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## The Evolution and Unintended Consequences of Legal Responses to Childhood Sexual Abuse: Seeking Justice and Prevention

By Alexandra Hunstein Roffman\*

### I. INTRODUCTION

*See I was young, man, I was just a toddler, a kid  
And he wasn't the first to successfully try but he did*

*...  
See it was weird because I felt like I was losing my mind  
And then it happened like it happened like millions of times  
And I would swear that I would tell but they would think that I was lying  
And now the power that he held was like a beacon to mine<sup>1</sup>*

In her song, “Cleaning out My Closet,” rapper Angel Haze explains in graphic detail the sexual abuse that she suffered as a child at the hands of young men.<sup>2</sup> She describes the physical pain and the lasting emotional pain that affected her relationships with her family and future partners, her body image, her personality, and her health.<sup>3</sup> Haze is not alone in her experience—one in four women and one in five men in the United States have experienced childhood sexual abuse.<sup>4</sup> In 2012 alone, the United States Department of Health and Human Services reported 62,936 incidents of child sexual abuse.<sup>5</sup> The prevalence of this type of abuse has motivated legislators to improve the amount of protection that the justice system can provide to children. Child sexual abuse is not a problem only facing the justice system, rather “[i]t is a social issue, a religious issue, an economic issue, an emotional issue, a political issue, a spiritual issue, a health issue, an educational issue, a racial issue, a gender issue, and more.”<sup>6</sup>

In the last twenty years, both federal and state legislators have passed a wide range of legislation relating to the problem of childhood sexual abuse. Each response has been largely based on the call of states to reform their laws after a recent tragedy involving one of their citizens.<sup>7</sup> After a series of children were abducted and killed by known abusers, the first wave of

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<sup>1</sup> Angel Haze - *Cleaning out My Closet*, YOUTUBE (Oct. 23, 2012), <https://www.youtube.com/watch?v=U7bZ08RNUyM>.

<sup>2</sup> *Id.*; Michael P. Jeffries, *How Rap Can Help End Rape Culture*, ATLANTIC (Oct. 30, 2012), <http://www.theatlantic.com/entertainment/archive/2012/10/how-rap-can-help-end-rape-culture/264258/>.

<sup>3</sup> Angel Haze - *Cleaning out My Closet*, *supra* note 1 (“I was afraid of myself, I had no love for myself / I tried to kill, I tried to hide, I tried to run from myself / . . . I didn’t want to be attractive to nobody else”); Jeffries, *supra* note 2.

<sup>4</sup> MARCI A. HAMILTON, *JUSTICE DENIED: WHAT AMERICA MUST DO TO PROTECT ITS CHILDREN* 4 (2008).

<sup>5</sup> CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., *CHILD MALTREATMENT 2012* 21, 39 (2013), *available at* <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf#page=31>.

<sup>6</sup> Eric S. Janus & Emily A. Polachek, *A Crooked Picture: Re-Framing the Problem of Child Sexual Abuse*, 36 WM. MITCHELL L. REV. 142, 166 (2009) (quoting Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws or Public Education and Prevention*, 23 NEW. ENG. J. ON CRIM. & CIV. CONFINEMENT 303, 304 (1997)).

<sup>7</sup> See Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 515–17 (2013); J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & ECON. 161, 162 (2011). Alex: Although the BlueBook no longer requires the hyphen used here to be an en dash (–, which is longer than a -)

legislative response, from 1990 to 2006, focused on registration and identification of convicted child sexual abusers.<sup>8</sup> This publicly-available information appeased citizens and allowed them to participate in community policing, thereby giving them more control in the criminal justice process.<sup>9</sup> It did not, however, have a significant effect on the overall prevalence of child abuse, nor did legislators realize the far-reaching implications this law would have on communities.<sup>10</sup>

In the mid-2000s, after the rampant child abuse scandals within the Catholic Church, the problem of child sexual abuse came into the national spotlight once again.<sup>11</sup> In the second wave of reforms, legislators focused on amending existing laws to allow more victims of childhood sexual abuse to seek justice within the legal system.<sup>12</sup> This wave of reforms continues to develop as more states amend their laws regarding the statute of limitations for bringing legal claims of child sexual abuse to create means by which adult victims can bring expired claims.<sup>13</sup> The changes in the law reflect the nature of child abuse, in that it often remains a secret for decades.<sup>14</sup>

That second wave of reforms is a much more victim-centered approach and offers the benefit of potentially identifying abusers who are still at large by allowing victims to bring claims of childhood sexual abuse that would have previously expired.<sup>15</sup> Although this legal strategy is more beneficial in terms of helping victims find justice than registration and notification laws, it is still a secondary response to the problem of childhood sexual abuse.<sup>16</sup> In addition to reforming the statutes of limitations, the legal system should focus on responses that will increase the detection and disclosure of childhood sexual abuse during childhood.<sup>17</sup>

This Comment describes the unique nature of childhood sexual abuse and specific obstacles that victims face regarding the timing of their claims, explores the two waves of legal reforms, the first focusing on regulating the abusers, and the second focusing on assisting victims, and finally offers suggestions for reform. Part II defines the problem of childhood sexual abuse by examining its prevalence and unique characteristics. Part III examines the first wave of legislative reform seeking to address childhood sexual abuse, inspired by a series of tragic kidnappings and murders, and the effects its focus on registration and identification has had on sexual offenders. Part IV next outlines the barriers that victims of childhood sexual abuse face today, mainly the fast expiration of statutes of limitation, and the second wave of legislative

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in page ranges, the BlueBook still uses an en dash for page ranges, year ranges, etc., in examples. I suggest we use the en dash when referring to ranges. I have changed all hyphens to en dashes, but you can simply reject if you disagree.

<sup>8</sup> Wilson, *supra* note 7; Prescott & Rockoff, *supra* note 7.

<sup>9</sup> Wilson, *supra* note 7, at 541.

<sup>10</sup> *Id.* at 519, 524; see Prescott & Rockoff, *supra* note 7, at 161–92 (exploring the unintended consequences of registration and notification laws); Damien Cave, *Roadside Camp for Miami Sex Offenders Leads to Lawsuit*, N.Y. TIMES (July 9, 2009), <http://www.nytimes.com/2009/07/10/us/10offender.html?pagewanted=print>; Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531, 531–32 (2007); see also *infra* Part III.D.iiB (discussing the mixed effects of registration and identification legislative reform on the overall prevalence of child abuse).

<sup>11</sup> HAMILTON, *supra* note 4, at 7.

<sup>12</sup> See Erin Khorram, *Crossing the Limit Line: Sexual Abuse and Whether Retroactive Application of Civil Statutes of Limitation Are Legal*, 16 U.C. DAVIS J. JUV. L. & POL'Y 391, 400 (2012); see generally MARCI A. HAMILTON & PAUL R. VERKUIL, BENJAMIN N. CARDOZO SCH. OF LAW, SUMMARY OF STATUTES OF LIMITATIONS REFORM ACROSS THE UNITED STATES (2014), available at <http://sol-reform.com/snapshot.pdf> (providing an overview of the state of statutes of limitation).

<sup>13</sup> HAMILTON & VERKUIL, *supra* note 12.

<sup>14</sup> Jenna Miller, Note, *The Constitutionality of and Need for Retroactive Civil Legislation Relating to Child Sexual Abuse*, 17 CARDOZO J.L. & GENDER 599, 602 (2011); JANET R. OLIVA, SEXUALLY MOTIVATED CRIMES: UNDERSTANDING THE PROFILE OF THE SEX OFFENDER AND APPLYING THEORY TO PRACTICE 163 (2013).

<sup>15</sup> HAMILTON, *supra* note 4, at 46.

<sup>16</sup> Janus & Polachek, *supra* note 6, at 158 (advocating for primary responses rather than the current secondary and tertiary responses); Miller, *supra* note 14, at 609 (stating that 1000 victims were able to bring claims when California created window legislation). No commas in numbers with only 4 digits.

<sup>17</sup> David Finkelhor, *The Prevention of Childhood Sexual Abuse*, FUTURE CHILD., Fall 2009, at 169, 176.

reform that seeks to change these statutes. Finally, Part V concludes with recommendations for future reforms.

## II. DEFINING THE PROBLEM OF CHILD SEXUAL ABUSE

Child sexual abuse is broadly defined as “any sexual activity perpetrated against a minor by threat, force, intimidation, or manipulation.”<sup>18</sup> This encompasses any sexual act that is performed on a child or that is performed in the presence of a child.<sup>19</sup> Importantly, this definition continues to broaden as the understanding of childhood sexual abuse develops.<sup>20</sup> The definition now includes exploitation through prostitution and production of pornographic materials in addition to physical sexual acts.<sup>21</sup>

### *A. The Prevalence of Child Sexual Abuse*

Eighty percent of female survivors and sixty percent of male survivors of childhood sexual abuse are abused by someone close to them, ranging from family members or friends, to teachers and healthcare professionals.<sup>22</sup> Familial abuse accounts for more than twenty-five percent of child sexual abuse, while a person in the child’s social network perpetrates the abuse sixty percent of the time.<sup>23</sup> The risk of childhood sexual abuse rises with age for girls, but peaks for boys when they reach puberty.<sup>24</sup>

The effects of this abuse are often devastating for victims who experience a range of short- and long-term side effects.<sup>25</sup> In the short-term, victims may experience Posttraumatic Stress Disorder, develop sexualized behavior, feel depressed, or develop general behavioral issues.<sup>26</sup> In the long-term, victims can experience sexual dysfunction, have suicidal tendencies, develop substance abuse problems and sleep disturbances, and have propensities to engage in self-mutilation.<sup>27</sup> These effects are a result of the way that victims’ bodies process the abuse they endured on a biological level.<sup>28</sup> Medical researchers have found that victims of childhood sexual abuse experience a permanent disruption in the brain’s ability to handle stress.<sup>29</sup> When the body experiences stress, it deploys cortisol, the hormone that helps the body cope with stress, and when receptors in the brain receive cortisol, the stress levels are reduced.<sup>30</sup> A study published in 2009

<sup>18</sup> Delphine Collin-Vézina et al., *Lessons Learned from Child Sexual Abuse Research: Prevalence, Outcomes, and Preventive Strategies*, CHILD & ADOLESCENT PSYCHIATRY & MENTAL HEALTH (July 18, 2013), <http://www.capmh.com/content/7/1/22>. Another definition of child sexual abuse is “the exploitation of a child for the sexual gratification of an adult or older child. It can include any sexual act performed with or in the presence of a child.” OLIVA, *supra* note 14, at 159.

<sup>19</sup> OLIVA, *supra* note 14, at 159; Finkelhor, *supra* note 17, at 170–71.

<sup>20</sup> Collin-Vézina et al., *supra* note 18.

<sup>21</sup> OLIVA, *supra* note 14, at 159.

<sup>22</sup> HAMILTON, *supra* note 4, at 10.

<sup>23</sup> Finkelhor, *supra* note 17, at 172.

<sup>24</sup> *Id.* at 171.

<sup>25</sup> Miller, *supra* note 14, at 604–05.

<sup>26</sup> *Id.* at 605; Beth E. Molnar et al., *Child Sexual Abuse and Subsequent Psychopathology: Results from the National Comorbidity Survey*, 91 AM. J. PUB. HEALTH 753, 753, 757 (2001) (finding that a “strong, independent, statistically significant relationship between [childhood sexual abuse] and the majority of mood, anxiety, and substance disorders” exists).

