney).

119. *Id.*

120. JOURNAL OF THE HOUSE, 79th Leg. Sess., 6185 (Minn. Jan. 16, 1996); *Community Notification*, SESS. WKLY, Volume 13, no. 5 (Minn. H.R. 1996).

121. Conrad deFiebre, *Support Builds for Bill to Notify Communities About Sex Offenders*, MINNEAPOLIS STAR TRIB., Feb. 15, 1996, at 1B.

122. JOURNAL OF THE HOUSE, 79th Leg. Sess., 6844 (Minn. Feb. 15, 1996).

risk based upon such factors as the seriousness of the crime if the offender repeats the offense, prior offense history, and response to treatment.¹²³ Under the bill, if an offender disagreed with the committee's assessment, it could be appealed to an administrative law judge.¹²⁴ Bishop emphasized that the bill provided enhanced procedural protections for offenders, allowing them to attend risk-assessment hearings with counsel and also seek reassessment every two years.¹²⁵ After assessment, however, local law enforcement again had discretion as to what, if any, information would be released and to whom the information would be released, based on whether the information was "relevant and necessary to protect the public and counteract the offender's dangerousness."¹²⁶

Bishop estimated that the proposed regime, if implemented, would cost roughly \$500,000 per year, including funds for two public defenders dedicated to handling sex offender appeals.¹²⁷ Past opponents of community notification lauded the bill because of its due process provisions.¹²⁸ State Public Defender John Stuart stated that "[i]t's the best bill of its kind in the country. But I still wish we didn't have to have it."¹²⁹

In the end, House and Senate negotiators endorsed a compromise version.¹³⁰ Governor Carlson signed community notification into law as part of a \$17.4 million dollar crime bill and included appropriations of \$340,000 to implement notification and to finance possible legal challenges to the law.¹³¹ The official legislative intent of the "Community Notification Act" was as follows:

The legislature finds that if members of the public are provided adequate notice and information about a sex offender who has been or is about to be released from custody and who lives or will live in or near their neighborhood, the community can develop constructive plans to prepare themselves and their children for the offender's release.¹³²

123. *Id.*

124. *Id.* at 6845.

125. *Id.* at 6844.

126. *Id.*

127. deFiebre, *supra* note 121, at 1B.

128. *Id.*

129. *Id.*; *see also* Ragsdale, *supra* note 117, at 1D.

130. *Sex Offender Identification*, ST. PAUL PIONEER PRESS, Mar. 20, 1996, at 3B.

131. *Community Notification*, SESS. WKLY, Vol. 13, no. 13 (Minn. H.R. 1996).

132. 1996 Minn. Laws at 659 (chapter 408, Art. 5).

The cornerstone of the law was the establishment of “end-of-confinement review” committees (ECRCs) at each state prison and treatment facility housing sex offenders.¹³³ Each committee was to be comprised of the head of the prison or treatment facility; a law enforcement officer; a sex offender treatment professional; a caseworker experienced in supervising sex offenders; and a victim’s services specialist employed by the department of corrections.¹³⁴ The members, other than the prison or treatment facility head, serve two-year terms.¹³⁵ Risk assessment proceedings, in which offenders enjoy a right to notice and to be heard,¹³⁶ are to take place ninety days prior to release,¹³⁷ and evaluate offenders based on a three-level scale (“low,” “moderate” or “high” risk of reoffense) devised by the commissioner of corrections.¹³⁸

Offenders and local law enforcement are entitled to receive a copy of the risk assessment sixty days prior to the date of scheduled release.¹³⁹ Individuals assigned to level II and III risk levels can appeal to an administrative law judge, whose decision is to be in writing and deemed final.¹⁴⁰ The law enforcement agency where the registrant is expected to reside can also request reconsideration of an ECRC risk assessment,¹⁴¹ and if a higher risk assessment is assigned as a result, the registrant can in turn seek review.¹⁴² Registrants were also authorized to seek reassessment of their risk

133. MINN. STAT. § 244.052 subd. 3 (1996).

134. *Id.* at subd. 3(b).

135. *Id.*

136. *Id.* at subd. 3(d)(i).

137. *Id.*

138. *Id.* at subd. 2. Although the law required the Commissioner of Corrections to devise the scale, it specified a non-exclusive series of “risk factors” to be included: “the seriousness of the offense should the offender reoffend”; “the offender’s prior offense history”; “the offender’s characteristics” (including history of substance abuse and response to treatment efforts); “the availability of community supports to the offender”; “whether the offender has indicated or if credible evidence indicates that the offender will reoffend if released into the community”; and “whether the offender demonstrates a physical condition that minimizes the risk of reoffense” (e.g., advanced age or debilitating illness). *Id.* at subd. 3(g).

139. *Id.* at subd. 3(f).

140. *Id.* at subd. 6(a)-(c). The offender must establish by a preponderance of the evidence that the initial assessment was erroneous. *Id.* at subd. 6(b). The offender has a right to be present at the review hearing, to put on evidence and examine witnesses, and to be represented by counsel (appointed if necessary). *Id.* at subd. 3(b). Counsel from the Attorney General’s office is to defend the designation. *Id.*

141. *Id.* at subd. 3(h).

142. *Id.*

levels after two years and once every two years thereafter.¹⁴³

As for notification itself, the law charged local law enforcement agencies with getting the word out.¹⁴⁴ The Legislature authorized disclosure when law enforcement deemed disclosure “relevant and necessary to protect the public and to counteract the offender’s dangerousness,”¹⁴⁵ and afforded the following “guidelines” to inform the process. For level I registrants, the law provided that police “may” provide information on the offender to other law enforcement agencies, as well as any victims or witnesses to the offense committed by the offender.¹⁴⁶ They “shall” disclose offender information to the offender’s victims should they request it.¹⁴⁷ For level II registrants, police “may” also disclose information on the offender to “agencies and groups” that the offender is “likely to encounter”: “public and private educational institutions; day care establishments; and establishments and organizations that primarily serve individuals likely to be victimized by the offender.”¹⁴⁸ For level III registrants, in addition to notification authorized for level IIs, police were advised that they “may” also disclose offender information “to other members of the community whom the offender is likely to encounter.”¹⁴⁹

The law defined “likely to encounter” as follows:

(1) the organizations or community members are in a location or in close proximity to a location where the offender lives or is employed, or which the offender visits or is likely to visit on a regular basis, other than the location of the offender’s outpatient treatment program; and (2) the types of interaction which ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably certain.¹⁵⁰

Law enforcement must make a “good faith effort” to effectuate notification at least fourteen days before an offender’s release,¹⁵¹ and can continue to disclose information for the duration of the

143. *Id.* at subd. 3(i).

144. *Id.* at subd. 4(a). The Legislature empowered local law enforcement to effectuate notification where the offender “resides, expects to reside, is employed, or is regularly found. . . .” *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at subd. 4(b)(1).

148. *Id.* at subd. 4(b)(2).

149. *Id.* at subd. 4(b)(3).

150. *Id.* at subd. 4(c).

151. *Id.* at subd. 4(d).

individual's period of required registration.¹⁵² Finally, as with registration, the Legislature afforded governmental actors immunity from civil and criminal liability for disclosure or non-disclosure of information.¹⁵³

The 1996 session also addressed registration. Senator Kelly proposed expanding the law to mandate registration of those judicially classified as sexually dangerous persons or psychopathic personalities, regardless of whether the classification was associated with a criminal conviction.¹⁵⁴ Representative Skoglund proposed that registration be extended to include individuals convicted of or adjudicated guilty of a "kiddie porn" offense or another offense arising out of the same set of circumstances.¹⁵⁵ Both provisions were signed into law in early April 1996 along with the new notification provisions.¹⁵⁶

In the 1997 session, pursuant to the mandate of the federal

152. *Id.* at subd. 4(f). Basic questions remained, however, over implementation of the law, which specified only that police were "authorized to and may" notify community members, and, failed to specify the geographic scope of notification. See Wayne Wangstad, *Police Must Resolve Conflicts in "Megan's Law," State Statute*, ST. PAUL PIONEER PRESS, May 18, 1996, at 1A. Questions also remained over how notification would actually occur. *Id.* Deputy Corrections Commissioner for Community Services Richard Mulcrone envisioned that notification could take the form of posting pictures of offenders at schools, notifying community watch groups of a sex offender, or just ensuring heightened police awareness that a local sex offender needs surveillance. *Id.* Mulcrone offered that it was his "guess that neighbors will not be notified because at what door do you stop notifying?" *Id.* *Preventive Measures* publisher Keith Hammond believed that the law came up short because it too narrowly defined "community." See Leslie Brooks Suzukamo, *Notification Law Might Increase Vengeful Acts*, ST. PAUL PIONEER PRESS, June 21, 1996, at 1A. Hammond felt that notification should encompass offenders' home counties or even the entire state because, as he put it: "What happens if [the registrant] hops on a bus? Heck, say you've got a guy in Hennepin County; he crosses the bridge and he's in Ramsey County." *Id.* Hammond also faulted the law for failing to cover juvenile offenders and not applying retroactively. Anne O'Connor, *The Sex Offender Next Door Law Being Put to Test in Eagan*, MINNEAPOLIS STAR TRIB., Mar. 3, 1997, at 1A.

In late July, 1996, the Minnesota Board of Peace Officer Standards and Training (POST) issued guidelines designed to guide local law enforcement on implementing notification. See Conrad deFiebre, *Guidelines to Aid Neighborhood Sex-Offender Notification*, MINNEAPOLIS STAR TRIB., July 24, 1996, at 2B. See also Lisa Grace Lednicer, *Police Explain Their Policy on Offender Notification*, ST. PAUL PIONEER PRESS, Jan. 8, 1997, at 3D (discussing continued uncertainty over the definition of "community" subject to notification, including whether it should include the workplace, especially when the registrant works at home).

153. MINN. STAT. § 244.052 subd. 7 (1996).

154. JOURNAL OF THE SENATE, 79th Leg. Sess., 6540 (Minn. Feb. 23, 1996).

155. JOURNAL OF THE HOUSE, 79th Leg. Sess., 6182 (Minn. Jan. 16, 1996).

156. JOURNAL OF THE SENATE, 79th Leg. Sess., 8749 (Minn. Feb. 23, 1996).

Jacob Wetterling Crimes Against Children and Violent Sex Offender Registration Act, the Legislature provided that police “shall” disclose offender information as necessary to protect the public.¹⁵⁷ Moreover, the scope of notification for level II offenders was expanded to include “staff members” of institutions already targeted for notification, and any other individuals “likely to be victimized by the offender.”¹⁵⁸ The Legislature also clarified that police can disclose any information used by the ECRC in its assessment decision, including juvenile offenses.¹⁵⁹

Representative Skoglund sponsored a bill that would expand notification to cover all sex offenders released from federal prisons.¹⁶⁰ The bill provided that the Department of Corrections must collaborate with federal authorities to develop a community notification plan for sex offenders who plan to live in Minnesota upon release from a federal prison.¹⁶¹ Although Skoglund conceded that sex offenders comprise a small percentage of federal inmates, he said that federal sex offenders are allowed to roam freely once released from prison: “When the federal government passed the law [mandating that states develop notification plans] they left a group out – their own prisoners.”¹⁶² The proposal failed to be approved.

The 1998 session marked the addition of several amendments to the registration law. Senator Kelly successfully authored a provision to expand the gamut of registration-eligible offenses to include falsely imprisoning a minor, soliciting a minor to engage in prostitution, and soliciting a minor to engage in sexual conduct.¹⁶³

157. See 42 U.S.C. § 14071 (g)(2)(A) (1996) (threatening states with loss of federal law enforcement funds unless “relevant information that is necessary to protect the public” is released). See also Megan’s Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, *as amended*, 64 Fed. Reg. 572 (1999).

158. MINN. STAT. § 244.052 subd. 4(b)(2) (1997). “The agency’s belief shall be based on the offender’s pattern of offending or victim preference as documented in the information provided by the Department of Corrections or Human Services.” *Id.*

159. *Id.* at subd. 4(a). A community notification meeting in Eagan in which authorities were unsure if they could divulge the offender’s juvenile crimes to the community prompted the amendment, by Representative Bishop. Conrad deFiebre, *House Committee OKs Releasing Some Records on Released Sex Offenders*, MINNEAPOLIS STAR TRIB., Mar. 11, 1997, at 3B.