<sup>27</sup> Miller, *supra* note 14, at 605; Joseph Nowinski, *Childhood Trauma and Adult Alcohol Abuse: Shedding Light on the Connection*, HUFFINGTON POST (July 22, 2013), [http://www.huffingtonpost.com/joseph-nowinski-phd/alcohol-abuse\\_b\\_3595743.html](http://www.huffingtonpost.com/joseph-nowinski-phd/alcohol-abuse_b_3595743.html) (finding a connection between alcohol abuse and childhood sexual abuse); Beth E. Molnar et al., *Psychopathology, Childhood Sexual Abuse and Other Childhood Adversities: Relative Links to Subsequent Suicidal Behaviour in the US*, 31 PSYCHOL. MED. 965, 969 (2001). People who experienced childhood sexual abuse were more likely to attempt suicide. *Id.* at 966, 968. Compared with individuals who did not experience sexual abuse as children, suicide attempts among victims were three to eleven times higher. *Id.* at 974.

<sup>28</sup> Scott Mendelson, *The Lasting Damage of Child Abuse*, HUFFINGTON POST (Dec. 31, 2013), [http://www.huffingtonpost.com/scott-mendelson-md/the-lasting-damage-of-child-abuse\\_b\\_4515918.html](http://www.huffingtonpost.com/scott-mendelson-md/the-lasting-damage-of-child-abuse_b_4515918.html). I’m unsure why none of these internet citations have the time that the article was published online? I read Rule 18 as requiring the time following the date unless there is no time listed.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

compared the brains of people who committed suicide with the brains of people who died natural deaths, and found that those who experienced abuse and committed suicide had fewer cortisol receptors allowing the body to turn off the stress response.<sup>31</sup> High levels of cortisol in the brain leads to mood alteration, sleep disturbances, and heightened anxiety.<sup>32</sup> This leaves victims of childhood sexual abuse more prone to major psychiatric disorders.<sup>33</sup> Some of these symptoms do not, however, present themselves until years after the abuse occurs.<sup>34</sup> Victims can be so preoccupied with coping with the side effects of abuse that they do not realize the abuse is actually the source of these problems.<sup>35</sup>

The effects of this abuse do not just have a long-term effect on the victims themselves, but have fiscal implications for communities and institutions. In 2010, the government spent an estimated average of \$97,952 to \$210,012 on each victim of nonfatal child abuse.<sup>36</sup> In the United States in 2008, the total lifetime economic burden that resulted from new cases of child maltreatment was between \$57 and \$124 billion.<sup>37</sup> Moreover, children who are victims of abuse and neglect in any form are fifty-nine percent more likely to be arrested as juveniles, twenty-eight percent more likely to be arrested as adults, and thirty percent more likely to commit violent crimes.<sup>38</sup> This propensity toward illicit behavior traps the child in a “cycle of violence” for the rest of his or her life.<sup>39</sup>

#### *B. The Unique Circumstances of Child Sexual Abuse*

Adults and older juveniles often target children because their circumstances make them the “perfect victims.”<sup>40</sup> Children are vulnerable because of their age and because they are usually physically weaker and smaller than adults, immature, less credible than adults, and often lack verbal communication skills to articulate abuse.<sup>41</sup> Furthermore, the way in which children interact with adults lends itself more easily to exploitation: children are naturally curious, easily led, and have a distinct need for attention and affection from adults in their lives.<sup>42</sup> As they grow older, the natural curiosity that children have about sex is often a forbidden topic to discuss with their parents, making reporting abuse difficult for the child.<sup>43</sup> Some researchers argue that sexual predators are aware of these characteristics and exploit the average child’s natural sexual curiosity when seducing him or her.<sup>44</sup>

<sup>31</sup> *Id.*; Patrick O. McGowan et al., *Epigenetic Regulation of the Glucocorticoid Receptor in Human Brain Associates with Childhood Abuse*, 12 NAT. NEUROSCIENCE 342, 342–43 (2009).

<sup>32</sup> Mendelson, *supra* note 28.

<sup>33</sup> *Id.* These major disorders include Major Depression, Posttraumatic Stress Disorder, and Generalized Anxiety Disorder, among others. *Id.*

<sup>34</sup> Miller, *supra* note 14, at 603.

<sup>35</sup> *Id.* at 603–04.

<sup>36</sup> Xiangming Fang et al., *The Economic Burden of Child Maltreatment in the United States and Implications for Prevention*, 36 CHILD ABUSE & NEGLECT 156, 160 (2012) (basing these figures on estimates of short and long-term healthcare costs, productivity losses, child welfare costs, criminal justice costs, and special education costs).

<sup>37</sup> *Id.* at 161.

<sup>38</sup> Jenna Rae King, *Caught in the Cycle of Sexual Violence: The Application of Mandatory Registration and Community Notification Laws to Juvenile Sex Offenders*, 18 WIDENER L. REV. 99, 103 (2012).

<sup>39</sup> *Id.*

<sup>40</sup> OLIVA, *supra* note 14, at 161.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (arguing that these characteristics, in combination with the fact that many children feel a need to defy their parents and are not ideal witnesses when testifying about a crime, contribute to their vulnerability to sexual abuse). Children are taught from an early age to respect adults, and generally rely on them for daily emotional and physical support, and those relationships allow abusers to easily prey on children victims. *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

A vast majority of all childhood sexual abuse goes unreported.<sup>45</sup> Only ten percent of all survivors of child sex abuse notify the authorities of their experience.<sup>46</sup> This means that around ninety percent of victims do not report incidents of child sexual abuse, and their abusers could remain anonymous in their communities.<sup>47</sup> Victims choose not to come forward to report their abuse for a variety of reasons. One of the primary reasons that victims do not come forward is because they usually feel shame and embarrassment about their experiences.<sup>48</sup> The pressure that children feel to be accepted by their peers affects their daily behavior, so children are commonly embarrassed by their experience.<sup>49</sup> Children also often believe that they have somehow done something to merit the abuse and are therefore to blame for its occurrence.<sup>50</sup> In other cases, the abusers threaten to harm the child or the child's family should the child tell someone, or give the child gifts and special attention in exchange for keeping the abuse secret.<sup>51</sup> If the abuser is someone in the victim's family, it is particularly difficult for the victim to choose to report the abuse due to a fear of having to see the abuser again or that no one in the victim's family will believe him or her.<sup>52</sup>

The secretive nature of child sex abuse and the propensity of children to hold onto that secret for years at a time create unique circumstances. The fact that only ten percent of victims report their abuse, coupled with this secrecy makes it difficult to identify abusers.<sup>53</sup> Accordingly, when a number of children died at the hands of abusers in the early 1990s,<sup>54</sup> federal and state legislatures reacted by focusing on punishing known abusers in hopes that it would have a deterrent effect on others.<sup>55</sup> These types of laws are referred to as memorial laws since legislatures enacted them after highly-publicized kidnappings, sexual assaults, or murders of children.<sup>56</sup> Though states and local jurisdictions have enacted their own local laws, the national memorial laws enacted since the early 1990s provide states with a set of primary regulatory policies for monitoring sexual offenders.<sup>57</sup>

### III. FIRST WAVE REFORMS: REGULATING AND PUBLICLY IDENTIFYING KNOWN ABUSERS

The first wave of reforms relating to the regulation of sexual offenders began in the early 1990s and continued through 2006.<sup>58</sup> Both the federal and state laws were passed in response to a

<sup>45</sup> Miller, *supra* note 14, at 602–03; OLIVA, *supra* note 14, at 166; HAMILTON, *supra* note 4.

<sup>46</sup> Miller, *supra* note 14, at 602–03; HAMILTON, *supra* note 4. The biggest obstacle that victims of childhood sexual abuse face is coming forward and reporting the experience. OLIVA, *supra* note 14, at 163. The secrecy surrounding the abuse also makes it difficult for criminal investigators once a child victim does come forward. *Id.*

<sup>47</sup> HAMILTON, *supra* note 4, at 13.

<sup>48</sup> Miller, *supra* note 14, at 603; OLIVA, *supra* note 14, at 163–64.

<sup>49</sup> OLIVA, *supra* note 14, at 163–64 (noting that the need for children to be accepted by their peers is so strong that it can affect their future behaviors as adults. When children do not report abuse because of the embarrassment they feel about the abuse, and fear being ostracized by their peers, then that confusion and the “bad” feelings will continue until the abuse stops).

<sup>50</sup> *Id.* at 164 (highlighting the fact that children have a limited understanding of what is happening to them when they are being sexually abused. Thus, all they understand is that they feel bad, and that is connected to feelings of guilt or worry that they did something wrong).

<sup>51</sup> *Id.* at 166–67.

<sup>52</sup> *Id.* at 165.

<sup>53</sup> Miller, *supra* note 14, at 602–03; HAMILTON, *supra* note 4.

<sup>54</sup> Karen J. Terry & Alissa R. Ackerman, *A Brief History of Major Sex Offender Laws*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 65, 65 (Richard G. Wright ed., 2009).

<sup>55</sup> Wilson, *supra* note 7, at 518.

<sup>56</sup> Terry & Ackerman, *supra* note 54.

<sup>57</sup> *Id.* at 65–66.

<sup>58</sup> *Id.* at 65; LAURA J. ZILNEY & LISA ANNE ZILNEY, *PERVERTS AND PREDATORS: THE MAKING OF SEXUAL OFFENDING LAWS* 83 (2009).

rare, but highly-publicized, kidnapping and murder of a child.<sup>59</sup> In general, these types of stories are appealing to journalists because they involve sex and murder and offer a narrative to the audience.<sup>60</sup> The random and public nature of the events makes the audience fearful that there is a sexual predator on the loose in their community.<sup>61</sup> This media-fueled fear, combined with the public outcry after the death of each child, led to legislation that only protected children from a rare type of sexual predator.<sup>62</sup> The laws focused on “stranger danger” rather than seeking to assist the vast majority of victims who are abused by someone they know.<sup>63</sup>

In 1990, Washington was the first state to pass comprehensive sex offender laws.<sup>64</sup> Like most of the state and federal laws subsequently enacted, it was created in response to two cases of sexual assault and torture of children.<sup>65</sup> The perpetrators were both prior offenders who had served only finite sentences and, despite both making statements preceding the events indicating that they planned to commit the crimes, the community had no means of tracking their whereabouts.<sup>66</sup> The Washington state legislature passed the Community Protection Act of 1990, which contained fourteen means by which the community could regulate convicted sexual offenders.<sup>67</sup> Other states, as well as the federal government, soon began enacting similar legislation.<sup>68</sup> After two decades of legislative reform, there is now a set of federal laws governing the regulation of sexual offenders: the Jacob Wetterling Act, Megan’s Law, and the Adam Walsh Child Protection and Safety Act.<sup>69</sup> In addition to the federal laws, a number of states during this time passed legislation imposing other types of restrictions on convicted sexual offenders.<sup>70</sup>

#### A. *The Jacob Wetterling Act*

In October 1989 in St. Paul, Minnesota, a masked gunman abducted eleven-year-old Jacob Wetterling from a group of three boys, including Jacob, his brother Trevor, and his friend Aaron.<sup>71</sup> Ten months earlier, a masked gunman had abducted another boy and sexually abused him in a car before releasing him.<sup>72</sup> The police later discovered evidence suggesting that the same individual perpetrated both crimes.<sup>73</sup> Jacob is still missing and his case remains open.<sup>74</sup> His friends and family organized the Jacob Wetterling Resource Center with the mission to “educate

<sup>59</sup> Terry & Ackerman, *supra* note 54.

<sup>60</sup> ZILNEY & ZILNEY, *supra* note 58, at 84.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Terry & Ackerman, *supra* note 54, at 74.

<sup>65</sup> *Id.* The first case was that of Wesley Allan Dodd, who was eventually executed for kidnapping, sexually molesting, and murdering three boys. *Id.* The second case was that of Earl Shriver who cut off a seven-year-old boy’s penis and left him for dead after sexually assaulting him. *Id.* Both men stated prior to the perpetration that they intended to commit the acts, but because the state of Washington could only require finite sentences at that time, the state could not monitor their activities. *Id.* This prompted the passage of legislation that allowed for the monitoring of known sexual perpetrators. *Id.* at 74–75.

<sup>66</sup> *Id.* at 74.

<sup>67</sup> *Id.* The fourteen means by which the community could regulate convicted sexual offenders were related to the punishment or management of sexual predators, but this law also contained the first community notification statute, and the first statute allowing for civil commitment of sexual offenders. *Id.*

<sup>68</sup> *Id.* at 74–75.

<sup>69</sup> *Id.* at 65–66.

<sup>70</sup> *Id.* at 66.

<sup>71</sup> Wilson, *supra* note 7, at 515; Jacob Wetterling Resource Center, *Jacob’s Story*, GUNDERSON NAT’L CHILD PROTECTION TRAINING CTR., <http://www.gundersenhealth.org/ncptc/jacob-wetterling-resource-center/who-we-are/history/jacobs-story> (last visited Mar. 13, 2014).

<sup>72</sup> Wilson, *supra* note 7, at 515.

<sup>73</sup> *Id.*

<sup>74</sup> Jacob Wetterling Resource Center, *supra* note 71.

and assist families and communities to address and prevent the exploitation of children, by putting online and in-person safety information in the hands of every man, woman, and child.”<sup>75</sup>

The first federal regulation creating registries of known sexual predators is named after Jacob Wetterling.<sup>76</sup> In 1994, Congress passed the Federal Violent Crime Control and Law Enforcement Act, otherwise known as the Jacob Wetterling Act.<sup>77</sup> This law required states to create registries of offenders who committed sexually-violent offenses or sexually-violent offenses against children, and to establish registration requirements for these types of offenders.<sup>78</sup> States that did not comply with the requirements of the Jacob Wetterling Act faced losing ten percent of one source of their federal crime budget funding.<sup>79</sup> Congress intended for law enforcement agencies to use these registries to track the whereabouts of known sex offenders and quickly apprehend suspected perpetrators of sexual crimes.<sup>80</sup> Who is able to access this registration information, however, varies from state to state.<sup>81</sup>

The Jacob Wetterling Act defined a “predator,” or someone who must register with the community, as someone who commits an act “directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.”<sup>82</sup> In keeping with that definition, many states excluded family members or close friends from the definition of a “sexual predator,” while creating their sexual offender registration protocols.<sup>83</sup> The rationale behind this decision was that family members who were abusive were less of a threat to the general public.<sup>84</sup> This legislative decision reflects the reactionary nature of these laws and the legislators’ limited understanding of the actual problem of child sex abuse, which primarily occurs between family members and acquaintances.<sup>85</sup>

#### *B. Megan’s Law*

In July of 1994 in Hamilton Township, New Jersey, seven-year-old Megan Kanka’s neighbor lured her into his home with the promise of a puppy.<sup>86</sup> The neighbor brutally sexually assaulted Megan inside his home before murdering her.<sup>87</sup> The perpetrator was a twice-convicted child sexual abuser who lived across the street from Megan in a house with four other sex offenders.<sup>88</sup> Because there was no community notification of known sex offenders, Megan’s

<sup>75</sup> Wilson, *supra* note 7, at 515; Jacob Wetterling Resource Center, GUNDERSON NAT’L CHILD PROTECTION TRAINING CTR., <http://www.gundersenhealth.org/ncptc/jacob-wetterling-resource-center> (last visited Apr. 21, 2014).

<sup>76</sup> Prescott & Rockoff, *supra* note 7; Wilson, *supra* note 7, at 515.

<sup>77</sup> Prescott & Rockoff, *supra* note 7; Wilson, *supra* note 7, at 515.

<sup>78</sup> Wilson, *supra* note 7, at 515–16; ZILNEY & ZILNEY, *supra* note 58, at 86; Terry & Ackerman, *supra* note 54, at 79.

<sup>79</sup> *Megan’s Law and the Adam Walsh Protection Act*, PARENTS FOR MEGAN’S LAW & CRIME VICTIMS CENTER, <http://www.parentsformeganslaw.org/public/meganFederal.html> (last visited Mar. 13, 2014) (noting that the ten-percent reduction would be removed from grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which allocates federal funding to states for purposes of “improving functioning of the criminal justice system with an emphasis on violent crime and serious offenders”); ZILNEY & ZILNEY, *supra* note 58, at 86; Terry & Ackerman, *supra* note 54, at 79.

<sup>80</sup> Prescott & Rockoff, *supra* note 7; Wilson, *supra* note 7, at 515.

<sup>81</sup> ZILNEY & ZILNEY, *supra* note 58, at 86.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*; Jill Levenson, *Sex Offender Residence Restrictions*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 275 (Richard G. Wright ed., 2009) (noting that thirty-four percent of child abuse victims are abused by family members and fifty-nine percent are abused by close acquaintances); HAMILTON, *supra* note 4, at 10 (noting that eighty percent of girl survivors and sixty percent of boy survivors were abused by someone they know). Abusers range from close relatives, to family friends, teachers, doctors, or religious figures. *Id.*

<sup>86</sup> Wilson, *supra* note 7, at 516; *Megan’s Law and the Adam Walsh Protection Act*, *supra* note 79.

<sup>87</sup> *Megan’s Law and the Adam Walsh Protection Act*, *supra* note 79.

<sup>88</sup> Wilson, *supra* note 7, at 516; *Megan’s Law and the Adam Walsh Protection Act*, *supra* note 79.



parents were not aware that convicted criminal child sexual abusers were living across the street from their daughter.<sup>89</sup>

In 1996, Congress adopted an amendment to the Jacob Wetterling Act, known as Megan's Law, which required that states notify the public about the identities and addresses of sex offenders in their communities.<sup>90</sup> In the absence of national standards, the Act allowed states discretion in determining how they would choose to notify the public.<sup>91</sup> Generally, the amount of information that a state disseminated about a convicted sex abuser was dependent on the level of danger that the person posed to the community.<sup>92</sup> Some states chose active means of notification, such as holding public meetings, posting flyers, or notifying at-risk institutions like daycares and schools; others chose to simply make the registry available for public inspection at local police stations.<sup>93</sup>

In August of 1996, President Bill Clinton advocated for Megan's Law in a presidential radio address, stating:

Nothing is more threatening to our families and communities and more destructive of our basic values than sex offenders who victimize children and families. . . . We have to stop sex offenders before they commit their next crime, to make our children safe and give their parents peace of mind.<sup>94</sup>

The Megan's Law amendment was adopted primarily to do just that; give parents peace of mind.<sup>95</sup> Although parents may have felt empowered by the knowledge of sex offenders in their communities, this legislation also made reintegration into the community much more difficult for offenders.<sup>96</sup> Moreover, the legislation focused primarily on addressing sexual offenders who targeted strangers rather than family members or friends.<sup>97</sup> At the time of Megan's death, only five states had valid laws regulating sexual offenders. Just over two years later in August of 1996, however, versions of Megan's law existed in every state.<sup>98</sup>

The Jacob Wetterling Act and Megan's Law comprised the first set of Registration and Community Notification Laws.<sup>99</sup> Registration requires that sex offenders provide specific information about themselves to a local division of the government.<sup>100</sup> Conversely, notification laws take a much more active approach than registration laws, mandating that information about sex offenders be distributed to the public in communities in which the offenders live.<sup>101</sup>

<sup>89</sup> Wilson, *supra* note 7, at 516.

<sup>90</sup> Prescott & Rockoff, *supra* note 7; Wilson, *supra* note 7, at 516.

<sup>91</sup> Wilson, *supra* note 7, at 516; ZILNEY & ZILNEY, *supra* note 58, at 87.

<sup>92</sup> ZILNEY & ZILNEY, *supra* note 58, at 87.

<sup>93</sup> Wilson, *supra* note 7, at 516; ZILNEY & ZILNEY, *supra* note 58, at 87. New Jersey, Oregon, and Washington broadly disseminate information to local residents, organizations, and media outlets. *Id.* Connecticut, Georgia, and New York give discretion to probation and parole officers to determine who should be notified. *Id.* Arkansas, Michigan, South Carolina, Vermont, and Virginia only disclose information to individuals who specifically submit a request in writing. *Id.* Delaware has a special designation on drivers' licenses of convicted offenders. *Id.*

<sup>94</sup> ZILNEY & ZILNEY, *supra* note 58, at 88.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 83.

<sup>98</sup> Terry & Ackerman, *supra* note 54, at 80.

<sup>99</sup> *Id.*

<sup>100</sup> Prescott & Rockoff, *supra* note 7, at 163.

<sup>101</sup> *Id.*

Notification laws are primarily designed to make the information about offenders available to the public directly, rather than simply to assist local law enforcement.<sup>102</sup>

Congress did not renew the Jacob Wetterling Act and Megan's Law, however, because it passed new legislation in 2006 governing the registration and notification of sexual offenders.<sup>103</sup> In the Adam Walsh Act, Congress limited the discretion of the states and established new guidelines for registry and notification.<sup>104</sup>

### *C. The Adam Walsh Act and SORNA*

In the 1980s, a number of children went missing, inspiring a national reform effort to increase assistance for families with missing children.<sup>105</sup> One of those children was six-year-old Adam Walsh, who was abducted from a shopping mall in Florida in 1981 and then murdered.<sup>106</sup> Adam Walsh's story, and the foundation created in his honor, led to the establishment of the National Center for Missing and Exploited Children ("NCMEC") in 1984.<sup>107</sup> NCMEC was created to provide assistance to law enforcement to "find missing children, eliminate child sexual exploitation and prevent child victimization."<sup>108</sup> Congress has authorized NCMEC to perform specific tasks related to these goals including, among others, operating a national hotline for information regarding missing children, providing training to law enforcement agencies, operating a cyber tip line for reporting internet-related child exploitation, and disseminating information about child exploitation.<sup>109</sup>

Adam's legacy was honored again in 2006 when Congress passed The Adam Walsh Child Protection and Safety Act.<sup>110</sup> The Adam Walsh Act replaced the Jacob Wetterling Act with more explicit instructions about the registration of sexual offenders, leaving less discretion to the individual states.<sup>111</sup> Title I of the Adam Walsh Act is the Sex Offender Registration and Notification Act ("SORNA"), which provides basic guidelines for compliance with the Act.<sup>112</sup> Further, the Act created the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office ("SMART"), a new administrative agency charged with issuing guidelines to be used when implementing SORNA.<sup>113</sup>

The Adam Walsh Act imposes a new set of requirements on states in relation to their management of convicted sexual offenders. The idea behind the Act was to establish a comprehensive national database so that each state could access the information about sex offenders.<sup>114</sup> SORNA specifically outlines how and when a sex offender must register with the

<sup>102</sup> *Id.* at 165.