160. JOURNAL OF THE HOUSE, 80th Leg. Sess., 48 (Minn. Feb. 23, 1997).

161. *Id.*

162. *Id.*

163. JOURNAL OF THE SENATE, 80th Leg. Sess., 4851 (Minn. Jan. 29, 1998).

A bill sponsored by Senator Junge¹⁶⁴ and Representative Slawik, DFL-Woodbury,¹⁶⁵ expanded registration to cover felony indecent exposure.¹⁶⁶

The Legislature made only minor changes to the notification law in 1998. These modifications included the creation of a specialized ECRC dedicated to assessing risk of offenders released from federal correctional facilities and offenders on parole accepted from another state pursuant to interstate compact agreement.¹⁶⁷ The Senate refused to make it unlawful for citizens to interfere with efforts by corrections personnel to situate registrants within the community, despite testimony from a representative of the Department of Corrections that such interference was making it difficult for high-risk level registrants to secure work and housing,¹⁶⁸ and “making nomads out of our most serious offenders.”¹⁶⁹

In 1999, in the wake of the rape of a thirteen-year-old Wayzata girl in her home, and the subsequent acquittal of her assailant due to insanity,¹⁷⁰ legislators expanded registration to cover persons deemed not guilty by reason of insanity.¹⁷¹ Representative Bishop sponsored the bill in the House¹⁷² and Senator Ranum took the lead in the Senate.¹⁷³ Defending the bill, Ranum insisted that she was “not trying to widen the net” and indicated that those individuals presently confined in state hospitals under the “mentally ill and dangerous to the public” standard, but who have not been charged with a sex crime, would not be affected by the bill.¹⁷⁴ The bill passed and eventually became law.¹⁷⁵ The

164. *Id.* at 4848.

165. JOURNAL OF THE HOUSE, 80th Leg. Sess., 6179 (Minn. Jan. 26, 1998).

166. MINN. STAT. § 243.166 subd. 1(a)(iv) (1998).

167. *See* MINN. STAT. § 244.052 subd. 3(j) (1998).

168. SENATE BRIEFLY, Jan. 30, 1998, at 5 (Minn.).

169. *Id.*

170. Todd Melby, *Mentally Ill Rapist Prompts Call for Change to Registration Law*, ST. PAUL LEGAL LEDGER, available at <http://www.legal-ledger.com/archive/129law.htm> (last visited Mar. 2, 2003).

171. JOURNAL OF THE HOUSE, 81st Leg. Sess., 136 (Minn. Jan. 21, 1999); JOURNAL OF THE SENATE, 81st Leg. Sess., 73 (Minn. Jan. 19, 1999).

172. JOURNAL OF THE HOUSE, 81st Leg. Sess., 136 (Minn. Jan. 21, 1999).

173. JOURNAL OF THE SENATE, 81st Leg. Sess., 73 (Minn. Jan. 19, 1999).

174. *Id.*

175. MINN. STAT. § 243.166 subd. 1(d)(1)-(3) (1999). The amended law also required registration of persons found guilty but mentally ill, in any jurisdiction with such a provision, and persons civilly committed pursuant to Minnesota law. *See* MINN. STAT. § 243.166 subd. 1(d) (1999).

Legislature also expanded registration to cover all kidnappers—not merely those targeting minors.¹⁷⁶

Community notification also drew the Legislature's attention in 1999. Inspired by a White Bear Lake mother's exasperation at belatedly learning that a teenage neighbor had a history of sexual misconduct involving boys, Senator Chuck Wiger, DFL-North St. Paul, proposed that juveniles be subjected to risk assessment and notification.¹⁷⁷ Julie Lapinski, the White Bear Lake mother, considered "juvenile offenders . . . more scary because children are going to trust a teenager more than a full-grown adult."¹⁷⁸ Senator Randy Kelly voiced the concern of many legislators that the privacy interests of juveniles were especially significant but ultimately concluded that "public safety needs to be paramount and the issue of confidentiality and privacy issues have to take a back seat."¹⁷⁹ Wiger hoped that individualized risk assessments would help ensure that only the most dangerous juvenile offenders would be affected by his proposal: "It's very narrow, when we would provide information. It's for high-risk offenders, particularly for those who have not successfully passed a treatment program."¹⁸⁰ Ultimately, however, juvenile notification failed to garner sufficient support.

The 1999 Legislature also focused on the predilection of high-risk registrants to concentrate in particular geographic areas. Senator Linda Higgins, DFL-Minneapolis, became aware in February 1999 that the Jordan neighborhood in her district was to be the future home of three more high-risk registrants.¹⁸¹ At the time, the economically depressed area had five level III registrants living within a four-square-block vicinity, and was home to more than half of all level III registrants living in Minneapolis.¹⁸² Higgins argued that "[t]here are 67 [Senate] districts in the state, so I should have 1/67th of the offenders," and advanced a proposal that no level III registrant be permitted to live within 1,500 feet of

176. *Id.* at subd. 1(a)(1)(ii).

177. JOURNAL OF THE SENATE, 81st Leg. Sess., 569 (Minn. Mar. 8, 1999). *See also* Nancy Ngo, *Bill Would Tell Neighbors of Young Sex Offenders Lawmaker Reacts to an Incident in White Bear Lake*, ST. PAUL PIONEER PRESS, Mar. 6, 1999, at 2C.

178. David Chanen, *Bill Would Notify Community of Teen Offenders Plan Modeled on Law for Convicted Adult Predators*, MINNEAPOLIS STAR TRIB., Mar. 9, 1999, at 3B.

179. *Id.*

180. *Id.*

181. David Chanen, *An Unwelcome Mat for Sex Offenders*, MINNEAPOLIS STAR TRIB., May 13, 1999, at 1B.

182. *Id.*

another or within a square block of a school or park.¹⁸³ Senator Linda Berglin, DFL-Minneapolis, representing the Phillips neighborhood, an area also containing several level III registrants, echoed Higgins' concern, stating that "[i]t doesn't do any good to notify people about the offenders if there are so many that you can't keep track of them."¹⁸⁴

Will Alexander, the community notification coordinator for the Department of Corrections, noted that in light of the fact that Minneapolis had 244 schools, 171 parks, and 788 licensed day care operations, the proposed amendment would render more than 35,000 blocks off-limits.¹⁸⁵ Alexander said that he could not "fault the legislators for wanting to please their constituents, but it won't remove the offenders who are already in the neighborhood."¹⁸⁶ Alexander claimed that there was no evidence supporting the idea that if offenders live close to one another that their likelihood of recidivism was increased, noting that "[s]exual offenders usually perpetrate their crimes alone and don't feed off another offender."¹⁸⁷

Although agreeing in principle with Higgins' proposal, Representative Skoglund stated: "It's an unfair burden to the neighborhoods, but the amendment makes it virtually impossible for level III offenders to live anywhere in Minneapolis. But if the sex offender does everything he or she is supposed to do in prison, they won't become a level III."¹⁸⁸ Fearing the law would have a disproportionate impact on smaller cities because the only person who may actually rent to a sex offender has a greater chance of living near a school or park, Representative Rich Stanek, IR-Maple Grove, stated: "You can't have a law that will impact the entire state in an effort to help two neighborhoods."¹⁸⁹

Concerned that the Higgins proposal was too restrictive, House and Senate conferees proposed that the supervising agency be required to consider whether the neighborhood that a level III offender wishes to move to already has one or more level III offenders, and whether the registrant's offending history warrants

183. *Id.* A House amendment added licensed day care centers to the Higgins proposal. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

particular residency restrictions.¹⁹⁰ These proposals, in addition to one requiring that the agency “to the greatest extent feasible [] shall mitigate the concentration of level III offenders,” eventually became law.¹⁹¹ The Legislature also made mandatory, not discretionary, the release of level III registrant information to day care and educational institutions, except in instances where the public safety would be compromised by disclosure or the identity of the victim would be revealed.¹⁹² Pursuant to proposals by Senator Warren Limmer, R-Maple Grove, and Representative Barb Haake, R-Mounds View,¹⁹³ the Legislature also inserted a provision expressly depriving sentencing courts of discretion to modify individuals’ legal duty to register.¹⁹⁴

In the spring of 1999, tragic events yet again conspired to prompt major changes to the registration and notification laws. On May 26, 1999, nineteen-year-old Katie Poirier was working at a convenience store in Moose Lake, Minnesota when an adult male entered and forced Poirier to leave the store.¹⁹⁵ Donald Blom, a fifty-year-old Richfield resident, was apprehended one month later and charged with Poirier’s kidnapping and murder.¹⁹⁶ Blom was said to have at least fourteen aliases and was arrested after police received telephone calls from people who had recognized him from a composite sketch.¹⁹⁷ It soon became apparent that Blom had an extensive history of sex offense convictions, including those involving adolescent females dating back to 1975, yet was not subject to registration and notification in Moose Lake both because

190. David Chanen, *Proposal to Restrict Where Serious Sex Offenders Live Eased*, MINNEAPOLIS STAR TRIB., May 14, 1999, at 3B.

191. See MINN. STAT. § 244.052 subd. 3(k) (1999) (providing that if the ECRC makes a level III designation, it “shall determine whether residency restrictions shall be included in the conditions of the offender’s release based on the offender’s pattern of offending behavior.”); *id.* at subd. 4(a) (providing that before release of a level III registrant “the agency responsible for the offender’s supervision shall take into consideration the proximity of the offender’s residence to that of other level III offenders and, to the greatest extent feasible, shall mitigate the concentration of level III offenders”).

192. *Id.* at subd. 4(b)(3).

193. JOURNAL OF THE SENATE, 81st Leg. Sess., 598 (Minn. Mar. 10, 1999); JOURNAL OF THE HOUSE, 81st Leg. Sess., 787 (Minn. Mar. 10, 1999).

194. MINN. STAT. § 243.166 subd. 2 (1999).

195. Robert F. Moore & Wayne Wangstad, *Richfield Man Held in Poirier Abduction Has Long Record of Sex Attacks, Identities*, ST. PAUL PIONEER PRESS, June 22, 1999, at 1A.

196. *Id.*

197. *Id.*

the laws were not retroactive in their application and because he resided in Richfield.¹⁹⁸

Ms. Poirier's victimization triggered an outpouring of public concern and prompted the creation of the Katie Poirier Abduction Task Force, comprised of citizens (including Patty Wetterling), policy makers, and public safety officials, dedicated to a comprehensive analysis of Minnesota's registration and notification laws.¹⁹⁹ Many of the Task Force's recommendations took form in "Katie's Law," which won overwhelming support in the Legislature in Summer 2000.

Katie's Law made a number of changes to the State's registration and notification laws. First, the legislation required that registrants provide significantly more information to authorities, including:

- (1) the address of primary residence;
- (2) the addresses of all secondary residences, including all addresses used for residential and recreational purposes;
- (3) the addresses of all property owned, leased, or rented;
- (4) the addresses of all locations where the offender is employed;
- (5) the addresses of all residences where the offender resides while attending school; and
- (6) the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the offender.²⁰⁰

Katie's Law also increased the scope of persons subject to registration in several ways. For example, offenders from other jurisdictions who enter Minnesota to live, work or attend school must register if within the past ten years they were convicted of or adjudicated delinquent for an offense that would require registration under Minnesota law.²⁰¹ Moreover, any individual convicted of an enumerated "crime against a person" after August 1, 2000 was required to register if (1) the individual was previously

198. *Id.*; Ruben Rosario, *Arrest Highlights Controversy About Sex Offender Follow-up*, ST. PAUL PIONEER PRESS, June 22, 1999, at 1A.

199. Terri Mozzone, *New Predatory Offender Laws Spurred by Abduction Task Force*, PERSPECTIVES, Vol. 26, no. 1, July 2000, at 16.