<sup>103</sup> Terry & Ackerman, *supra* note 54, at 90; Wilson, *supra* note 7, at 517.

<sup>104</sup> Wilson, *supra* note 7, at 516; 42 U.S.C.A. § 14071 (West 2014) (repealed 2006).

<sup>105</sup> *Our History*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.com/History> (last visited Mar. 14, 2014).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Congressional Authorization*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.com/Authorization> (last visited Mar. 14, 2014).

<sup>109</sup> *Id.*

<sup>110</sup> Wilson, *supra* note 7, at 516; 42 U.S.C.A. §16901 (West 2014). In 2003 Congress also passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today ("PROTECT") Act, which dealt primarily with child abduction and pornography, but included provisions imposing mandatory life sentences for sex offenders who abused children if they had a prior conviction relating to a minor. See PROTECT Act of 2003, Pub. L. No. 108-21, 117 Stat. 650.

<sup>111</sup> Wilson, *supra* note 7, at 517.

<sup>112</sup> *Id.*; Corey Rayburn Yung, *The Ticking Sex-Offender Bomb*, 15 J. GENDER, RACE & JUST. 81, 103 (2012); 42 U.S.C.A. § 16912.

<sup>113</sup> Yung, *supra* note 112, at 104. The Act is funded by a budget of forty-seven million dollars to sustain the programs that it created. ZILNEY & ZILNEY, *supra* note 58, at 92.

<sup>114</sup> *Id.*

local authorities.<sup>115</sup> The registration requirements imposed on offenders are based on their rating within the tier system that the Act created.<sup>116</sup> Offenders are rated as Tier 1, 2, or 3 based on the type of sexual crime they committed.<sup>117</sup> Tier 3 offenders are considered the highest-risk offenders, and include those offenders who committed a crime that is punishable by imprisonment for more than one year.<sup>118</sup> The offenses in Tier 3 are comparable to or more severe than the federal offenses of sexual abuse, aggravated sexual abuse, abusive sexual contact against a minor less than thirteen years old, or kidnapping of a minor.<sup>119</sup> Tier 2 offenders committed a crime that is punishable by more than one year imprisonment and is comparable to sex trafficking or abusive sexual conduct.<sup>120</sup> Tier 1 offenders are those that do not fall within Tier 2 or 3.<sup>121</sup> The Act requires that Tier 3 sexual offenders update their personal information, including their address, with local police departments in person every three months for the duration of their life.<sup>122</sup> Tier 2 offenders must update the police department in-person every six months for twenty-five years and Tier 1 offenders must do so every year for fifteen years.<sup>123</sup> The registration information is then added to the national registry, created by the Act, allowing people to search beyond their own state borders for sex offenders.<sup>124</sup> An offender who knowingly fails to comply with SORNA's registration requirements, including updating his registration when required, can incur a federal criminal penalty of up to ten years in prison.<sup>125</sup>

SORNA also mandates the registration of offenders who are as young as fourteen years old.<sup>126</sup> Based on the requirements of the Amie Zyla amendment of the Adam Walsh Act, states include juveniles in their sex registries who are over the age of fourteen at the time they committed the offense.<sup>127</sup> This provision was enacted as a result of the advocacy of Amie Zyla, a child sexual abuse survivor who discovered that the man that was convicted of sexually assaulting her in his teens was convicted of harming more children after he turned eighteen and became a legal adult.<sup>128</sup> Just as in the Jacob Wetterling Act, if states do not comply with the provisions of this new act, they forfeit ten percent of their federal crime budget.<sup>129</sup>

<sup>115</sup> Wilson, *supra* note 7, at 517; ZILNEY & ZILNEY, *supra* note 58, at 92; *see also* 730 ILL. COMP. STAT. ANN. 150/3 (West 2014) (requiring criminal sex offenders in Illinois to provide, among other things, a current photograph, address, place of employment, all email addresses, instant messaging identities, and chat room identities when registering with local law enforcement agencies).

<sup>116</sup> ZILNEY & ZILNEY, *supra* note 58, at 87.

<sup>117</sup> *Id.*; Lisa L. Sample & Mary K. Evans, *Sex Offender Registration and Community Notification*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 211, 219 (Richard G. Wright ed., 2009).

<sup>118</sup> Terry & Ackerman, *supra* note 54, at 91; Sample & Evans, *supra* note 117, at 219–20.

<sup>119</sup> Sample & Evans, *supra* note 117, at 219–20.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> ZILNEY & ZILNEY, *supra* note 58, at 92; Terry & Ackerman, *supra* note 54, at 91; *see also* 730 ILL. COMP. STAT. ANN. 150/6 (West 2014) (stating that a criminal sex offender in Illinois must report to the local law enforcement agency with whom he or she has registered every ninety days).

<sup>123</sup> ZILNEY & ZILNEY, *supra* note 58, at 92; Terry & Ackerman, *supra* note 54, at 91.

<sup>124</sup> ZILNEY & ZILNEY, *supra* note 58, at 92; Terry & Ackerman, *supra* note 54, at 91.

<sup>125</sup> ZILNEY & ZILNEY, *supra* note 58, at 92; *Sex Offender Registration and Failure to Register FAQs*, SMART OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, & TRACKING, [http://ojp.gov/smart/faqs/faq\\_registration.htm](http://ojp.gov/smart/faqs/faq_registration.htm) (last visited Apr. 9, 2014) (explaining that anyone required to register under SORNA can incur these punishments if they fail to notify local authorities “where circumstances supporting federal jurisdiction exist,” including travel anywhere out of state or onto an Indian reservation).

<sup>126</sup> ZILNEY & ZILNEY, *supra* note 58, at 92.

<sup>127</sup> Janus & Polachek, *supra* note 6, at 160–61.

<sup>128</sup> Martha T. Moore, *Sex Crimes Break the Lock on Juvenile Records*, USA TODAY (July 10, 2006), [http://usatoday30.usatoday.com/news/nation/2006-07-10-juvenile-offenders\\_x.htm](http://usatoday30.usatoday.com/news/nation/2006-07-10-juvenile-offenders_x.htm). Amie Zyla argued “that the public’s right to know of a sex offender living nearby trumps a juvenile’s right to keep court records secret.” *Id.* After her offender “was sent to a juvenile home for sexually assaulting her when she was 8 and he was 14,” Amie later discovered that he was arrested again for assaulting children and eventually sentenced to twenty-five years in prison. *Id.*

<sup>129</sup> Janus & Polachek, *supra* note 6, at 153.

The Adam Walsh Act also contains provisions for sentencing of child sexual abusers and tracking convicted sex offenders. The Act created a federal DNA database of convicted sex offenders and funds programs that track offenders using Global Positioning System monitoring.<sup>130</sup> Additionally, the Act not only eliminated the statute of limitations for prosecution of child abduction and felony child sexual offenses, but also imposed mandatory minimum sentencing for sex crimes involving children.<sup>131</sup> Although this Act created federal minimum standards, which states are required to meet, states continue to pass individual laws about sex offenders in their communities.<sup>132</sup>

#### *D. Trends in State Law: Jessica's Law*

In 2005 in Homosassa, Florida, a neighbor of the Lunsford family, who was a convicted sex offender, abducted nine-year-old Jessica Lunsford from her home.<sup>133</sup> He sexually assaulted Jessica in his trailer across the street and then murdered her.<sup>134</sup> The Florida legislature reacted by passing the Jessica Lunsford Act (informally known as “Jessica’s Law”), which both created a mandatory minimum sentence for sex crimes perpetrated against children, and required lifetime electronic monitoring of those convicted.<sup>135</sup> Jessica’s Law required that criminal sex offenders who abuse children under the age of twelve face a mandatory minimum sentence of twenty-five years and should they recidivate upon release, would be subject to an immediate life sentence.<sup>136</sup> By 2011, forty-four other states had passed laws similar to Jessica’s Law—all mandating harsh sentencing for child sex offenders—thirty-nine of which allow for electronic tracking of those convicted.<sup>137</sup>

#### *E. Results of the First Wave of Reform*

During the first wave of legislative reform, each variation of federal and state legislation required further amendment, definition, and regulation.<sup>138</sup> When the original registration laws did not deter sexual predators, legislatures and society turned to notification laws.<sup>139</sup> When the registration and community notification laws proved ineffective, legislatures then created harsher punishments and additional requirements for convicted sexual offenders.<sup>140</sup> Now, as evidenced by the wide adoption of Jessica’s Law, states are turning to more specific regulation of sexual predators through physical monitoring, residency requirements, and mandatory sentencing.<sup>141</sup> As a result, communities are beginning to see unintended consequences of this legislation.

### 1. Motivations Behind First-Wave Legislation: Fear and Public Outcry

<sup>130</sup> ZILNEY & ZILNEY, *supra* note 58, at 93; Michelle L. Meloy & Shareda Coleman, *GPS Monitoring of Sex Offenders*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 243, 245 (Richard G. Wright ed., 2009). There are three typical methods of tracking offenders: active, passive, and hybrid. *Id.* Active tracking involves wearing a device that provides updates regarding the offenders’ locations every few minutes. *Id.* Passive trackers simply update all of the information about the offenders’ location one time per day. *Id.* Hybrid tracking switches a tracker into active mode at the first sign of a violation, but it otherwise remains passive. *Id.*

<sup>131</sup> *Id.* (noting that rape of a child is thirty years minimum, sexual trafficking of a child is ten years minimum, and coerced child prostitution is ten years minimum).

<sup>132</sup> Terry & Ackerman, *supra* note 54, at 90.

<sup>133</sup> Wilson, *supra* note 7, at 517; *Drifter Says He Held Girl for Three Days*, CNN (June 24, 2005), <http://www.cnn.com/2005/LAW/06/23/lunsford.report/index.html>.

<sup>134</sup> *Drifter Says He Held Girl for Three Days*, *supra* note 133.

<sup>135</sup> Wilson, *supra* note 7, at 517–18; ZILNEY & ZILNEY, *supra* note 58, at 91.

<sup>136</sup> Kate Sheppard, *To Cash in on a Predator*, MOTHER JONES (Nov./Dec. 2011), <http://www.motherjones.com/politics/2011/11/jessicas-law-surveillance-corporations>.

<sup>137</sup> *Id.* Of those forty-four states, thirty-nine allow for sexual offenders to be electronically monitored upon release, and twenty-four permit this monitoring to include GPS tracking. *Id.* Mark Lunsford, Jessica’s father, and activist for the passage of the law in other states, said at an event in California promoting the law, “Instead of them stalking our children, let’s stalk them.” *Id.*

<sup>138</sup> Terry & Ackerman, *supra* note 54, at 90.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

Although most of the regulations during the first wave were passed quickly as a response to public outcry and fear, the basic principle behind each of the acts was to aid law enforcement in supervising and apprehending offenders who may abuse again, and to help local households protect themselves from abusers in their neighborhoods.<sup>142</sup> Many legislators hoped that these new regulations would deter potential offenders from either committing crimes in the first place or discourage them from again committing sex crimes against children.<sup>143</sup> Proponents of the Adam Walsh Act specifically maintained that by implementing these methods of tracking abusers, communities would see a decrease in the aggregate sex crimes committed.<sup>144</sup> They reasoned that placing known sex offenders on a registry would have a deterrent effect on criminal sexual activity.<sup>145</sup> Finally, proponents of this type of legislation argued that by giving community members the location and identification of local sex offenders, they would be able to more easily protect their children.<sup>146</sup>

The idea of community policing of child sex abusers, or giving citizens notification about sex abusers, is an important aspect of these notification laws. Notification is psychologically appealing to communities because it gives community members more control over their surroundings.<sup>147</sup> Legislators continue to turn to this form of attempted crime prevention because it vests power in individuals in an age where the fear of being a victim of a crime is common.<sup>148</sup> Moreover, clinical research shows that people who are able to take control of their own protection, or even assist in the process, experience empowerment.<sup>149</sup> Research also shows that the public views sex offender laws as effective. A study conducted in Washington State, for example, indicated that sixty-three percent of the public believed that sex offender laws encouraged released offenders to avoid re-offense, and seventy-eight felt a greater sense of safety knowing the location of sexual offenders.<sup>150</sup> Furthermore, a study in Florida showed that eighty-three percent of people surveyed felt that community notification laws helped decrease sexual violence in their community.<sup>151</sup> Because of this strong public approval, many of the lawmakers who supported the registration and notification legislation have been motivated simply by a desire to appear proactive in the eyes of their constituents, rather than by a belief that this would truly help reduce child sexual abuse.<sup>152</sup>

## 2. Inefficacy of Legislation

Despite the motivations behind and public support of this series of legislation, registration and notification laws have not provided the deterrent effect that many expected. Between 1992 and 2006, child sexual abuse decreased by fifty-three percent.<sup>153</sup> This decrease, however, occurred during a period of overall decrease in crime and abuse in general, making it

<sup>142</sup> Prescott & Rockoff, *supra* note 7; Terry & Ackerman, *supra* note 54, at 93; Levenson, *supra* note 85 (“Laws tend to be passed in response to anomalous cases rather than the statistical probabilities reported by researchers.”).

<sup>143</sup> Wilson, *supra* note 7, at 518.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 541. “Turning over information to the public has been seen not only as a way of maximizing the effectiveness of the existing law enforcement resources but also as a healthy mechanism for encouraging involvement and investment in the community.” *Id.*

<sup>148</sup> *Id.* at 541–42. “Public opinion polls have demonstrated that Americans maintain a relatively high level of anxiety about being victims of crime.” *Id.* at 542. Responding to public concern, “legislation aimed at restoring a sense of security to the public” is implemented “in spite of the doubts about the wisdom of such” criminal registries. *Id.*

<sup>149</sup> *Id.* at 541–42.

<sup>150</sup> ZILNEY & ZILNEY, *supra* note 58, at 121.

<sup>151</sup> *Id.*

<sup>152</sup> Wilson, *supra* note 7, at 522.

<sup>153</sup> Finkelhor, *supra* note 17, at 184.

difficult to ascertain which policies were responsible for the decline.<sup>154</sup> Many social, economic, and political factors contributed to this trend: the economic optimism of the 1990s, increased numbers of police officers and child social workers, enhanced efforts to identify and incarcerate abusers, and widespread use of prescription medicine to curb aggressive behavior and depression.<sup>155</sup>

Research focusing specifically on the impact of registration and notification laws, however, is mixed. Some researchers have found that registration laws—those that require offenders to report to police, but do not offer public information—are associated with a decrease in crime.<sup>156</sup> The researchers note, however, that this decrease in the overall frequency of crime is most likely associated with fewer attacks against victims within their own communities, because the frequency of attacks against strangers appears to be unaffected by registration.<sup>157</sup> Moreover, registration laws, and specifically the residency requirements within them, have the potential to push released offenders away from social services in their communities that they may need to facilitate their rehabilitation in favor of moving to a new community where they can remain anonymous.<sup>158</sup> These requirements have also made it difficult for local law enforcement agencies to maintain contact with all those required to register.<sup>159</sup> In 2003, California admitted to losing track of 33,000 of the state's registered sex offenders.<sup>160</sup> There are over 600,000 people on sex offender registries throughout the U.S., which makes it difficult for law enforcement to monitor them all.<sup>161</sup>

Research is similarly bleak when it comes to notification laws. In a small sample area, it appears that notification laws may be effective at reducing crime slightly, but that benefit disappears as more offenders are added to the notification list.<sup>162</sup> When registration and notification laws are combined, which is the effect of the Adam Walsh Act, research has shown a slight *increase* in the number of sex offenses.<sup>163</sup> One study found that a decrease in recidivism due to registration was counteracted by the notification requirements.<sup>164</sup> This led the researchers to conclude that the impositions of an offender's diminished social standing, loss of support network, and difficulty finding a job makes him or her more likely to recidivate.<sup>165</sup> The only type of law that has been found to be successful in terms of preventing recidivism is broad community notification of Tier 3 offenders.<sup>166</sup> A recent Minnesota study found that broad community

<sup>154</sup> *Id.* at 185.

<sup>155</sup> *Id.* None of these factors have been causally linked by evidence but each one has implications for prevention of future childhood sexual abuse. *Id.* These developments, however, indicate that further research should be done on the ability of mental health treatment to curb recidivism in sexual abusers, and that school-based education programs should not be abandoned because “they may be connected with the improvements.” *Id.*

<sup>156</sup> Prescott & Rockoff, *supra* note 7, at 164, 181 (finding that registration in an average-sized registry resulted in a yearly reduction of 1.21 sex offenses per 10,000 people).

<sup>157</sup> *Id.* at 164.

<sup>158</sup> HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 9 (2007), available at <http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf>.

<sup>159</sup> *Id.* at 45.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Prescott & Rockoff, *supra* note 7, at 192. “When a registry is of average size, adding a notification regime effectively increases the number of sex offenses by more than 1.57 percent.” *Id.* The study found that notification may deter nonregistered offenders, but encourage recidivism among registered offenders. *Id.* The Act has provisions for registration of convicted sex offenders, as well as maintenance of public websites containing information about the offenders. 42 U.S.C.A. § 16920 (West 2014).

<sup>163</sup> Prescott & Rockoff, *supra* note 7, at 192.

<sup>164</sup> Wilson, *supra* note 7, at 524 (concluding that “whereas some nonregistered or potential offenders may be deterred by the threat of notification and its associated costs, the ex post imposition of those sanctions on convicted offenders may make them more likely to recidivate”).

<sup>165</sup> *Id.*

<sup>166</sup> ZILNEY & ZILNEY, *supra* note 58, at 124.

notification of Tier 3 offenders significantly reduced recidivism of those offenders over an eight-year period.<sup>167</sup> However, the study notes that this decrease could also be attributed to the fact that the offenders were placed in intensive supervision, which could have reduced their recidivism rates.<sup>168</sup>

### 3. Implications of Reform for Offenders and Communities

This inefficacy is particularly troubling when examining the detrimental effects these laws have on the lives and families of those convicted. When a community recognizes an individual as a sexual predator, he experiences diminished social standing that leads to social sanctions such as loss of job, spouse, or friends.<sup>169</sup> Since the passage of the Adam Walsh Act, local police departments are required to notify the community of Tier 3 offenders and some do so very publicly by putting up billboards, announcing sex offenders' addresses on the front page of newspapers, and handing out flyers door to door.<sup>170</sup> Some scholars suggest that because offenders' social position leaves them feeling marginalized, they are less likely to accept mainstream societal norms, and thus recidivate.<sup>171</sup>

Since the adoption of Jessica's Law, many communities have restricted where these registered sex offenders can live in their communities.<sup>172</sup> These residency restrictions are particularly troubling because they limit a convicted sex offender's ability to find stable housing or employment.<sup>173</sup> Residency regulations typically restrict an offender from living within 1000 to 2500 feet of a school, or near daycare centers or parks.<sup>174</sup> Only limited empirical data addresses whether these residency restrictions are effective.<sup>175</sup> One study from Minnesota found no link between the proximity of sexual offenders to institutions that house children and recidivism rates.<sup>176</sup> In fact, researchers found that the restrictions actually compromised public safety, because the offenders were unable to find housing and more likely to recidivate.<sup>177</sup> In Miami, a shantytown of homeless sex offenders housed over seventy individuals who could not find stable housing due to the restrictions placed on them based on their convictions.<sup>178</sup> After changes in local laws barred offenders from living within 2500 feet of where children gather, the shantytown

<sup>167</sup> *Id.* The Tier 3 offenders in this study were assigned "intensive supervision," meaning that there was always someone monitoring them. *Id.* Thus, the study concluded that the offenders likely internalized the feeling of constant monitoring, thereby deterring their predatory behavior. *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 125.

<sup>170</sup> *Id.* at 87.

<sup>171</sup> *Id.* at 125. These difficulties, such as finding stable relationships and housing, can lead offenders to feeling detached socially. *Id.* Furthermore, some people take action against the offenders personally: about one quarter of offenders reported that they had experienced some kind of vigilante justice once the community was on notice of their presence. *Id.* One offender recounted, "One day after I registered I got this note in the mail. It was my name, address, and my charge highlighted and downloaded off the Internet. The note said 'I'm watching you.' It scared the hell out of me." *Id.*

<sup>172</sup> Finkelhor, *supra* note 17, at 175.

<sup>173</sup> Terry & Ackerman, *supra* note 54, at 88.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*; Levenson, *supra* note 85, at 273. A New Jersey study in 2008 found that sex offenders lived closer to schools than other community members, but that sex offenders who had abused children lived farther from the schools than offenders who had harmed adults. *Id.* at 276. Another 2008 study found no correlation between the presence of schools and the rate of child sexual abuse. *Id.* at 277. A Colorado study in 2004 found that sex offenders who recidivate were not more likely to be living near a school than those who did not recidivate. *Id.*

<sup>176</sup> Janus & Polachek, *supra* note 6, at 159.

<sup>177</sup> *Id.* Another Minnesota study analyzed 224 sexual offenses perpetrated by criminals who had recidivated and found that "[n]ot one of the 224 sex offenses would likely have been deterred by a residency restriction law." Levenson, *supra* note 85, at 278. Seventy-nine percent of the incidents were perpetrated against someone the abuser knew, and half of the incidents against strangers were located more than one mile from the offenders' homes. *Id.*

<sup>178</sup> Cave, *supra* note 10.

saw increasing numbers of people seeking shelter.<sup>179</sup> Miami provides just one example of a community that is experiencing unintended effects of the residency restriction laws.