200. MINN. STAT. § 243.166 subd. 4a(1)-(5) (2000).

201. *Id.* at subd.1 (b), subd. 3(c). In addition, offenders registered in Minnesota who enter another state to work or attend school are now required to register in such other state where they work or attend school. *Id.*

required to register yet completed the specified duration of the registration period or (2) was previously convicted of a registerable offense yet was not required to register under then-existing law.²⁰²

Katie's Law also imposed limits on the capacity of registrants to change their names. Based on a proposal of Representative Mary Liz Holberg, R-Lakeville,²⁰³ and inspired by Donald Blom's numerous reported aliases,²⁰⁴ the Law required registrants to notify authorities of name change requests and to demonstrate that the change is not an attempt to defraud or mislead.²⁰⁵ Registrants were also prohibited from using a different surname after marriage, divorce, or legal separation without complying with the name change procedure prescribed in the Law.²⁰⁶ In addition, prosecutors and the office of the attorney general were authorized to object under certain conditions to prevent name changes.²⁰⁷

Katie's Law further provided that the minimum ten-year registration period would start over if the offender is later incarcerated for violating a term of community release for the registerable offense, commencing from the time of subsequent release or when the specified probation, supervised release, or conditional release period expired—whichever occurs later.²⁰⁸ The ten-year period would also start anew if an offender is convicted and incarcerated for *any* new offense, not merely one specified in the registration law.²⁰⁹ Moreover, effective August 1, 2000, lifetime registration was required of persons convicted of or adjudicated delinquent for a second registerable offense;²¹⁰ convicted of any of several enumerated offenses of a particularly aggravated nature,²¹¹ or civilly committed as a sexually dangerous person or sexual psychopath.²¹²

Katie's Law also toughened penalties for registration-related violations. Pursuant to a recommendation by Representative Barb

202. MINN. STAT. § 243.167 subd. 1 (2000).

203. JOURNAL OF THE HOUSE, 81st Leg. Sess., 5859 (Minn. Feb. 21, 2000).

204. Moore & Wangstad, *supra* note 195, at 1A.

205. MINN. STAT. § 259.13 subd. 2 (2000). *See also* Jim Ragsdale, *Repeat Felons House Bill Would Tighten Criminal Tracking Poirier Abduction is Part of Impetus Behind Tougher Law*, ST. PAUL PIONEER PRESS, Mar. 17, 2000, at 3B.

206. MINN. STAT. § 259.13 subd. 1 (2000).

207. *Id.* at subd. 2.

208. MINN. STAT. § 243.166 subd. 6(c) (2000).

209. *Id.*

210. *Id.* at subd. 6(d)(1) (2000).

211. *Id.* at (d)(2).

212. *Id.* at (d)(3).

Haake, R-Mounds View, the law made registration violations a felony,²¹³ not a gross misdemeanor, triggering a mandatory minimum sentence of a year and a day and a maximum of five years.²¹⁴ Furthermore, repeat violators risked a mandatory minimum two years' imprisonment and five years' maximum.²¹⁵ The new law also expressly provided that if a person over age sixteen fails to comply with registration requirements, and is out of compliance for at least thirty days, the BCA can disseminate available address information on the individual to the public by electronic, computerized or other means.²¹⁶ The information made available to the public, including a photo, would be limited to that necessary for the public to assist law enforcement agencies to locate the sex offender.²¹⁷ To monitor compliance, the BCA was directed to confirm registration information by means of mailed verification forms four times per year for persons committed as a sexual predator or sexual psychopath; annual verification was required of other all offenders subject to registration.²¹⁸

Finally, as a result of provisions advanced by Senator Dave Kleis, R-St. Cloud, and Representative Erik Paulsen, R-Eden Prairie,²¹⁹ Katie's Law required that the Department of Corrections create and maintain an Internet Web site containing information on level III offenders.²²⁰ Prior to the law's implementation, the

213. JOURNAL OF THE HOUSE, 81st Leg. Sess., 5569 (Minn. Feb. 3, 2000).

214. MINN. STAT. § 243.166 subd. 5(b) (2000). Legislators had originally endorsed an amendment proposed by Senator Ember Junge, DFL-New Hope, making failure to register a felony with an automatic two-year prison sentence. Conrad deFiebre, *Bill Targets Sex Offenders Who Fail to Register Address*, MINNEAPOLIS STAR TRIB., Feb. 10, 2000, at 5B. However, concern arose over the proposal's likely impact on prison populations. *Id.* (noting that analysis by the State Sentencing Guidelines Commission predicted that a two-year minimum sentence would require 133 additional prison beds within three years); SENATE BRIEFLY, Feb. 25, 2000, at 9 (Minn.) (noting that Deb Daily, of the Minnesota Sentencing Guidelines Commission, said the two-year minimum sentence would instantly create 3,000 new felons). Critics also complained that the two-year sentence was longer than the sentences faced by low-level sex offenders for their crimes and longer than those for some violent crimes. *See deFiebre, supra.*

215. MINN. STAT. § 243.166 subd. 5(c) (2000). In addition, upon motion of the prosecutor, or upon their own initiative, sentencing courts were authorized to impose sentence without regard to the mandatory minimum if the court finds "substantial and compelling reasons to do so." *Id.* at subd. 5(d).

216. *Id.* at subd. 2(a), subd. 4(e) and subd. 7(a).

217. *Id.*

218. *Id.* at subd. 4(e)(3).

219. JOURNAL OF THE SENATE, 81st Leg. Sess., 4012-13 (Minn. Feb. 1, 2000); JOURNAL OF THE HOUSE, 81st Leg. Sess., 5569 (Minn. Feb. 3, 2000).

220. MINN. STAT. § 244.052 subd. 4(b) (2000).

State only produced quarterly newsletters on level III registrants.²²¹ The Web site information must be “updated in a timely manner to account for changes in the offender’s address,” and be maintained for the duration of the period of time the individual remains subject to level III community notification.²²²

With Governor Ventura’s signature on April 3, 2000, Katie’s Law was enacted, a little over ten months after Katie Poirier’s abduction.²²³ In addition to substantive changes, the legislation allocated \$12 million for the creation of an integrated criminal justice statewide database, a prelude to the estimated \$100 million thought necessary to fully implement an effective registrant information system.²²⁴ A portion of the funds was also earmarked for the purchase of digital imaging equipment and fingerprint scanners to promote identification of offenders and access to their criminal histories.²²⁵

221. Brenda van Dyck, *A Continuing Threat*, SESS. WKLY, Vol. 17, No. 3, at 18 (Minn. H.R. 2000).

222. MINN. STAT. § 244.032 subd. 4b (2000). The site also contains information on persons once subject to notification in Minnesota who have since relocated to another state, and the names of deceased level III offenders. See <http://www.corr.state.mn.us/level3/level3.asp> (last visited Nov. 15, 2002).

As a result of the U.S. Supreme Court’s recent 6-3 decision in *Smith v. Doe*, 123 S. Ct. 1140 (2003) that Internet-based community notification does not constitute “punishment” for *ex post facto* purposes, Minnesota’s use of the Internet would appear safe from federal constitutional attack.

223. JOURNAL OF THE HOUSE, 81st Leg. Sess., 8517 (Minn. April 5, 2000). See also Patrick Sweeney, *Gov. Ventura Signs “Katie’s Law” Sex Offenders, Statewide Crime Database Are Focus*, ST. PAUL PIONEER PRESS, Apr. 4, 2000, at 1B.

224. *Katies Law Signed*, SESS. WKLY, Vol. 17, No. 10 at 5 (Minn. H.R. 2000).

At the time, criminal records information was handled by 1,100 independent agencies and departments, and most computer systems were incompatible. See News Release, Committee Endorses Statewide Criminal Information Network, Minnesota House of Representatives Republican Caucus (Feb. 22, 2000), at <http://www.house.leg.state.mn.us/gop/goppress/caucus/0221infosystems.htm> (last visited May 15, 2002). As a result, no statewide system could inform police, prosecutors, or judges of a suspect’s history or status, unless the individual was currently subject to some form of community supervision. See Lucy Quinlivan, *Lack of Data System Helps Criminals Holes in Record-Keeping Allowed Welch to Go Free*, ST. PAUL PIONEER PRESS, Sept. 17, 2000, at 1B.

225. *“Katies’ Law” Will Track Sex Offenders, Begin Building a Statewide Criminal Records System*, http://www.senate.leg.state.mn.us/caucus/dem/CaucusNews/Pressreleases/News_Release_**** (last visited May 15, 2002); Patrick Sweeney, *Gov. Ventura Signs Katie’s Law; Sex Offenders, Statewide Crime Database are Focus*, ST. PAUL PIONEER PRESS, Apr. 4, 2000, at 1B.

C. The System Closes Loopholes and Expands (2001-present)

The past two years have witnessed yet more changes to Minnesota's registration and notification laws. In 2001, registration in particular was tightened. Concerned that out-of-state offenders who had been sentenced to lifetime registration elsewhere were entering Minnesota, and hence required to register for only ten years under existing law, Senator Grace Schwab, R-Albert Lea, sponsored a bill that would close this loophole.²²⁶ This proposal eventually met with approval and became law.²²⁷ In addition, pursuant to recommendations of the Bureau of Criminal Apprehension,²²⁸ the Legislature added a provision permitting the commissioner of public safety to extend for five years the period of required registration in the event a person fails to register following a change in address.²²⁹

Senator Jane Ranum, DFL-Minneapolis, Chair of the Senate Crime Prevention Committee, unsuccessfully sought to limit registration requirements for juveniles.²³⁰ Ranum's amendment would have provided that first-time juvenile offenders, other than those adjudicated delinquent for an offense of first-degree murder while committing or attempting to commit first or second degree criminal sexual misconduct with force or violence, would not be subject to lifetime registration.²³¹

No significant changes were made to the notification provisions in the 2001 session.

In the 2002 session, both registration and notification were revisited. Representative John Tuma, R-Northfield, and Senator Ranum successfully advanced legislation expanding the scope of offenders subject to lifetime registration.²³² Hurried through the Legislature to prevent the State from losing \$850,000 in federal grant money,²³³ the law required lifetime registration of persons convicted of or adjudicated delinquent of a registerable offense before the law took effect in 1991, when later convicted of a second

226. JOURNAL OF THE SENATE, 82nd Leg. Sess., 594 (Minn. Mar. 15, 2001).

227. MINN. STAT. § 243.166 subd. 1(b)(3) (2001).

228. E-mail from Ken Backhus, Office of Senate Counsel and Research (Oct. 31, 2002) (on file with author).

229. MINN. STAT. § 243.166 subd. 6(b) (2001).

230. SENATE BRIEFLY, Apr. 20, 2001 at 5 (Minn.).

231. *Id.*

232. JOURNAL OF THE HOUSE, 82nd Leg. Sess., 6543 (Minn. Feb. 25, 2002).

233. See 42 U.S.C. § 14071(g)(2)(A) (1994 & Supp. 1998) (threatening states with loss of criminal justice grants unless compliance is achieved).

registerable offense (under Minnesota law or a similar law elsewhere).²³⁴

With respect to notification, the Legislature added a provision that required registrants' information to be presented to communities in different languages,²³⁵ and further required that information on level I registrants be disclosed to adult members of registrants' immediate households.²³⁶ Furthermore, the Legislature prohibited property managers of hotels, motels, lodging establishments, or apartment buildings under agreement with an agency to house victims of domestic abuse from knowingly renting a room to a level III registrant.²³⁷

The 2002 Legislature also addressed, yet again, the geographic clustering of level III registrants.²³⁸ Sherrie Pugh, Executive Director of Minneapolis' Northside Residents Redevelopment Council, said that "[t]he issue is not so much about a predator being released in the neighborhood, it's about a constant stream of predators that keep coming one after another. If every neighborhood in the city took one, people could probably deal with it."²³⁹ Jon Hinchliff, the sex offender notification coordinator for the Minneapolis Police Department, shared this concern: "I'm going back to the same places over and over again to hold meetings. I think it has the effect of causing people to get really concerned about the neighborhood they live in. We've got a problem with this and we're trying to address it with anyone who will listen."²⁴⁰

In response, legislators reexamined whether level III registrants should be statutorily barred from living within 1,500 feet of a park or school, or within the same distance from another level III registrant.²⁴¹ Representative Dave Bishop contended that the prohibition was not needed because sex offenders were being adequately supervised, by the state, and worried that the restrictions would leave level IIIs "living on a cloud."²⁴² Will

234. MINN. STAT. § 243.166 subd. 6(d)(1) (2002).

235. MINN. STAT. § 244.052 subd. 4(e)(h) (2002).

236. *Id.* at subd. 4(b)(1).

237. *Id.* at subd. 4a(b).

238. Mara H. Gottfried, *Sex Offenders Live in Poorer Areas*, ST. PAUL PIONEER PRESS, Mar. 8, 2002, at A1.

239. *Id.*

240. *Id.*

241. *Tougher Sentences*, SESS. WKLY, Vol. 19, no. 11, at 12 (Minn. H.R. 2002).