#### 4. Implications for Juvenile Sex Offenders

An additional factor affecting the application of these laws is that many child sex abusers are themselves juveniles. The Amie Zyla amendment to the Adam Walsh Act specifically applied these federally-mandated registration provisions to juveniles over the age of fourteen at the time they committed a sexual offense, which is a significant portion of the overall population of sexual abusers.<sup>180</sup> Some research has found that about one-third of known child sex abusers are themselves juveniles.<sup>181</sup> In a national study, other researchers found that twenty-three percent of offenders who committed sexual assault were under the age of eighteen, and sixteen percent were under the age of twelve.<sup>182</sup> It has also been reported that forty percent of the perpetrators who victimized children under the age of six were juveniles themselves, and juveniles perpetrated thirty-nine percent of the offenses against children between six and eleven years old.<sup>183</sup>

These juveniles may receive different legal punishments than their adult counterparts, based on juvenile sentencing guidelines, but they are still required to register as sex offenders and are subject to the same registration requirements and restrictions as adults.<sup>184</sup> Yet, some research has indicated that treating youth sex offenders like adult sex offenders does not protect public safety.<sup>185</sup> Juvenile sex offenders are at a much lower risk for recidivism than their adult counterparts and have the capability for comprehensive rehabilitation.<sup>186</sup> Assigning the legal label of “sex offender” to youth can create significant barriers to their rehabilitation by decreasing their access to healthy relationships, stable educational and employment opportunities, and required therapies.<sup>187</sup>

#### 5. Mistaken Understanding of Recidivism Rates

The belief that child sexual offenders are “incorrigible predators” courses through this first wave of legislation and is premised on the idea that recidivism rates of sexual offenders are high.<sup>188</sup> This view, however, is an over simplification, as the recidivism rate of child sexual offenders is actually lower than that of most other criminals.<sup>189</sup> The Bureau of Justice Statistics tracked a set of prisoners released in 1994 and published a study about their rates of recidivism in 2003.<sup>190</sup> The researchers found that of those convicted of child sexual abuse, only 5.1% were arrested for another sex crime within three years of their release and only 3.5% were convicted of

<sup>179</sup> *Id.*

<sup>180</sup> Janus & Polachek, *supra* note 6, at 160–61; HOWARD N. SNYDER, NAT’L CTR. FOR JUVENILE JUSTICE, U.S. DEP’T OF JUSTICE, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 8–11 (2000), available at <http://www.bjs.gov/content/pub/pdf/saycrlc.pdf>.

<sup>181</sup> Finkelhor, *supra* note 17, at 172.

<sup>182</sup> Janus & Polachek, *supra* note 6, at 159; SNYDER, *supra* note 180, at 8.

<sup>183</sup> Janus & Polachek, *supra* note 6, at 160; SNYDER, *supra* note 180, at 8.

<sup>184</sup> Janus & Polachek, *supra* note 6, at 161.

<sup>185</sup> ILL. JUVENILE JUSTICE COMM’N, IMPROVING ILLINOIS’ RESPONSE TO SEXUAL OFFENSES COMMITTED BY YOUTH 50 (2014), available at <http://files.sj-r.com/media/news/03252014JSOreport.pdf>. “Youth are placed on sex offender registries usually for the rest of their lives, with little or no demonstrable benefit to public safety.” *Id.* at 39.

<sup>186</sup> *Id.* at 44–45. “Youth reoffend sexually at similarly low rates whether or not they are placed on a registry. . . . There is simply no evidence in the research that registration lowers future risk of sexual reoffending among youth.” *Id.* at 44.

<sup>187</sup> *Id.* at 45.

<sup>188</sup> Finkelhor, *supra* note 17, at 172.

<sup>189</sup> *Id.*

<sup>190</sup> See PATRICK A. LANGAN ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994 1 (2003), available at <http://www.bjs.gov/content/pub/pdf/rsorp94.pdf>. This study tracked 9691 prisoners for the three years following their release from prison. *Id.* The study measured their recidivism by rates of re-arrest, reconviction, and re-imprisonment during that three-year period. *Id.*



another sex crime during those three years.<sup>191</sup> Other studies suggest that fourteen percent of sexual offenders recidivate with another sexual offense in the first five years after their release, but that number rises to twenty-four percent after fifteen years.<sup>192</sup> The 2003 study also notes that offenders who perpetrate sexually against adults tend to recidivate more frequently, and consequently affect those statistics.<sup>193</sup> The rate of recidivism for sexual offenders who abuse family members, however, is much lower.<sup>194</sup> One study found that overall, those convicted of sexual offenses are more likely to be rearrested for nonsexual crimes and “are among the least likely criminals to kill their victims.”<sup>195</sup>

Although the belief that sexual abusers are at a high risk of recidivating is widely held, there is not enough empirical evidence to support that belief, especially because that belief is dictating the creation of legislation to regulate offenders.<sup>196</sup> Yet the misnomer that the recidivism rate for child sexual abusers is extremely high is rampant in our legal system.<sup>197</sup> It is so ingrained that many courts have based their interpretation of the legislative intent of registration and notification laws on this belief.<sup>198</sup> In *Smith v. Doe*, the Supreme Court found that the legislature in Alaska implemented a registration statute to address the “frightening and high” risk of recidivism among sex offenders.<sup>199</sup> In *United States v. Emerson*, the Fifth Circuit based its decision to uphold special conditions of supervised release on the testimony of a U.S. Probation Officer who stated that, based on his experience, the recidivism rate of sex offenders was seventy percent; the probation officer did not cite to any authority.<sup>200</sup> Patty Wetterling, Jacob’s Wetterling’s mother and a prominent child safety advocate, even had a change of heart about this type of regulation.<sup>201</sup> In 2007, she told the Human Rights Watch that:

I based my support of broad-based community notification laws on my assumption that sex offenders have the highest recidivism rates of any criminal. But the high recidivism rates I assumed to be true do not exist. It has made me rethink the value of broad-based community notification laws, which operate on the assumption that most sex offenders are high-risk dangers to the community they are released into.<sup>202</sup>

This trend toward registration of known criminals has continued since the passage of federal legislation. Many state legislatures have proposed new registries ranging from “violent offender” and drug offense registries, to domestic violence registries.<sup>203</sup> In 2007, for example, Illinois passed the Child Murderer and Violent Offender Against Youth Registration Act, requiring violent offenders and those who murdered children to register with the state.<sup>204</sup> This Act

<sup>191</sup> *Id.* at 24.

<sup>192</sup> Finkelhor, *supra* note 17, at 172; Levenson, *supra* note 85, at 274 (reporting an average re-arrest rate of fourteen percent over four to six years).

<sup>193</sup> Levenson, *supra* note 85, at 274 (noting a twenty-four percent recidivism rate over fifteen years for rapists of adults).

<sup>194</sup> Finkelhor, *supra* note 17, at 172.

<sup>195</sup> Levenson, *supra* note 85, at 274.

<sup>196</sup> Terry & Ackerman, *supra* note 54, at 92–93.

<sup>197</sup> Yung, *supra* note 112, at 90.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* (citing *Smith v. Doe*, 538 U.S. 84, 103 (2003)).

<sup>200</sup> *Id.* at 91 (citing *United States v. Emerson*, 231 F. App’x 349, 352 (5th Cir. 2007)).

<sup>201</sup> HUMAN RIGHTS WATCH, *supra* note 158, at 4.

<sup>202</sup> *Id.*

<sup>203</sup> Wilson, *supra* note 7, at 528.

<sup>204</sup> *Id.* at 529; see 730 ILL. COMP. STAT. 154/85 (West 2014).

also created a publicly-accessible database of criminals that allows people to see criminals in their own neighborhood.<sup>205</sup> Legislatures have seen the positive impact that these registries have on individual citizens' feelings of safety, but it is important to look at the effect these types of registrations have on communities as a whole.

Although the first wave of reforms between 1994 and 2006 is popular among citizens who feel more empowered by the laws' registration and notification elements, the requirements have had unforeseen consequences for convicted offenders and have not been as effective as policymakers had hoped.<sup>206</sup> Unfortunately, this wave of reforms focuses solely on offenders who are already known to the criminal justice system, allowing those who remain anonymous to continue victimizing children.<sup>207</sup> Additionally, these laws focused "on a small, atypical group of [child sex abuse] offenders without providing meaningful relief to victims."<sup>208</sup> Victims today face a multitude of statutory barriers to finding relief in the justice system, which is what the second wave of reforms seeks to address.

#### IV. SECOND WAVE OF REFORMS: "OPENING THE COURTHOUSE DOORS"<sup>209</sup>

Although the goal of the first wave of legislation was to protect children from child sex offenders, children who have already experienced child sexual abuse often face many legal obstacles when trying to bring a claim to court. Most child victims who pursue legal action against their abusers through civil lawsuits do so because the criminal justice system has been unable to offer them relief.<sup>210</sup> The complexity in the criminal justice system lies in the ability of children to testify: it is difficult for a child to be deemed competent to testify against his or her abuser, and even if he or she is deemed competent, testifying can be emotionally scarring and frightening to a child.<sup>211</sup> Thus, civil remedies are often a better option for child victims or adults who were victimized as a child.<sup>212</sup> In these cases, individuals who experienced childhood sexual abuse are usually seeking monetary compensation for the suffering they experienced from the abuse.<sup>213</sup> Due to the nature of child sexual abuse, many victims do not bring claims until they

<sup>205</sup> Wilson, *supra* note 7, at 529; *Illinois State Police Child Murderer and Violent Offender Against Youth Registry*, ILL. STATE POLICE, <http://www.isp.state.il.us/cmvo/> (last visited Apr. 19, 2014).

<sup>206</sup> Finkelhor, *supra* note 17, at 172–75.

<sup>207</sup> KENNETH V. LANNING, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, U.S. DEP'T OF JUSTICE, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 51 (5th ed. 2010), available at [http://www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf) (noting that a child molester who targets acquaintances might molest many children in one lifetime).

<sup>208</sup> Janus & Polachek, *supra* note 6, at 158.

<sup>209</sup> See generally HAMILTON, *supra* note 4, at 15 (discussing legislation that makes it easier for child sexual abuse victims to bring claims to court).

<sup>210</sup> Khorram, *supra* note 12, at 396–97. In 2003, Congress abolished the federal criminal SOL for child sexual abuse, physical abuse, or kidnapping of all children under the age of eighteen. HAMILTON, *supra* note 4, at 46; see PROTECT Act of 2003, Pub. L. No. 108-21, 117 Stat. 650. Currently, most states do not have criminal SOLs for bringing claims of childhood abuse, however, most states place restrictions on criminal SOLs in the form of statutes of limitation (this is what SOL stands for, why include it again?) or evidentiary requirements, making them more difficult to prove. HAMILTON & VERKUIL, *supra* note 12, § C. For example, some states have no criminal SOL for childhood sexual assault, unless there is DNA evidence present or the assault was committed with threats or use of deadly force. *Id.*

<sup>211</sup> OLIVA, *supra* note 14, at 162 (noting that children are not ideal witnesses because they are less likely to be able to accurately identify people or places and recall specific events); ZILNEY & ZILNEY, *supra* note 58, at 150. To reduce the child's fear of testifying at trial, children are now allowed to testify via closed-circuit television. *Id.* Courts have made other provisions such as allowing someone else to testify on the child's behalf, utilizing a previously video-taped deposition, placing a physical barrier between the child and the abuser, and having a support person present in the courtroom. JANE NUSBAUM FELLER ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., WORKING WITH THE COURTS IN CHILD PROTECTION 53 (1992), available at [https://www.childwelfare.gov/pubs/usermanuals/courts\\_92/courts\\_1992.pdf](https://www.childwelfare.gov/pubs/usermanuals/courts_92/courts_1992.pdf).

<sup>212</sup> NUSBAUM FELLER ET AL., *supra* note 211, at 52; see Khorram, *supra* note 12, at 396.

<sup>213</sup> Khorram, *supra* note 12, at 396–97.

understand and process exactly what happened to them as children.<sup>214</sup> The psychological trauma that victims experience and the fear of their abusers makes it difficult for child victims to report the abuse until much later in their lives.<sup>215</sup> As a result, many claims of childhood sexual abuse are not reported until the victim becomes an adult.<sup>216</sup> Children often do not understand what is happening to them during their childhood and only gain clarity about their experience later in life.<sup>217</sup> They usually lack the communication skills to verbalize their experience or articulate that they are being abused.<sup>218</sup> Thus, in almost all cases the largest barrier that victims of childhood sexual abuse face is that of an expired statute of limitations.<sup>219</sup>

#### A. Statutory Barrier to Justice: Statute of Limitations

Advocates point to psychological research indicating that it is not only common for children to repress memories for years at a time, but also the reality for many children who are sexually abused.<sup>220</sup> One advocate points out, “[i]t is eerie how the law dovetailed with the pedophile’s predilection for children of a certain age,” noting that by the time these children are mature enough to report abuse it has likely stopped because of their age.<sup>221</sup> In order for a victim to officially report abuse when he or she is a child, three things have to happen: the child has to recognize that what is happening to him or her is wrong, the child has to come forward and tell someone, and finally, someone needs to believe the child.<sup>222</sup> Thus, proponents argue, it is important to provide victims with a means to justice when they finally do report abuse.<sup>223</sup> Advocates suggest that legislation extending the statute of limitations (the “SOL”) focuses on helping victims because it assists in identifying more child sex abusers and inspires other victims of the same abuser to come forward.<sup>224</sup>

The SOL for raising a claim of child sexual abuse often prevents victims from bringing their claims because they are not emotionally ready to pursue such action until they are adults.<sup>225</sup> The SOLs are created by the legislature, not by the judiciary, as a matter of public policy.<sup>226</sup> They are designed to keep stale claims out of court and to prevent defendants from having only limited access to a viable defense, because memories of the event have likely faded and evidence has likely been lost.<sup>227</sup> The SOLs are also designed to exclude from courts those who neglect their rights and fail to diligently pursue claims in a timely manner because “it is not the policy of the

<sup>214</sup> *Id.* at 397.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*; OLIVA, *supra* note 14.

<sup>217</sup> HAMILTON, *supra* note 4, at 18.

<sup>218</sup> OLIVA, *supra* note 14, at 161.

<sup>219</sup> 91 AM. JUR. *Trials* 151 § 21 (2004).

<sup>220</sup> Khorram, *supra* note 12, at 405. This theory is controversial in application because there is not agreement as to whether it is a valid psychological theory. *Id.* Opponents argue that these memories could very likely be false. *Id.*

<sup>221</sup> HAMILTON, *supra* note 4, at 19. Marci A. Hamilton is an advocate for a SOL reform, author of *Justice Denied: What America Must Do to Protect Its Children*, and organizer of *sol-reform.com*. See Directory, Marci A. Hamilton, CARDOZO LAW, <http://www.cardozo.yu.edu/directory/marci-hamilton> (last visited Apr. 19, 2014).

<sup>222</sup> Khorram, *supra* note 12, at 407–08.

<sup>223</sup> *Id.*

<sup>224</sup> HAMILTON, *supra* note 4, at 29–31. Statutes of limitations are statutes enacted by the federal government and individual states “setting maximum time periods during which certain actions can be brought or rights enforced. After the time period set out in the applicable statute of limitations has run, no legal action can be brought regardless of whether any cause of action even existed.” BLACK’S LAW DICTIONARY 927 (6th Ed. 1990).

<sup>225</sup> Miller, *supra* note 14, at 600; OLIVA, *supra* note 14, at 163–69 (noting that there are a variety of factors discouraging children from reporting abuse including: embarrassment, blaming themselves, fear of punishment, disbelief, family member involvement, guilt about the act itself, being labeled by other children, disclosing a secret, belief of threats that the abuser makes, and lack of information about the court system).

<sup>226</sup> Khorram, *supra* note 12, at 398.

<sup>227</sup> *Id.* at 397–98.

law to unjustly deprive one of his remedy.”<sup>228</sup> The legal system has struggled with finding a balance between protecting the rights of defendants and accommodating the unique situation of child abuse victims.<sup>229</sup> The traditional interpretation of a SOL in civil cases is that the SOL does not start to run until the act at issue is complete.<sup>230</sup> In the context of child sexual abuse, this means that the SOL does not start running until the abuse has stopped.<sup>231</sup>

The federal statute governing civil claims of childhood sexual abuse allows any person who was subjected to sex trafficking, sexual abuse, sexual exploitation, or prostitution, among other crimes related to the sexual abuse of children, as a minor, to bring a claim “in any appropriate United States District Court.”<sup>232</sup> This statute was amended in 2013 to extend the SOL from six to ten years.<sup>233</sup> Under the amended statute, if a person does not commence the action within ten years after the “right of action first accrues,” the action will be barred.<sup>234</sup>

Although in recent years, a number of states have extended their SOLs for childhood sexual abuse civil claims, the vast majority of states *do* impose a SOL on these civil claims.<sup>235</sup> Illinois and Maine are the only states that do not have any SOL for civil claims.<sup>236</sup> Four other states and Guam have eliminated a SOL for civil claims for only certain types of childhood sexual abuse.<sup>237</sup> Florida, for example, has no civil SOL for sexual batteries committed against victims under sixteen years old, while Connecticut has no civil SOL if the events forming the civil claim led to conviction of first-degree aggravated sexual assault or sexual assault.<sup>238</sup>

When civil litigants bring a claim to court, they must present an argument about when the SOL should begin and end in their case.<sup>239</sup> Each state has its own set of laws regarding when the SOL begins to run and when it ends.<sup>240</sup> Proponents of the SOL reform argue that because victims of childhood sexual abuse are in a unique situation, they merit specialized laws to address their injuries.<sup>241</sup> As of April 2014, seven additional states have some kind of a SOL reform pending in their legislatures.<sup>242</sup> It is clear that while some states have reformed their laws to account for the unique nature of childhood sexual abuse, civil SOLs are still an obstacle that most survivors of childhood sexual abuse must surmount to address the substantive piece of their claim against an abuser.

<sup>228</sup> *Id.* at 398.

<sup>229</sup> *Id.* at 397.

<sup>230</sup> *Id.* at 398–99.

<sup>231</sup> *Id.*

<sup>232</sup> 18 U.S.C.A. § 2255 (West 2014).

<sup>233</sup> *Id.*; see *Doe v. Schneider*, No. CIV.A. 08-3805, 2013 WL 5429229, at \*5 n.8 (E.D. Penn. Sept. 30, 2013) (noting that Congress never explicitly made clear that this amendment should revive time-barred claims, therefore this court did not use it to do so).

<sup>234</sup> 18 U.S.C.A. § 2255.

<sup>235</sup> HAMILTON & VERKUIL, *supra* note 12, § C; Marci A. Hamilton, 2013: *The Year in Review for Child Sex Abuse Victims' Access to Justice*, VERDICT (Jan. 9, 2014), <http://verdict.justia.com/2014/01/09/2013-year-review-child-sex-abuse-victims-access-justice> (noting that Indiana, Minnesota, and Illinois revised their civil SOLs in 2013).

<sup>236</sup> HAMILTON & VERKUIL, *supra* note 12, § C.

<sup>237</sup> *Id.* § B.

<sup>238</sup> *Id.*

<sup>239</sup> See 91 AM. JUR. *Trials* 151 §§ 21–22 (2004).

<sup>240</sup> *Id.* § 21.

<sup>241</sup> Khorram, *supra* note 12, at 403–04; HAMILTON, *supra* note 4, at 19; Barb Ickes, *Victim: Statute of Limitations Too Short in Iowa and Illinois*, QUAD-CITY TIMES (Nov. 30, 2013), [http://qctimes.com/news/local/victim-statute-of-limitations-too-short-in-iowa-and-illinois/article\\_17241fe7-147d-5080-9f77-c52b422c7a82.html](http://qctimes.com/news/local/victim-statute-of-limitations-too-short-in-iowa-and-illinois/article_17241fe7-147d-5080-9f77-c52b422c7a82.html).

<sup>242</sup> HAMILTON & VERKUIL, *supra* note 12, §§ D, E. California has a bill extending both the civil SOL and the criminal SOL; Georgia has a bill extending the civil SOL against perpetrators; Florida has a bill eliminating the criminal SOL for children over the age of thirteen; Hawaii has three bills to eliminate the civil and criminal SOLs, as well as retroactively extend civil SOLs; Iowa has a bill extending both criminal and civil SOLs; New York has a bill to eliminate the criminal and civil SOLs and create a one-year window to bring expired claims for both; Pennsylvania has a bill eliminating civil and criminal SOLs and retroactively applying the civil SOL. *Id.*

### B. Other Methods of Reform

State legislatures are using a variety of methods to allow victims of childhood sexual abuse to find legal relief. They have taken actions ranging from reforming the SOLs and enacting window legislation for bringing previously-expired claims, to creating legislation that applies retroactively.<sup>243</sup> Some states have chosen to accommodate victims of childhood sexual abuse by allowing for delayed discovery.<sup>244</sup> States that recognize delayed discovery in civil cases acknowledge that the SOL should begin running at the time at which the victim realized he or she experienced childhood sexual abuse.<sup>245</sup> This would apply in situations where the child represses memories of abuse and only later in life recalls these situations, where the victim did not realize the abuse was wrong until later, and where the victim did not connect injuries to previous abuse.<sup>246</sup> Proponents argue that it is excusable for children who have been abused to forget the abuse for a period of time and these children should not be held accountable for failing to bring their claims earlier.<sup>247</sup> Nine states currently allow for repressed memory to control the SOL.<sup>248</sup> These states recognize that the SOL often expires during a period of time when the memory of abuse is completely repressed by the victim, and the SOL should therefore only begin to run when the victim consciously remembers the experience.<sup>249</sup> Other states account for situations of duress in which the victim remained under the abuser's control and therefore could not bring a claim.<sup>250</sup> Thus, the legislation reforming the SOL or creating delayed discovery extends to instances of abuse that occurred before the enactment of this new legislation.<sup>251</sup>

Similar to this retroactive legislation is another type of legislation states are using—window legislation—to address claims of childhood sexual abuse. Window legislation amounts to a temporary suspension of the SOL, allowing victims to bring time-barred claims against their abusers during a short, statutorily-created period of time.<sup>252</sup> The window opens the state's courts, usually for a period of one to two years, to civil claims of childhood abuse that would otherwise not be viable.<sup>253</sup> Both California and Delaware have enacted this type of law.<sup>254</sup> The California legislation created a one-year window in which victims of child sexual abuse could bring a claim against their abusers.<sup>255</sup> While the window legislation was in effect in California, over 1000 claims were brought against individual abusers and institutions such as the Catholic Church and Boy Scouts of America.<sup>256</sup> As a result of these new claims, three hundred individual abusers were identified.<sup>257</sup> Advocates of a SOL reform reason that window legislation is the only way for victims who have expired claims of childhood sexual abuse to find justice.<sup>258</sup>

<sup>243</sup> HAMILTON, *supra* note 4, at 15. Window legislation is a temporary suspension of the SOL to allow victims to bring time-barred claims against their abusers during a short, statutorily created period of time. *Id.* at 40. For example, California created a window of time in which victims of childhood sexual abuse could bring time-barred claims for a period of one year. *Id.* at 41.

<sup>244</sup> Khorram, *supra* note 12, at 400–01.

<sup>245</sup> *Id.*; HAMILTON, *supra* note 4, at 39–40.

<sup>246</sup> Khorram, *supra* note 12, at 401–02.

<sup>247</sup> *Id.* at 402.

<sup>248</sup> 91 AM. JUR. *Trials* 151 § 21 n.4 (2004) (California, Florida, Iowa, Kansas, Missouri, New Mexico, Oregon, Vermont, and Washington).

<sup>249</sup> *Id.* § 22.

<sup>250</sup> *Id.*

<sup>251</sup> Miller, *supra* note 14, at 600.