242. *Id.*

Alexander, Department of Corrections Community Notification Officer, again weighed in against the proposal, asserting that it would make the “entire City of Minneapolis off-limits except for a few blocks.”²⁴³

As in the past, geographic limits failed to win approval.²⁴⁴ The 2002 Legislature did, however, require that, in addition to giving “consideration” to the proximity of a newly arrived level III registrant to others already residing in an area (enacted in 1999), that the supervising agency consider the new arrival’s “proximity to schools,” and “to the greatest extent feasible [] shall mitigate the concentration of level III offenders and concentration of level III offenders near schools.”²⁴⁵ Furthermore, the Legislature directed the Department of Corrections to provide a detailed study of the level III clustering effect and its consequences, as well as the likely ramifications of imposing a 1500 foot residential restriction.²⁴⁶ The study was issued in early 2003²⁴⁷ and concluded *inter alia* that:

- as of December 31, 2002, Minnesota had 329 level III registrants (all male): 97 live in residential settings, with 50 residing in Hennepin County, 14 in Ramsey County, 6 in Olmstead County, 4 in St. Louis County, and 23 in other counties;²⁴⁸
- having level III registrants live together serves to enhance supervision and shows no negative recidivism effects;²⁴⁹
- imposing a 1,500 foot restriction would “essentially forbid residential options” for level III registrants in the Twin

243. *Restricting Sex offenders*, SESS. WKLY, Vol. 19, no. 13, at 5 (Minn. H.R. 2002).

244. To date, it appears that only two states have imposed statutory limits on where registrants can live or work—Alabama and Iowa. See ALA. CODE § 15-20-26(a) (2002) (prohibiting registrants from living or working within 2,000’ of a school or child care facility); IOWA CODE § 692A.2A(2) (2002) (prohibiting registrants from living within 2,000’ of a school or child care facility). As of this writing, the Iowa law is the subject of constitutional challenge. See Christoph Trappe, *Attorney Calls Sex-Offender Law Unconstitutional*, IOWA CITY PRESS-CITIZEN, Feb. 19, 2003, at 1A.

245. MINN. STAT. § 244.052 subd. 4a (2002).

246. Act of May 21, 2002, ch. 385, §10, 2002 Minn. Sess. Law Serv. 963 (West 2002).

247. See MINNESOTA DEPARTMENT OF CORRECTIONS, LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES: 2003 REPORT TO THE LEGISLATURE (January 2003) [hereinafter *Legislative Report*], available at <http://www.corr.state.mn.us/publications/legislativereports/reports.html>.

248. *Id.* at 1. Of the fifty level III registrants in Hennepin County as of year-end 2002, thirty were concentrated in just three postal zip codes. *Id.* at 10.

249. *Id.* at 8.

Cities,²⁵⁰ and would force them into more rural, suburban or industrial areas, creating “other problems, such as a high concentration of offenders with no ties to the community; isolation; lack of work, education, and treatment options; and an increase in the distance traveled by agents who supervise offenders”;²⁵¹

- imposing residential limits “may be a comfort factor for the general public, but it does not have any basis in fact”; there have been no recorded instances of a level III registrant re-offending at a park or school nearby his residence;²⁵²
- placing residential limits on level III registrants, in the face of already limited residential opportunities, would cause many registrants to become transients, which would hinder supervision efforts;²⁵³
- public awareness that level III registrants are concentrated in an area heightens citizen fears about safety and negatively affects property values;²⁵⁴ and
- the existing case-by-case determinations on registrant residence locations should be continued.²⁵⁵

Finally, the 2002 Legislature rejected an effort to impose other limits on the capacity of registrants to move about freely. Representative Dennis Ozment, R-Rosemount, proposed that level III registrants be required to give twenty-one days notice, not five days, of their intention to change residence.²⁵⁶ In cases where it was not possible to satisfy such a notice period, the provision would have required that a notice be posted at the proposed residence until public meetings could be held to inform the neighbors.²⁵⁷ AnnMarie O’Neill, Program Administrator with the Bureau of Criminal Apprehension, thought the plan was “unenforceable”

250. *Id.* at 10.

251. *Id.* at 9-10.

252. *Id.* at 9. The Report notes that two level III registrants have committed new offenses near parks but that they drove there from their residence several miles away. *Id.* “Based on these cases,” the Report adds, “it appears that a sex offender attracted to such locations for purposes of committing a crime is more likely to travel to another neighborhood in order to act in secret than in a neighborhood where his or her picture is well known.” *Id.*

253. *Id.*

254. *Id.* at 11.

255. *Id.* Additional findings contained in the Report are discussed *infra* at notes 366-67 and accompanying text.

256. *Tougher Sentences*, SESS. WKLY, Vol. 19, no. 11, at 12 (Minn. H.R. 2002).

257. *Id.*

because many sex offenders move from one home to the next and that “[m]ost don’t know what they’re doing tomorrow, let alone 21 days from now.”²⁵⁸

D. Summary

Although it is now a matter of conventional wisdom that criminal victimizations, especially those involving children, have a catalytic effect on the political process,²⁵⁹ the 1989 abduction of Jacob Wetterling surely represented a watershed event in this regard. As a result of the tireless work of the Wetterling family, and the foundation that bears Jacob’s name, crimes against children seized first the State’s and then the nation’s attention in the early-mid 1990s. In rapid-fire succession, the names and faces of other child victims caught the attention of the media, and politicians, resulting in the enactment of a litany of eponymous registration and notification laws—often quickly enacted without significant debate²⁶⁰—invoking the names of particular victims (e.g., “Megan’s Law,” New Jersey; “Zachary’s Law,” Indiana).²⁶¹

Minnesota’s legislative response, created amid debates largely free of the searing political rhetoric evidenced elsewhere,²⁶² as discussed next, numbers among the nation’s most moderate in function and scope.²⁶³ Nonetheless, like registration and notification laws elsewhere, Minnesota’s regime has been, and

258. *Restricting Sex Offenders*, SESS. WKLY, Vol. 19, no. 13, at 5 (Minn. H.R. 2002).

259. See generally KATHERINE BECKETT, MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS (1997); LORD WINDLESHAM, POLITICS, PUNISHMENT, AND POPULISM (1998); Jonathan Simon, *Megan’s Law: Crime and Democracy in Late Modern America*, 25 LAW & SOC. INQUIRY 1111 (2000).

260. See, e.g., Daniel M. Filler, *Making the Case for Megan’s Law: A Study in Legislative Rhetoric*, 76 IND. L.J. 315, 316-17 (2001) (describing process in New Jersey).

261. See Simon *supra* note 259 at 1137 (noting that “Megan’s Law testifies to the importance of the politics of identity in contemporary political life, and to the importance of victimization to the politics of identity.”).

262. See, e.g., Filler, *supra* note 260, at 329-40 (examining New York State and federal legislative debates); 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 (2002) (examining federal debates). Cf. Jonathan Simon, *Managing the Monstrous: Sex Offenders and the New Penology*, 4 PSYCHOL. PUB. POL’Y & L. 452, 455-56 (1998) (discussing the political allure of “populist punitiveness” and its impact on recent sex offender-related legislation).

263. See *infra* Part III.B.

likely will remain, highly susceptible to evolution, especially in favor of expansion as a result of notorious victimizations occurring in the State, which if unfortunate past is prologue, will inevitably come to pass.²⁶⁴

III. DATA ON MINNESOTA'S LAWS, HOW THE LAWS COMPARE TO THOSE ELSEWHERE, AND CHALLENGES TO COME

Now just over a decade old, Minnesota's registration and notification laws play a central part in the State's coordinated effort to combat physical and sexual abuse in its communities. This section provides an overview of the data currently available on the laws, situates the State's approach to registration and notification in the broader context of regimes in effect nationwide, and explores several of the most pressing research needs concerning the laws and their effects.

A. *The Data*

According to data provided by the Bureau of Criminal Apprehension, the agency charged with implementing Minnesota's registration law, as of November 2002, 10,986 persons were registered with the Bureau.²⁶⁵ Of these registrants:

- 9,451 are in the community;
- 1,392 are in prison/jail;
- 143 are civilly committed;
- 217 are female (12 of whom are juveniles—now 18 years of age or younger);
- 424 are juveniles; and
- 280 are registered for their lifetimes.²⁶⁶

Overall, 79% of adult registrants are believed to be in compliance

264. Bill McAuliffe, *Think There Ought To Be a Law? Major News Events Influence What Bills Legislature Considers*, MINNEAPOLIS STAR TRIB., Feb. 7, 2000, at 1A (noting same).

265. Memorandum from AnnMarie O'Neill, Minnesota Bureau of Criminal Apprehension (Nov. 14, 2002) (on file with author) [hereinafter O'Neill Memorandum]. By way of comparison, in April 1993, 300 individuals were registered. See Associated Press, *Crime Prevention Committee Passes Expanded Sex-Offender Registration Bill*, MINNEAPOLIS STAR TRIB., Apr. 13, 1993, at 2B.

266. O'Neill Memorandum, *supra* note 265. In addition, 172 individuals have satisfied the ten-year duration requirement and discharged their registration obligation, presumably as a result of having been required to register at the time the registration law was implemented in July 1991 or shortly thereafter. *Id.*

with registration requirements.²⁶⁷

A comparatively small proportion of registered offenders have had risk levels assigned to them (2,516), which should come as no surprise given that only offenders released since July 1997 are subject to community notification, and juveniles are exempt.²⁶⁸ Of this total, 63% are level Is; 24% are level IIs; and 13% are level IIIs.²⁶⁹ From 1996 to mid-November 2002, there were 217 requests by registrants for administrative review of ECRC risk level designations.²⁷⁰ Of those challenges concluded, 144 cases were resolved without hearing, 35 designations were confirmed, and 12 were reduced.²⁷¹ Also, since 1997, there have been 190 referrals for involuntary civil commitment as sexually dangerous persons or sexual psychopaths.²⁷²

Finally, since notification took effect in 1997, Department of Corrections personnel have participated in an estimated 300 community meetings across the state, with at least 70,000 individuals in attendance.²⁷³ In addition, since 1997 no one in Minnesota has been arrested for or charged with harassing behavior toward a registrant.²⁷⁴

B. How Minnesota Laws Compare and Challenges to Come

True to its reputation for moderation in criminal justice issues more generally, Minnesota's registration and community

267. *Id.*

268. Memorandum from Adam Bailey, Minnesota Department of Corrections (Nov. 18, 2002) (on file with author) [hereinafter Bailey Memorandum]. This figure from the Department of Corrections captures risk assignments as of July 1, 2002 and differs from information provided by the Bureau of Criminal Apprehension, reflecting the number of assessments as of November 14, 2002. As of that date, the BCA reports that 2,247 individuals were risk assessed. See O'Neill Memorandum, *supra* note 265. The author was unable, based on communications with agency representatives, to reconcile the discrepancy.

269. Bailey Memorandum, *supra* note 268.

270. Memorandum from Angela Helseth, Minnesota Assistant Attorney General (Dec. 9, 2002) (on file with author).

271. *Id.* The remaining appeals are reported as still pending. *Id.*

272. *Id.*

273. Memorandum from Stephen Huot, Minnesota Department of Corrections (Nov. 8, 2002) (on file with author).

274. *Id.* For an extensive discussion of threats and assaultive behavior experienced by registrants elsewhere see Brief of Amicus Curiae Office of the Public Defender for the State of New Jersey et al. at 7-21, *Smith v. Doe*, 123 S. Ct. 1140 (2003) (No. 01-729) (focusing on New Jersey); Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin* Nat'l Institute of Just. Res. Brief 1, 10-11 (Dec. 2000) (focusing on Wisconsin).

notification laws rank among the nation's least onerous in a variety of respects. For instance, Minnesota limits registration to a comparatively narrow scope of quite serious offenses,²⁷⁵ and while the State's baseline ten-year period of required registration after release into the community conforms to the federal minimum,²⁷⁶ it is shorter than many others.²⁷⁷ Also, unlike numerous other states, Minnesota has refrained from making registration retroactive.²⁷⁸ Furthermore, Minnesota requires that registrants (other than those freed after civil commitment) only verify their information on an annual basis for ten years,²⁷⁹ unlike the considerably shorter intervals applicable elsewhere.²⁸⁰ Moreover, unlike fourteen other states,²⁸¹ Minnesota does not require in-person verification, instead

275. See MINN. STAT. § 243.166 subd. 1(a)-(d) (2002) (requiring registration for: murder committed in the course of first or second-degree criminal sexual conduct; felony indecent exposure; kidnapping; varieties of felony criminal sexual conduct; false imprisonment of a minor; solicitation of a minor to engage in prostitution; solicitation of a minor to engage in sexual conduct; use of a minor in a sexual performance; possession of child pornography; judicial designation as a "patterned sex offender" pursuant to Minn. Stat. § 609.108; and violations of parallel state or federal laws). Compare, e.g., ALA. CODE §§ 13A-11-200, 13A-12-131 (2002) (posting obscene bumper sticker); CAL. PENAL CODE §§ 290, 647(d) (West 2002) (loitering outside restroom for lewd or lascivious purposes); CONN. GEN. STAT. § 54-251(a) (2002) ("nonviolent sexual offense"); KAN. STAT. ANN. § 22-4902(a)(4) (2002) (involuntary manslaughter; adultery; consensual sodomy, if one of the parties is under 18); LA. REV. STAT. ANN. §§ 15:542.1(A), 15:541(14.1) (2002) (consensual sodomy); MISS. CODE ANN. § 45-33-25 (2002) ("any sex offense or attempted sex offense"); MONT. CODE ANN. § 46-23-502(9)(a) (2002) (homicide, aggravated assault); S.C. CODE ANN. § 23-3-430(C)(10), (12) (2002) (buggery, "peeping"). In Louisiana, 40% of registrants in New Orleans were convicted of sodomy, typically used to target male and female prostitutes. See Pamela Coyle, *400 Sex Offenders in Region; Web Site Lists Many in N.O.: 44% Probably Prostitutes*, NEW ORLEANS TIMES-PICAYUNE, May 2, 2000, at A1.

276. See 42 U.S.C. § 14071(b)(6)(A) (1998).

277. See, e.g., ARIZ. REV. STAT. ANN. § 13-3821(L) (West 2002) (life); FLA. STAT. ANN. § 775.21(6)(a)(1)(I) (West 2002) (life); HAW. REV. STAT. § 846E-2(a) (2002) (life); MICH. COMP. LAWS § 28.725(7) (2002) (twenty years); S.C. CODE ANN. § 23-3-460 (Law. Co-op. 2002) (life).

278. See Robert L. Jacobson, Note, "*Megan's Laws*" Reinforcing Old Patterns of Anti-Gay Police Harassment, 87 GEO. L.J. 2431, 2467 (1999) (noting that at least 16 jurisdictions impose registration requirements retroactively, with no limited or time restrictions). See also, e.g., State v. Walls, 558 S.E.2d 524, 526 (S.C. 2002) (upholding required registration of individual, verified annually for his lifetime, based on conviction of registerable offense twenty-five years before).

279. See MINN. STAT. § 243.166 subd. 4(e)(3) (2002).

280. See, e.g., HAW. REV. STAT. § 846E-5 (2002); KAN. STAT. ANN. § 22-4904(c) (2002); MICH. COMP. LAWS § 28.725a(4)(b) (2002) (all requiring quarterly verification).

281. See Brief of Amicus Curiae United States in Support of Petitioners at 13 n.23, *Godfrey and Botelho v. Doe I*, 122 S. Ct. 2656 (2002) (No. 01-729).

allowing registrants to respond to a certified mailing.²⁸²

On the other hand, Minnesota is among a handful of states that require registration on the basis of behavior beyond expressly enumerated offenses, based on a provision enacted in 1993 requiring registration if the offender is convicted of “another offense arising out of the same set of circumstances” as a charged, registerable offense.²⁸³ Minnesota is also one of thirty states²⁸⁴ that require registration of juvenile offenders (in Minnesota, ten years of age being the minimum).²⁸⁵

As for notification, Minnesota discloses a comparatively limited amount of information on registrants. The information contained in the Department of Corrections’ Web site, reserved exclusively for level III registrants, contains a photo of the offender; identifying information such as name (including any aliases), race, hair and eye color, height and weight, and date of birth; prison release date; offense history, including the nature of prior criminal conduct, victim age, gender and relationship (if any) to the offender; last reported home address; and responsible local law enforcement agency.²⁸⁶ In many states, employment addresses²⁸⁷ and other identifying information such as descriptions of registrants’ vehicles are disseminated.²⁸⁸ Arizona, for instance, provides a map indicating the registrant’s home address,

282. See MINN. STAT. § 243.166 (2002).

283. See MINN. STAT. § 243.166 subd. 1(a)(1) (2002). See also CAL. PENAL CODE § 290(a)(2)(E) (West 2002) (if the crime committed “for the purpose of sexual gratification”); IND. CODE ANN. § 5-2-12-4 (a)(5) (West 2002) (if crime committed for “vicarious sexual gratification”); KAN. STAT. ANN. § 22-4902(b)(14) (2002) (if crime of conviction is “sexually motivated”); WASH. REV. CODE ANN. §§ 9A.44.130, 9.94A.030(39) (West 2002) (if crime committed “for the purpose of his or her sexual gratification”); W. VA. CODE § 15-12-2(c) (2002) (if crime “sexually motivated”); WIS. STAT. § 973.048(1m) (2002) (same).

284. See H.J. Cummings, *Courts Shield Young Sex Offenders; Judges Keeping Some Juveniles Off Registry*, MINNEAPOLIS STAR TRIBUNE, Oct. 6, 2002, at 1A (noting that thirty states register juveniles).

285. See MINN. STAT. § 243.166 subd. 1(a) (2002) (requiring registration if offender is “convicted of or adjudicated delinquent for” a registerable offense).

286. Minnesota Department of Corrections, at <http://www.doc.state.mn.us/level3/search.asp> (last visited Feb. 20, 2003). Viewers can access information on all level III registrants in the State, or information on level III registrants in specified areas by providing a zip code, city or county, or registrant name. *Id.*

287. See, e.g., District of Columbia, Sex Offender Registry, at <http://mpdc.dc.gov/serv/sor/impreminder.htm> (last visited Feb. 20, 2003); State of New Mexico Dept. of Public Safety Sex Offender Information Page, at <http://www.nmsexoffender.dps.state.nm.us> (last visited Feb. 20, 2003).

288. See, e.g., Utah Department of Corrections, at <http://corrections.utah.gov> (last visited Feb. 20, 2003).

emphasizing proximity to day care centers and schools.²⁸⁹ The Arizona site also includes, like some other states, information on registrants with moderate levels of assessed risk.²⁹⁰

Minnesota's non-electronic means of notification is also comparatively modest. Unlike other jurisdictions where law enforcement employ quite intrusive methods, including the distribution of leaflets and door-to-door consultations,²⁹¹ Minnesota's local law enforcement agents resort exclusively to community meetings, where authorities are available to educate residents on registrants' backgrounds, emphasize the importance of refraining from vigilantism, and communicate the empirical reality that potential offenders not subject to notification also reside in the community. Moreover, Minnesota, unlike many other states, does not subject juvenile registrants to community notification.²⁹²

Minnesota's approach to deciding which registrants warrant community notification itself places it in a comparatively restrained peer group of jurisdictions. Minnesota uses an "offender-based," not an "offense-based" approach, requiring that statutorily eligible offenders be assessed on an individual basis for risk, which determines the extent (if any) of community notification.²⁹³ At such hearings, registrants enjoy significant procedural due process protections, including the right to notice and to be heard,²⁹⁴ and the right to seek administrative appeal of a risk level II or III determination by the End-of-Confinement Review Committee

289. See Arizona Dep't of Public Safety Sex Offender Info Center, at <http://www.azsexoffender.com> (last visited Feb. 20, 2003).

290. See, e.g., Delaware State Police Bureau of Identification, Sex Offender Central Registry, at <http://www.state.de.us/dsp/sexoff/search.htm> (last visited Feb. 20, 2003).

291. See generally DEVON B. ADAMS, U.S. DEP'T OF JUSTICE, SUMMARY OF STATE SEX OFFENDER REGISTRIES 2001, at 8-12 (2001) (describing variety of approaches). In Louisiana, registrants themselves are required to implement notification by means of mail and advertising, at their own expense, and the court can require that they wear special identifying clothing, post signs at their residence, or affix bumper stickers to their cars to provide "adequate" notice. See LA. REV. STAT. ANN. § 15:542(B) (2002).

292. See Cummings, *supra* note 284, at 1A (noting that thirty states register juveniles and that about half of such states makes such registry information publicly available).

293. See generally Wayne A. Logan, *A Study in "Actuarial Justice": Sex Offender Classification Practice and Procedure*, 3 BUFF. CRIM. L. REV. 593, 602-33 (2000) (discussing approaches taken by jurisdictions to classify registrants for purposes of community notification).

294. MINN. STAT. § 244.052 subd. 3(d)(i) (2002).

(ECRC),²⁹⁵ with right to appointed counsel.²⁹⁶ Minnesota registrants are now also entitled to have their risk levels reassessed after three years of their community release and can renew the request every two years following denial.²⁹⁷

Whether community notification implicates a liberty interest as a matter of federal constitutional law, requiring that due process be afforded registrants prior to being subject to notification, remains unclear, despite a recent U.S. Supreme Court decision that promised to resolve the issue.²⁹⁸ If in time the Court concludes that notification jeopardizes a liberty interest, Minnesota will not likely need to overhaul its system, given the panoply of protections it provides. If the Court were to hold otherwise, the State will have the opportunity to revisit its approach to notification classification decisions.²⁹⁹

295. *Id.* at subd. 6(a). Likewise, within thirty days of receiving a registrant's risk level, the government itself can request that the registrant's risk level be reassessed by the ECRC. *See id.* at subd. 3(h).

296. *Id.* at subd. 6 (b) (2002).

297. *Id.* at subd. 3(i) (2002).

298. In *Connecticut Dep't of Public Safety v. Doe*, 123 S. Ct. 1160 (2003), the Court addressed Connecticut's law, which subjects all persons convicted of statutorily specified crimes to registration and notification, without conducting individualized risk assessments. The Court avoided answering whether the approach violates procedural due process. *Id.* at 1164. This was because Connecticut's Internet site expressly disclaims whether listed individuals are "currently dangerous," and acknowledges that the state "has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion [on the registry]. Individuals included within the registry are included solely by virtue of their conviction record and state law." *Id.* The Court held 9-0 that even *assuming arguendo* that a liberty interest was at stake no due process was required to "establish a fact that is not material under the Connecticut statute." *Id.*

The upshot of *Doe*, it would appear, is that jurisdictions need not engage in risk assessments prior to notification so long as a disclaimer such as that used by Connecticut accompanies the dissemination of information. For discussion of whether notification implicates a liberty interest more generally see Wayne A. Logan, *Liberty Interests in the Preventive State*, 89 J. CRIM. L. & CRIMINOLOGY 1167, 1186-97 (1999).

299. Of course, the possibility exists that procedural due process protections are compelled by the Minnesota Constitution alone. However, the Minnesota Supreme Court has signaled that it is disinclined to interpret the scope of due process more broadly than the federal courts. *See Boutin v. LaFleur*, 591 N.W.2d 711, 719 (Minn. 1999) (stating, with regard to registration, that the court "decline[s] to recognize a protectible liberty interest in reputation alone and instead embraces the federal 'stigma-plus' standard."); *State v. Fuller*, 374 N.W.2d 722, 726-27 (Minn. 1985) (stating that the Court will not "cavalierly construe our

If such a time comes, the Legislature would be well advised to keep in mind the advantages of narrowing the population of eligible offenders subject to notification. While an individualized risk assessment approach is costly and time-consuming, compared to an "offense-based" regime that automatically requires notification based on the commission of particular crimes, it does have significant benefits. Most fundamentally, it limits the number of persons targeted by an already overburdened system, and thus conserves precious criminal justice resources, reserving notification for those offenders thought to pose the greatest risk. Moreover, and more important, such risk level classifications optimize the likelihood that community members will remain alert to risk.³⁰⁰ Finally, by allowing registrants some input in classification decisions, the laws possibly enhance the willingness of registrants to abide by legal requirements upon their release into the community, and might even engender some positive therapeutic effects.³⁰¹

constitution more expansively than the United States Supreme Court has construed the federal constitution"). The Court of Appeals held in *In re Risk Level Determination of C.M.*, 578 N.W.2d 391 (Minn. Ct. App. 1998), before *Boutin*, that the State's notification law implicates a liberty interest insofar as the immunity it affords governmental actors deprives individuals of the right to sue guaranteed by the Remedies Clause of the Minnesota Constitution. Whether the Minnesota Supreme Court would see fit to use the Clause as a basis to distinguish Minnesota law from federal law remains to be seen. For further discussion of *C.M.*, see *infra* notes 315-21 and accompanying text.

300. See *In re Registrant E.L.*, 693 A.2d 505, 508 (N.J. Super. Ct. App. Div. 1997) (noting that "if Megan's Law is applied literally and mechanically to virtually all sexual offenders, the beneficial purpose of this law will be impeded."). Cf. *New York Times v. United States*, 403 U.S. 713, 729 (1971) (Stewart, J., concurring) (noting that "when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or careless"); *Thompson v. County of Alameda*, 614 P.2d 728, 735 (Cal. 1980) (refusing to impose on local government a duty to warn of potentially dangerous probationers and parolees because it would "produce a cacophony of warnings that by reason of their sheer volume would add little to the effective protection of the public.").

301. See Bruce J. Winick, *Sex Offender Laws in the 1990s: A Therapeutic Jurisprudence Analysis*, 4 PSYCHOL. PUB. POL'Y & L. 505, 565-66 (1998) (noting that "affording offenders an opportunity to participate through a hearing process can have significant therapeutic value" and might encourage a "willingness to accept [the] outcome and to comply with it."). According to Professor Winick, the hearing can lessen the self-denial common among sex offenders in that it "will place sex offenders in the position of advocating that they are amenable to treatment and rehabilitation and that their present risk of reoffending is reduced." *Id.* at 566. See also TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* 176 (1997) (asserting that "people who experience procedural justice

In contemplating an overhaul, the Legislature should also keep in mind that its heretofore moderate approach to registration and notification has resulted in a very solid judicial track record.³⁰² The first major test came in 1995 with *State v. Manning*.³⁰³ There, the Court of Appeals rebuffed an *ex post facto* challenge to the State's registration law, reasoning that because the law was "regulatory" and not "punitive" in design and effect, it could be applied to offenders who committed their statutorily eligible offenses before the effective date of the law (August 1, 1991), and were released from prison after that date.³⁰⁴ Applying both the Minnesota and U.S. *ex post facto* provisions, the *Manning* court unanimously concluded that "[a]lthough former offenders may be slightly burdened by the fact that they could be scrutinized when local sex crimes occur, this additional burden is not excessive in relation to the important regulatory purpose served."³⁰⁵ In 1997, again by unanimous decision, the Court of Appeals in *In re Welfare of C.D.N.* upheld the registration law against constitutional

when they deal with authorities are more likely to view those authorities as legitimate, accept their decisions, and to obey social rules"); TOM R. TYLER, WHY PEOPLE OBEY THE LAW 109 (1990) (asserting that "[i]f people feel they are unfairly treated when they deal with legal authorities, they then view the authorities as less legitimate and as a consequence disobey the law frequently in their everyday lives."); Tom R. Tyler, *Multiculturalism and the Willingness of Citizens to Defer to Law and Legal Authorities*, 25 LAW & SOC. INQUIRY 983, 989 (2000) (asserting that "the key to the effectiveness of legal authorities lies in creating and maintaining the public view that the authorities are functioning fairly").

302. This has occurred even in the absence of legislative efforts to inoculate the laws by means of express findings that registrants have a "lessened expectation of privacy," as some states have done. See, e.g., ALA. CODE § 15-20-20.1 (2002) ("[Registrants] have a reduced expectation of privacy because of the public's interest in safety and in the effective operation of government"); COLO. REV. STAT. § 16-22-112(1) (2002) ("The general assembly finds that persons convicted of offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety"); TENN. CODE ANN. § 40-39-101(b)(3-4) (2002) ("Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety. . . . [I]n balancing the offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about sexual offenders. . . will further the primary governmental interest of protecting vulnerable populations from potential harm."). For its part, the Florida Legislature has insisted that reviewing courts have a "duty" to uphold registration and notification laws, and that failure to do so "unlawfully encroaches on the Legislature's exclusive power to make laws and places at risk significant public interests of the state." FLA. STAT. ANN. § 775.24(1) (West 2002).

303. 532 N.W.2d 244 (Minn. 1995).

304. *Id.* at 247.

305. *Id.* at 248-49.

challenge, concluding that its application to juveniles was nonpunitive, and thus not violative of due process.³⁰⁶

However, Minnesota courts have suggested that community notification, as opposed to registration, warrants heightened constitutional safeguards. In *Boutin v. LaFleur*,³⁰⁷ Boutin was charged *inter alia* with two counts of criminal sexual conduct in the third degree and one count of assault in the third degree, and ultimately pled guilty to the assault charge alone.³⁰⁸ Prior to his release from prison, Boutin was required to register because he was initially charged with an offense requiring registration and pled guilty to “another offense arising out of the same set of circumstances.”³⁰⁹ The *Boutin* court concluded that requiring registration under such circumstances did not violate substantive due process because registration is regulatory, not punitive, and thus did not violate Boutin’s fundamental right to be presumed innocent of a criminal charge.³¹⁰ “Simply requiring Boutin to register does not amount to a finding of guilt of an enumerated predatory offense.”³¹¹ Nor did Boutin’s required registration violate procedural due process. While being labeled a “predatory offender” was admittedly injurious to reputation,³¹² satisfying the first prong of the “stigma-plus” test used in procedural due process analysis,³¹³ the law’s requirement that information be annually updated and verified constituted a “minimal burden” and as such did not trigger due process protection.³¹⁴

In reaching its due process conclusions, however, the court was at pains to emphasize that it was dealing only with registration—not notification. In a footnote, the *Boutin* majority noted that its decision did “not raise the issues addressed” by the Court of

306. 559 N.W.2d 431 (Minn. Ct. App. 1997).

307. 591 N.W.2d 711 (Minn. 1999).

308. *Id.* at 713.

309. *Id.* at 714 (citing MINN. STAT § 243.166 subd. 1(a)(1)).

310. *Id.* at 717-18.

311. *Id.* at 717.

312. *Id.* at 718.

313. The test originated with the Supreme Court’s decision in *Paul v. Davis*, 424 U.S. 693, 697 (1976), where the Court held that damage to “mere reputation” did not warrant procedural due process protection. Rather, for a protectible liberty interest to be at issue one must establish damage to reputation as well as harm to “some more tangible interest.” *Id.* at 701. For discussion of *Paul’s* application by other courts addressing registration and notification laws more generally see Logan, *supra* note 298, at 1183-1207.

314. *Boutin*, 591 N.W.2d at 718.

Appeals in its prior decision in *In re Risk Level Determination of C.M.*³¹⁵ In *C.M.*, the court addressed whether an offender required to register because he was convicted of an offense “arising out of the same set of circumstances” as a charged enumerated offense, could also be subject to notification, consistent with state and federal procedural due process.³¹⁶ The *C.M.* court implied that notification imposed “stigma,” and expressly held that the immunity afforded law enforcement by the notification law jeopardized the Remedies Clause of the Minnesota Constitution, which provides that “[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person. . . or character.”³¹⁷ As a result, *C.M.* was stripped of his right to sue over a publicly disseminated allegation that he had been convicted of an enumerated offense, which qualified as an additional legal injury sufficient to satisfy the “stigma-plus” test.³¹⁸

Having found a protectible liberty interest, the *C.M.* court then concluded that the procedures in ECRC assessments were inadequate to avoid a “significant risk of arbitrary or erroneous deprivation of an offender’s liberty interests.”³¹⁹ Offenders at initial ECRC risk assessment hearings lack the statutory right to call or cross-examine witnesses and “at no point does the state bear the burden of proving . . . that the offender actually committed a sex offense.”³²⁰ Accordingly, at least until such time as greater procedural rights are afforded offenders at ECRC risk assessments, or it is unreservedly determined by the Minnesota or U.S. Supreme Court that notification does not implicate a liberty interest, notification can occur only if a person has been *convicted* of an offense specifically enumerated in Minn. Stat. § 243.166 subd. 1, not “another offense arising out of the same set of circumstances.”³²¹

In short, it appears that for the foreseeable future Minnesota’s registration and notification laws will continue to be applied, free of much of the disruptive litigation experienced by other states. If past experience serves as a guide, the laws will also continue to

315. *Id.* at 717 n.5 (citing *In re Matter of Risk Level Determination of C.M.*, 578 N.W.2d 391 (Minn. Ct. App. 1998)).

316. *C.M.*, 578 N.W.2d at 395.

317. *Id.* at 397 (citing MINN. CONST. art. I, § 8).

318. *Id.*

319. *Id.* at 398.

320. *Id.*

321. *Id.* at 399.

evolve toward greater inclusiveness, in response to gaps manifested by high-profile victimizations, or shortcomings revealed by daily experience. This growth can be expected to occur both with respect to the range of registration-eligible offenses (e.g., false imprisonment of adults, aiding and abetting a registerable offense) and the extent of those subject to risk assessment and notification (e.g., persons entering Minnesota from elsewhere who currently are required on their own initiative to register yet are not subject to assessment or community notification).

One exception to this growth will likely relate to the required registration of individuals who committed their offenses when juveniles, a requirement in effect since 1994.³²² As noted earlier, at this time over four hundred individuals are on the registry as a result of offenses committed when they were less than eighteen years of age.³²³ It appears, however, that criminal justice system actors are not altogether receptive to the registration of juveniles as young as ten years of age, potentially for their lifetimes, and the "predatory offender" label that attaches. Prosecutors have charged juveniles with gross misdemeanors, not felonies, thereby avoiding the possibility of registration.³²⁴ Judges have ordered stays of adjudication, pursuant to Rule of Juvenile Procedure 15.05, allowing continued court supervision without requiring immediate registration,³²⁵ and otherwise merely disregarded the law by permitting registration waivers.³²⁶ It has been reported that in the 2003 legislative session the Minnesota County Attorneys' Association, among others, will advocate changes to the law, including a provision affording judges discretion to waive registration if they conclude the juvenile does not pose a threat to public safety.³²⁷ For its part, the Court of Appeals has characterized

322. For commentary on the registration of juveniles *see, e.g.*, Michael L. Skoglund, Note, *Private Threat, Public Stigma? Avoiding False Dichotomies in the Application of Megan's Law to the Juvenile Justice System*, 84 MINN. L. REV. 1805 (2000); Mark J. Swearingen, Comment, *Megan's Law as Applied to Juveniles: Protecting Children at the Expense of Children?*, 7 SETON HALL CONST. L.J. 525 (1997).

323. *See* O'Neill Memorandum, *supra* note 265.

324. *See* Cummins, *supra* note 284, at 1A.

325. *See, e.g.*, *In re Welfare of M.A.R.*, 558 N.W.2d 274 (Minn. Ct. App. 1997); *State v. Krotzer*, 548 N.W.2d 252 (Minn. Ct. App. 1996).

326. *See* Cummins, *supra* note 284, at 1A.

327. *Id.* Judge Randall recently commented on the predicament district judges now face as a result of mandatory registration:

When the district judge wishes to spare the child the harsh penalty of registration, he must stay the adjudication, even when he has solid

mandatory juvenile registration as “harsh,” and “invited” the Legislature to reconsider its stance.³²⁸ If in due course the law is reexamined and narrowed in its application, it is likely that consideration will also be given again to singling out certain high-risk juveniles for community notification.

The application of registration to homeless persons is also likely to attract legislative attention in the future. Current law requires that registrants inform authorities of any address change “[a]t least five days before [a registrant] starts living at a new primary address.”³²⁹ The BCA requires homeless persons to notify authorities of their “living address” on a daily basis.³³⁰ Given the transient lives of the homeless, such requirements pose possible insurmountable burdens, as recently recognized by the Court of Appeals.³³¹

A provision likely to attract continued judicial, if not legislative, attention is that requiring registration for a conviction if it “arise[es] out of the same set of circumstances” as a charged offense that requires registration.³³² The provision is a distinctive feature of Minnesota’s law, and is notable for its deviation from the “offense of conviction” orientation of the Minnesota Sentencing Guidelines,³³³ and its similarity to the controversial “real offense”

reasons for adjudicating the child delinquent. Why should the judge’s hands be so tied? . . . Common sense and decency demand that, at least when you are convicted of something that does not require registration, the sentencing judge should, in that instance, have the ability not to impose registration as a sexual offender, the second penalty, which can be the harshest of all.

In re Welfare of J.S.K., 2002 WL 31892086, at *4 (Minn. Ct. App. Dec. 31, 2002) (Randall, J., concurring).

328. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 249 (Minn. Ct. App. 2002).

329. MINN. STAT. § 243.166 subd. 3(b).

330. *State v. Iverson*, 2002 WL 31012999 *3-4 (Minn. Ct. App. 2002). In Washington State, transients classified as medium and high-risk must report in person to authorities and verify their registration information on a weekly basis, and lowest risk registrants on a monthly basis. See Sarah Duran, *Is There a Sex Offender Living Next Door?*, THE NEWS TRIBUNE (Tacoma, Wash.), June 4, 2000, at A1. See also *State v. Pray*, 980 P.2d 240, 243 (Wash. Ct. App. 1999) (upholding conviction of transient individual for failure to register while living in three different locations over a ten-day period).

331. See *Iverson*, 2002 WL 31012999 at *1 n.2.

332. See MINN. STAT. § 243.166 subd. 1(a)(1) (2002).

333. See MINNESOTA SENTENCING GUIDELINES AND COMMENTARY § II(A.), at 2 (Aug. 1, 2002), available at <http://www.msgc.stat.mn.us>. According to the Sentencing Commission, “serious legal and ethical questions would be raised if punishment were to be determined on the basis of alleged, but unproven,

approach adopted by the U.S. Sentencing Guidelines.³³⁴ In its application, the provision serves to maximize the charging power of prosecutors: so long as a statutorily enumerated felony is charged, and a conviction results, even if a misdemeanor, registration is required if the “arising out of” requirement is satisfied.³³⁵ This power was recently recognized by the Court of Appeals, which while constrained to uphold a petitioner’s required registration under plain meaning construction of the statute, noted

the enormity of the potential unchecked power this statute . . . places in the hands of the prosecution who has sole control over which offense to charge. In some criminal sexual conduct cases, the state’s case against the defendant weakens so significantly that the state will agree to plea bargain down. . . to a misdemeanor such as simple assault . . . Defendants may consider it prudent to accept a plea of guilty to a lower-level misdemeanor charge rather than go through the uncertainty of a trial on an egregious sexual assault charge. Yet, the stigma of the original

behavior . . . Thus, if an offender is convicted of simple robbery, a departure from the guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.” *Id.* See also *State v. Womack*, 319 N.W.2d 17, 18 (Minn. 1982) (invalidating upward departure based on non-conviction behavior because defendant never “had a right to have a jury determine his guilt or innocence of that charge”). Cf. Andrew D. Leipold, *The Problem of the Innocent, Acquitted Defendant*, 94 NW. U. L. REV. 1297 (2000) (arguing that defendants who have been acquitted, or had their charges dropped, should have the right to request a determination that they are factually innocent). It is worth noting, however, that Minnesota courts have not always observed this prohibition. See, e.g., *State v. Cox*, 343 N.W.2d 761, 643-44 (Minn. 1984) (upward departure permitted for plea to third-degree rape based on victim’s severe injuries); *State v. Tyler*, No. C7-90-2121, 1991 Minn. App. LEXIS 25, at *4 (Jan. 8, 1991) (upward departure permitted based non-conviction assaults, reflecting pattern of escalating domestic violence).

334. See U.S.S.G. § 1B1.3 (1998). For examples of critical commentary see, e.g., *The American College of Trial Lawyers Proposed Modifications to the Relevant Conduct Provisions of the United States Sentencing Guidelines*, 38 AM. CRIM. L. REV. 1463 (2001); Kevin R. Reitz, *Sentencing Facts: Travesties of Real-Offense Sentencing*, 45 STAN. L. REV. 253 (1993); David Yellen, *Just Deserts and Lenient Prosecutors: The Flawed Case for Real-Offense Sentencing*, 91 NW. U. L. REV. 1434 (1997).

335. See *Boutin v. LaFleur*, 591 N.W.2d 711, 715-16 (Minn. 1999); *State v. Kemmer*, No. C8-01-956, 2001 WL 1335733 *2-3 (Minn. Ct. App. Oct. 30, 2001). For an interesting discussion of how plea bargaining functioned to neutralize California’s earlier sex offender registry, the nation’s first, see E.A. Riddle, Note, *Compulsory Registration: A Vehicle of Mercy Discarded*, 3 CAL. W. L. REV. 195 (1967) (noting how courts and prosecutors permitted low-level sex crime suspects to plead to lesser, non-registerable offenses).

“charge” remains (meaning the registration requirement), even though it is now self-evident that the original charge did not result in a conviction. . . . Put another way, this is one of the few times in American jurisprudence where the “charge is the conviction,” meaning that once you are charged with an enumerated felony under the statute, you are “convicted of having to register” even if the ultimate result is a low-ranking misdemeanor. Amendments to the sexual-predator registration statutes are left to the legislature, but this case . . . articulates a troubling concept.³³⁶

Moreover, it appears that prosecutorial control over registration extends even to instances of dismissed complaints. In *Gunderson v. Hvass*,³³⁷ mandatory registration was upheld by a federal court in a habeas case when the State filed an original complaint charging Gunderson with first degree criminal sexual conduct, dismissed the complaint, and filed a substitute complaint charging the non-registerable offense of third degree assault, to which Gunderson pled guilty.³³⁸ Although Gunderson admitted during the plea colloquy that he assaulted the victim (non-sexually), the record contained no evidence supporting the initially charged registerable offense, other than that alleged in the dismissed original complaint.³³⁹ Despite the fact that Gunderson ultimately pled guilty to a non-sexual offense, of a considerably less serious nature, the court held that the initial allegation alone sufficed to trigger registration.³⁴⁰

336. State v. Newell, No. C1-02-310, 2002 WL 31253657 * 2 (Minn. Ct. App. 2002). This sentiment was expressed in more animated form by Judge Randall, who characterized the situation as:

a rare occasion in the history of the United States of America! The presumption of innocence . . . is swept aside in favor of a “rule” that says you are guilty and must register as a predatory sex offender simply because you were “charged” with an offense requiring registration, even though that charge did not stick. Your absolute right to plead not guilty and stand trial, which may result . . . in a conviction/adjudication for an offense not requiring registration as a predatory sex offender, is rendered almost meaningless. The *charge itself* is its own judge, jury, and executioner!

In re Welfare of J.S.K., No. C5-02-388, 2002 WL 31892086 (Minn. Ct. App. Dec. 31, 2002) (Randall, J., concurring) (emphasis in original).

337. Civ. No. 01-646 ADM/RLE, 2002 WL 31163049 (D. Minn. Sept. 27, 2002).

338. *Id.*

339. *Id.*

340. *Id.* at *2. Compare *Murphy v. Wood*, 545 N.W.2d 52, 53-54 (Minn. Ct. App. 1996) (reversing required registration because defendant admitted guilt to only

Beyond prompting concern over prosecutorial overreach, the “arising from” provision can generate judicial uncertainty. In *State v. Kemmer*,³⁴¹ for instance, the court of appeals concluded that a “district court is not required to find explicitly that the act with which a defendant is charged and the act to which he pleads guilty arise from the same underlying facts ‘if those facts are sufficiently established in the record.’”³⁴² Nor is the court limited to facts established as a matter of record at the plea hearing; rather, it can consider all materials available at sentencing (including, apparently, a letter from the victim who was “enraged” by the plea outcome).³⁴³ Five years before, however, the court of appeals reversed a required registration because there was no “factual record” supporting the conclusion that the offense pled to and that charged arose from the same set of circumstances.³⁴⁴ Such a record, the court added, is “also necessary for any constitutional analysis of procedural and substantive due process.”³⁴⁵

In short, despite the statutory mandate that an individual “shall register,” the “arising out of” provision requires courts to exercise considerable discretion in deciding whether registration is required. Moreover, while cases litigated to date have concerned guilty pleas there would appear to be no principled reason to not extend registration to persons convicted at jury trial of a non-registerable offense, a deliberative process that is far less transparent.

In the wake of the Minnesota Supreme Court’s holding in *Boutin* that registration imposes only a “minimal burden,”³⁴⁶ and does not amount to a conviction in itself,³⁴⁷ however, it appears that the “arising out of” provision is safe from procedural and substantive due process challenge. Nor would a substantive due process challenge likely be available based on the U.S. Supreme

non-sexual assault alleged by State) and *State v. Johnson*, No. C9-99-1046, 2000 WL 365051 (Minn. Ct. App. 2000) (reversing required registration because defendant did not “admit to any sexual contact” and conduct was “not sufficiently related to the criminal-sexual-conduct charges”).

341. No. C6-00-1402, 2001 WL 345470 (Minn. Ct. App. Apr. 10, 2001).

342. *Id.* at *2 (quoting Brief for Appellant and Boutin v. LaFleur, 591 N.W.2d 711, 715 (Minn. 1999)).

343. *Id.*

344. *See Murphy*, 545 N.W.2d at 54.

345. *Id.*

346. *Boutin v. LaFleur*, 591 N.W.2d 711, 718 (Minn. 1999).

347. *Id.*

Court's decision in *Apprendi v. New Jersey*,³⁴⁸ given that registration is deemed regulatory in nature, constituting neither a sentence enhancement nor a sentencing factor.³⁴⁹ These recognitions notwithstanding, it is safe to assume that in the years to come the "arising out of" provision will continue to spawn litigation and consume the time and attention of courts and other criminal justice system actors.³⁵⁰

Finally, beyond the legal concerns just noted, as registration and notification laws continue to be applied, other challenges of an even more fundamental, practical nature will need to be addressed. First and perhaps foremost, there remains the basic question of whether the laws are effective. According to BCA data, at this time twenty-one percent of adult and thirteen percent of juvenile (age eighteen or younger) registrants are out-of-compliance with registration requirements.³⁵¹ This figure compares favorably to other jurisdictions,³⁵² and shows significant improvement over the

348. 530 U.S. 466, 490 (2000) (holding that, other than the fact of a prior conviction, any fact that increases the penalty for a crime must be submitted to a jury and proven beyond a reasonable doubt).

349. See *Young v. State*, 806 A.2d 233, 251-52 (Md. 2002) (holding same).

350. Although Minnesota's provision appears unique, the State could draw from the experience of other states with similar provisions. In Connecticut, where registration is permitted if a person is convicted "of any felony that the court finds was committed for a sexual purpose," see CONN. STAT. § 54-254(a), the Court of Appeals recently held that judges must conduct a hearing to determine whether the requirement is satisfied, applying a preponderance of the evidence standard of proof. *State v. Pierce*, 794 A.2d 1123, 1133 (Conn. Ct. App. 2002). While such an approach would add costs to the front end of the registration process, ultimately it might result in diminished litigation costs compared to the present approach. See generally D.J. GALLIGAN, *DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES* 122-27 (1996) (discussing costs and benefits of enhanced procedural protections).

351. O'Neill Memorandum, *supra* note 265.

352. In California, for instance, it is believed that 44% of eligible registrants (almost 33,000 individuals) are out of compliance. See David Chanen, *2,227 Missing From Sex Offender Registry*, MINNEAPOLIS STAR TRIB., Jan. 9, 2003, at B1. In Kentucky, 26% of registrants' listed addresses that could not possibly be residences, raising serious question over whether other registrants' information is accurate and up-to-date. See Richard Tewksbury, *Validity and Utility of the Kentucky Sex Offender Registry*, 66 FED. PROBATION 20, 25 (June 2002). See also Ashley Broughton, *Sex Offender Tracking Lags*, SALT LAKE TRIBUNE, Feb. 24, 2003, at D1 (noting that eighteen states do not verify registrant compliance and estimating that 24% of registrants nationwide are out of compliance); Kirk Mitchell & Howard Pankratz, *Sexual Offender Registry Deficient; Communication, Funds Lacking*, DENVER POST, Dec. 9, 2001, at A01 (characterizing Colorado registry as "piecemeal" and containing addresses that "often are false or nonexistent"); *Improve Tracking of Offenders*, HARTFORD COURANT (Conn.), Mar. 19, 1999, at A20

recent past,³⁵³ likely a result of database management and technological improvements resulting from increased BCA funding for registration.³⁵⁴ However, given that the compliance of the vast majority of registrants is assessed once a year on the basis of a letter to their reported home address, not periodic door-to-door confirmations or similar methods, there remains some cause for concern that the reported figures do not accurately reflect true compliance rates.³⁵⁵ Moreover, there is no way of knowing with certainty whether statutorily eligible newcomers to Minnesota are taking the initiative to register in the first instance.³⁵⁶

The effectiveness of community notification also remains a largely untested assumption in Minnesota, as elsewhere.³⁵⁷ Studies conducted in Iowa³⁵⁸ and Washington State³⁵⁹ discerned no

(noting that as much as 50% of Connecticut registry information is missing or inaccurate).

353. See Karl J. Karlson, *Study Finds Many Sex Offenders Not Properly Registered*, ST. PAUL PIONEER PRESS, Jan. 2, 1998, at 1B (reporting that 70% of registrants were not living at their reported address). In the Spring of 1999 shortcomings in the registration law became apparent when police were unable to locate over half of the twenty-three registrants thought to live in the area where a twelve-year-old Waseca girl had been murdered. See Robb Murray, *System to Track Sex Offenders Falls Short*, MANKATO FREE PRESS, May 5, 1999, at 1A. While the registrants were all eventually located, the local police chief expressed frustration over lack of compliance and what he referred to as an “unfunded mandate.” *Id.*

354. Telephone conversation with AnnMarie O'Neill, Minnesota Bureau of Criminal Apprehension (Nov. 14, 2002) (memorandum on file with author).

355. In jurisdictions where more hands-on approaches have been employed the costs have proven significant. See, e.g., Kathleen Ingley, *A Fearful Eye: Keeping a Watch on the Valley's Sex Offenders; Monitoring Procedures Get Tougher*, ARIZ. REPUBLIC, May 2, 1999, at A1 (discussing significantly increased costs in Phoenix associated with door-to-door approach).

356. One exception in this regard would arise when a registerable offender arrives in Minnesota pursuant to an agreement with another state on the basis of interstate compact, which would serve to alert Minnesota officials. See MINN. STAT. § 243.166 subd. 9 (2002). As a result of the immigration provision, it is incumbent on non-compact immigrants to Minnesota to conduct legal research when entering the State. Cf. *Roe v. Att'y Gen.*, No. 99-2706-H, 1999 WL 1260188, at *1 (Mass. Super. Nov. 23, 1999) (noting difficulty of discerning whether Florida conviction constituted a “like offense” requiring registration in Massachusetts).

357. See generally Wayne A. Logan, *Sex Offender Registration and Community Notification: Emerging Legal and Research Issues*, in ANNALS NEW YORK ACADEMY OF SCIENCES, UNDERSTANDING AND MANAGING SEXUALLY COERCIVE BEHAVIOR (forthcoming 2003) (discussing limited empirical work conducted thus far).

358. GENEVA ADKINS ET AL., *THE IOWA SEX OFFENDER REGISTRY AND RECIDIVISM* (2000).

359. See DONNA D. SCHRAM & CHERYL D. MILLOY, *COMMUNITY NOTIFICATION: A STUDY OF OFFENDER CHARACTERISTICS AND RECIDIVISM* 3 (1995). The authors did find, however, that recidivism among juvenile registrants, as to which there was no

statistically significant difference in recidivism between control and study group offenders. The Washington study did find, however, that individuals subject to registration and notification were arrested for new crimes more quickly than those who were not.³⁶⁰ The authors were unsure of the reason for this latter outcome, speculating that high-risk registrants might be “watched more closely” and that the “increased attention results in earlier detection.”³⁶¹ Research, in Minnesota and elsewhere, is needed to learn how such subsequent arrests occur. If they result solely from ready access by police to registrants’ information, and not input from community members made aware of registrants’ presence, policy makers might have reason to question the value of community notification.

In conducting research into recidivism, attention must also be paid to the circumstances surrounding rearrest. According to the latest Minnesota data available, 69 registrants have been rearrested since 1997 for what the Department of Corrections considers a “new sex offense,” roughly five percent of sex offenders released during the time.³⁶² In terms of risk level, 39 level Is, 17 level IIs, and 13 level IIIs so recidivated.³⁶³ Also, since 1991, 466 individuals have been convicted of registration-related violations.³⁶⁴

In the future, it will be critically important to address a variety of more specific recidivism-oriented questions, including the development of more detailed information on whether the new offenses come within the ambit of the “predatory” crimes set forth in Minn. Stat. § 243.166. Such information will be invaluable in the

comparative cohort, was very high (79%). *Id.* at 19.

360. *Id.* at 18.

361. *Id.* at 19.

362. Memoranda from Stephen Huot and Adam Bailey (Nov. 21, 2002 and Jan. 9, 2003) (on file with author). It bears mention that by focusing only upon persons released, the figure excludes registrants subject to involuntary civil commitment, by definition a sub-population thought by State officials to be particularly prone to recidivate.

363. *Id.*

364. O’Neill Memorandum, *supra* note 265. This volume compares favorably to other jurisdictions. See David Chanen, *A Decade Later, It’s Imperfect*, MINNEAPOLIS STAR TRIBUNE, Feb. 10, 2001, at A1 (noting that in Illinois 3,000 of 16,200 sex offenders were returned to prison for registration violations). In Minnesota at least, it thus seems that registration is not being used to sweep up “undesirables,” a principal motivation of criminal registration laws in earlier decades. See Note, *Criminal Registration Ordinances: Police Control Over Potential Recidivists*, 103 U. PA. L. REV. 60, 62-63 (1954) (characterizing the “incarceration or expulsion of undesirables” as the “principal” objective of circa 1930s registration laws).

ongoing effort to develop a diagnostic instrument capable of accurately gauging risk, whether in terms of rooting out "false positives" (offenders unduly categorized level II or level III) or "false negatives" (offenders who should be but are not categorized as level II or level III). Attention must also be paid to the recidivist activity of registrants who have moved to Minnesota from other jurisdictions; at present, while such individuals are required to register, they are not subject to risk assessment or community notification.

Empirical work is also needed on whether recidivists repeat the modus operandi of their prior crimes, including victim selection, and whether the new offenses are committed within the geographic scope of community notification. These issues are critically important given that the vast majority of sex offenders are known to their victims, and that a foremost purpose of notification is to inform communities of dangerous sex offenders in their midst, in order to facilitate self-protective efforts.³⁶⁵

As part of its recent report to the Legislature,³⁶⁶ the Department of Corrections evaluated the cases of the thirteen level III registrants released since 1997 who, as of March 2002, were re-arrested for a new sex offense. Although the data set is very small, it warrants mention that the recidivists (1) were known to their victims; (2) were in jail or halfway house at the time of new offense; or (3) committed their new offense some distance from their registered address.³⁶⁷ These findings align with the only other study done thus far on re-offending characteristics, in Massachusetts, which found that just over 4% of sex crime victims would have benefited from having knowledge that a stranger with an offending history lived nearby.³⁶⁸ Again, future empirical work on this

365. See 1996 Minn. Laws, ch. 408, art. 5, §1, 1996 Minn. Sess. Law Serv. Ch. 408 (West) (codified as amended at Minn. Stat. §244.052 (2002)) ("The legislature finds that if members of the public are provided adequate notice and information about a sex offender who has been or is about to be released from custody and who lives or will live in or near their neighborhood, the community can develop constructive plans to prepare themselves and their children for the offender's release.").

366. See *Legislative Report*, *supra* note 247.

367. *Id.* at 4-8. One other offender was found to be in possession of child pornography, after having been informed upon by a level II registrant with whom he was living. *Id.* at 6.

368. Anthony J. Petrosino & Carolyn Petrosino, *The Public Safety Potential of Megan's Law in Massachusetts: An Assessment From a Sample of Criminal Sexual Psychopaths*, 45 CRIME & DELINQUENCY 140 (1999).

question will prove invaluable in the ongoing effort to optimize community notification efforts.

Finally, work must be done on how the laws actually impact two key constituencies: registrants themselves and community members. As for the former, while recidivism data will hopefully be broadly informative of any deterrent effects, evaluation is needed of the practical, day-to-day consequences of notification for registrants. In a positive sense, it is conceivable that the laws foster heightened accountability and awareness of scrutiny, which might contribute to increased law abidingness.³⁶⁹ On the other hand, there is good reason to think that the social pressures, isolation, and job and housing difficulties often associated with notification might carry significant anti-therapeutic effects.³⁷⁰

With respect to community residents, important work yet needs to be done on numerous fronts, including whether mass notification techniques such as the Internet are effective (especially among the "tech have-nots"), and whether and how informed residents increase their self-protective and surveillance efforts upon being notified of a registrant's presence. At the same time, research is needed into the emotional consequences to residents of notification: whether it possibly instills in some a harmful paranoia; in others a "fatigue effect," if subjected to repeated warnings (a particular concern in neighborhoods where registrants tend to congregate); or in others still a "lulling effect" because they are beyond the physical scope of notification. Research is also needed on whether the acknowledged burdens of registration and notification serve to discourage reporting of sex crimes, as suggested by anecdotal evidence associated with non-stranger sex crimes (incest in particular).³⁷¹

In the end, such empirical work, on these many fronts, is

369. See, e.g., Winston Ross, *Meet the "Worst of the Worst" Bill Would Put Cities on Notice When Violent Sex Offenders Move In*, SPOKESMAN-REVIEW (Spokane, Wash.), Feb. 16, 2003, at A1 (noting Idaho registrant's positive view of the law, based on his opinion that he "can't be trusted"); <http://www.calsexoffenders.net> (last updated June 23, 2002) (Website maintained by convicted California sex offender noting that while the laws "may be burdensome. . .they help us remember who we've been so we don't become it again").

370. For one study examining this possibility see Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Notification: Managing High Risk Criminals or Exacting Further Vengeance?*, 18 BEHAV. SCI. & L. 375 (2000).

371. See NAT'L CRIMINAL JUSTICE ASSOC., POLICY REPORT: SEX OFFENDER COMMUNITY NOTIFICATION 29 (Oct. 1997) (citing occurrence in Louisiana where two teenage girls were reluctant to report their abusive stepfather).

critically needed. While technological advances promise to ease the major personnel and fiscal burdens associated with implementing registration and notification,³⁷² there is no substitute for ongoing systematic evaluation of whether the laws are achieving their avowed community safety goals, with concomitant due regard for any possible adverse consequences they might have.

IV. CONCLUSION

During the 1990s, U.S. jurisdictions, shaken by tragic images of women and children being physically and sexually victimized, took aggressive steps to exercise control over convicted sex offenders within their communities by means of registration and community notification laws. The laws seek to do two basic things: first, heighten the capacity of police to monitor the whereabouts of persons with offending histories; and second, empower community members with the same information, in the hope of permitting them to take self-protective steps and make them “co-producers” of public safety and surveillance.³⁷³ Together the laws represent an important community-based, populist development in social control methodology, a welcome option for states in times of increasingly scarce (and expensive) prison space. However, registration and notification are by no means cost-free; millions of dollars are required to operate the systems in a manner likely to achieve any success.³⁷⁴ Ten years from now, perhaps in another symposium such as this, hopefully there will be answers to the basic questions that endure over whether Minnesota’s registration and

372. See Wayne A. Logan, *Federal Habeas in the Information Age*, 85 MINN. L. REV. 147, 200-01 (2000) (discussing innovations such as “Megan’s Mapper”); Ronnie L. Paytner, *Getting the Word Out*, 26 LAW ENF. TECH. 76 (June 1999) (surveying new developments in notification technologies).

373. See David Beatty, *Community Notification-It’s the Right Thing to Do*, 59 CORRECTIONS TODAY, Oct. 1997, at 20 (asserting that the laws permit “community management of offenders” as a result of “more eyes monitoring released offenders”); Lois Presser & Elaine Gunnison, *Strange Bedfellows: Is Sex Offender Notification a Form of Community Justice?*, 45 CRIME & DELINQ. 299, 310 (1999) (noting that the laws “generalize[] the incapacitative functions of prison beyond the prison and, indeed, beyond the dominion of government.”).

374. See Denise M. Bonilla & Joy L. Woodson, *Continuing Debate Over Megan’s Law; Some Question Whether Sex Offender List Curbs Crime*, L.A. TIMES, Feb. 14, 2003, at 2 (noting that California Attorney General Bill Lockyer estimates that an adequate system would cost \$15-\$20 million per year); Dave Morantz, *Sex Offenders’ Risk Status Often Slow to Be Assessed*, OMAHA WORLD-HERALD, Oct. 28, 2001, at 1A (noting that in Iowa 40% of registrants and Nebraska 50% of registrants have yet to be risk assessed due to lack of money).

notification laws, whatever their benefit in affording a measure of psychic security, actually achieve the promise of community safety envisioned at their origin.