<sup>252</sup> HAMILTON, *supra* note 4, at 40–41.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* at 41–42; CAL. CIV. PROC. CODE § 340.1(c) (West 2003); DEL. CODE ANN. tit. 10, § 8145(b) (West 2014).

<sup>255</sup> Miller, *supra* note 14, at 609; CAL. CIV. PROC. CODE § 340.1(c).

<sup>256</sup> HAMILTON, *supra* note 4, at 71–72; Miller, *supra* note 14, at 609. The results of California's window legislation will be discussed further in Part IV-C.

<sup>257</sup> HAMILTON, *supra* note 4, at 72.

<sup>258</sup> *Id.* at 41.

*C. Opposition to the Second Wave Legislative Reforms*

Legislation reforming the state SOLs has been met with opposition and legal challenges. For example, the Supreme Court ruled that the California window legislation for bringing criminal claims was unconstitutional, striking it down in 2003.<sup>259</sup> The Court held that it violated the Ex Post Facto Clause of the Constitution, which forbids the retroactive change of a legal consequence.<sup>260</sup> In 2006, the California Court of Appeals ruled that the California window legislation for bringing civil claims violated the state constitution's separation of powers doctrine.<sup>261</sup> However, the Supreme Court has a historical precedent for maintaining that the right of an offender to be shielded from litigation by the SOL is not a fundamental one, such as life, liberty, or property.<sup>262</sup> The legislature has the authority to determine whether expired claims can be revived.<sup>263</sup> Alternatively, some opponents argue that the SOL is a vested right, or a legally-protected right, and by depriving someone of that right it would be a violation of their Fourteenth Amendment rights.<sup>264</sup> States have varied on their interpretations of whether a SOL is a vested right, which is unconstitutional to remove.<sup>265</sup>

Those standing in stark opposition to reformation of the SOL range from institutions to individuals. In recent years religious institutions have been using new state versions of the Religious Freedom Restoration Act to shield themselves from liability from the acts of their employees.<sup>266</sup> This Act affords protection to religious institutions if any law imposes a "substantial burden" on their religious practice.<sup>267</sup> Because of the recent increase in the number of child sexual abuse cases brought against religious institutions,<sup>268</sup> insurance companies now offer insurance coverage for sexual abuse litigation to protect religious institutions from the increased number of claims.<sup>269</sup> These companies provide liability coverage for the institutions, as well as offer educational programming to teach employers how to defend themselves against allegations of sexual abuse.<sup>270</sup> As one researcher noted, "[t]here is hardly a more powerful set of lobbyists in the United States than those laboring for the insurance industry. One can only imagine the disparity in power between children and the insurance companies."<sup>271</sup> Insurance lobbyists have participated in legislative debates surrounding the SOL reforms in many states across the country.<sup>272</sup>

<sup>259</sup> *Id.*; *Stogner v. California*, 539 U.S. 607, 632–33 (2003).

<sup>260</sup> HAMILTON, *supra* note 4, at 41; *Stogner*, 539 U.S. at 632–33; U.S. CONST. art. I, § 9, cl. 3.

<sup>261</sup> *Perez v. Richard Roe 1*, 146 Cal. App. 4th 171, 174 (2006).

<sup>262</sup> *Khorrām*, *supra* note 12, at 412; *Miller*, *supra* note 14, at 615–16; *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 315 (1945).

<sup>263</sup> *Khorrām*, *supra* note 12, at 412; *Donaldson*, 325 U.S. at 315.

<sup>264</sup> *Khorrām*, *supra* note 12, at 419–21; *Miller*, *supra* note 14, at 618.

<sup>265</sup> *Miller*, *supra* note 14, at 618.

<sup>266</sup> *Hamilton*, *supra* note 235.

<sup>267</sup> *Id.* "Under the typical RFRA, if the believer succeeds in proving that the law imposes a 'substantial burden' on religious conduct, the burden shifts to the government to prove that the law serves a 'compelling interest' by the 'least restrictive means.'" *Id.*

<sup>268</sup> *See, e.g.*, Liam Moloney, *Vatican Defrocked 848 Priests for Child Abuse*, WALL ST. J. (May 6, 2014), <http://online.wsj.com/article/BT-CO-20140506-709368.html> (noting that the Catholic Church "laicized 848 priests between 2004 and 2013 for sexual abuses, with 2,572 receiving punishments"); Phillip Pullella & Stephanie Nebel, *U.N. Committee on Torture Grills Vatican on Sexual Abuse*, REUTERS (May 5, 2014), <http://uk.reuters.com/article/2014/05/05/uk-pope-abuse-idUKKBN0DL0RF20140505> (reporting that the U.N. committee on torture is questioning the Vatican about its "child sexual abuse crisis" and the "climate of impunity prevailing for decades").

<sup>269</sup> *See* HAMILTON, *supra* note 4, at 51–66 Chapter 5, "The Insurance Industry."

<sup>270</sup> *Id.* at 53. The National Catholic Risk Retention Group ("NCRRG") created a "child sexual abuse prevention system known as the Protecting God's Children™ program" that contains litigation workshops, defense preparation, "including First Amendment issues, statute of limitation issues, discovery considerations, and litigation planning and management protocols, processes, and procedures." *Id.* (citing Terry Carter, *Collaring the Clergy*, A.B.A. J., June 4, 2007).

<sup>271</sup> *Id.* at 55.

<sup>272</sup> *Id.* at 59.

Public defenders' offices and legislators alike have additional concerns about extending or reforming the SOLs.<sup>273</sup> The Division of Public Defenders in Connecticut explicates the major concerns of most defense attorneys that if old claims are allowed to be raised, evidence would be difficult, if not impossible, to locate, witnesses' memories will have faded, and facts will have been forgotten.<sup>274</sup> The group cites concerns that without "any finite period of time within which a prosecution can be brought, it may be impossible for an innocent person to fairly defend himself."<sup>275</sup> Some opponents have likened the statutes that allow for delayed discovery to a witch-hunt, asserting that a victim could at any point "remember" abuse.<sup>276</sup>

Despite the many detractors, this second wave of legislative reform is much more focused on increasing the access that victims have to legal remedies than the first wave. Although the first wave was a panacea for concerned citizens and parents, this second wave allows for more frequent identification of sexual abusers, which could inspire more victims to come forward. Nevertheless, the success of these new campaigns to reform the SOLs remains to be seen, as well as the implications of such reform and what legal challenges will arise.

## V. RECOMMENDED ACTION

The first wave of reforms, while making parents and the public feel safer, had a multitude of unforeseen consequences and little empirical success.<sup>277</sup> The second wave of reform, however, focused primarily on increasing the access that victims have to the justice system. Although emphasizing increased access so that victims do not feel futile coming forward many years after the fact is important, this second wave of reforms still focused on addressing the abuse after it happens rather than seeking to prevent it from occurring altogether. Despite legislative reforms aimed at punishing offenders and increasing access to the justice system, only ten percent of childhood sexual abuse is even reported.<sup>278</sup> The focus of legislators and advocates should thus be on encouraging victims to come forward and report abuse to stop it while it is happening, or even identify the abuse before it starts for others.

### A. Primary Interventions Through Education

While the legal system has made great strides in the last twenty years to address the problem of child sexual abuse, legislative approaches should be more focused and research-based. David Finkelhor, the Director of the Crimes Against Children Research Center, eloquently wrote, "[t]he most elemental thing the criminal justice system can do about a crime is increase its detection and disclosure and the likelihood that the offender will be arrested and prosecuted."<sup>279</sup> The problem of childhood sexual abuse requires comprehensive solutions, coming from both the legal and political systems as well as local communities, focusing on reducing risk factors and increasing protective factors.<sup>280</sup> Thus far, the responses to the problem of child sexual abuse have

<sup>273</sup> *Id.* at 106.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> Khorram, *supra* note 12, at 405.

<sup>277</sup> *See infra* Part III.

<sup>278</sup> Miller, *supra* note 14; HAMILTON, *supra* note 4.

<sup>279</sup> Finkelhor, *supra* note 17. Finkelhor specializes in the study of child maltreatment, victimization, and family violence, and has been researching those issues since 1977. David Finkelhor, Ph.D., Professor, CRIMES AGAINST CHILD. RES. CTR., <http://www.unh.edu/ccrc/researchers/finkelhor-david.html> (last visited Apr. 19, 2014). The mission of the Crimes Against Children Research Center is "to combat crimes against children by providing high quality research and statistics to the public, policy makers, law enforcement personnel, and other child welfare practitioners." *About the CCRC*, CRIMES AGAINST CHILD. RES. CTR., <http://www.unh.edu/ccrc/about/index.html> (last visited Apr. 19, 2014).

<sup>280</sup> Sandy K. Wurtele, *Preventing Sexual Abuse of Children in the Twenty-First Century: Preparing for Challenges and Opportunities*, 18 J. CHILD SEXUAL ABUSE 1, 7 (2009).

been secondary and tertiary in nature, in that they are reactionary and only offer solutions to the problem after it happens.<sup>281</sup> Focusing on primary interventions would address the attitudes and behaviors that govern sexual abuse of children to stop it before it begins.<sup>282</sup>

Primary interventions may include public education about child sexual abuse, such as explaining the difference between “good touching” and “bad touching” to children.<sup>283</sup> This type of educational effort could help remove the taboo of talking about sex when children become naturally curious and help them feel safe coming forward when they are being exploited in some way. In the early to mid-1980s, schools across America implemented educational programs focusing on teaching children about appropriate relationships with adults.<sup>284</sup> The current rate of these school-based programs is unknown, but schools likely shifted their focus away from childhood sexual abuse as they began educating students about other concerns, such as bullying and dating violence.<sup>285</sup> Researchers are in agreement, generally, that not enough evidence exists to support the efficacy or inefficacy of such programs.<sup>286</sup> What is known, however, is that these programs strengthen the protective factors that children have against abuse because they learn what sexual abuse is and how to report it to adults.<sup>287</sup> Additionally, because juveniles are oftentimes the ones actually perpetrating sexual abuse, education could be a particularly powerful tool.<sup>288</sup>

In addition to educational programming, there is a need to educate not only children, but also parents and communities. Parents, teachers, and professionals who interact with children can learn more about signs of abuse and how to respond if they suspect a child is being abused.<sup>289</sup> Social workers and law enforcement officers could help educate communities about the signs of abuse and how to speak to children when they suspect abuse. If the general public began focusing more attention on preventing child abuse, the shame that victims feel could potentially be transformed into something they feel comfortable coming forward and reporting.<sup>290</sup>

#### *B. Behavior and Family Therapy*

Another type of intervention that has proved to be successful is behavior therapy for sexual offenders. Although this type of response is more reactionary than educational campaigns, it can help rehabilitate juvenile offenders and prevent future abuse.<sup>291</sup> This type of therapy focuses on helping perpetrators change their thought patterns and manage their impulsivity.<sup>292</sup> Focusing on treating existing and known abusers could potentially help prevent future abuse of

<sup>281</sup> Janus & Polachek, *supra* note 6, at 167.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> Wurtele, *supra* note 280, at 3.

<sup>285</sup> *Id.* at 4; *Educate About Bullying*, STOPBULLYING.GOV, <http://www.stopbullying.gov/prevention/at-school/educate/index.html> (last visited Mar. 16, 2014) (providing educational materials for teachers and general information about teaching children about bullying at school).

<sup>286</sup> Wurtele, *supra* note 280, at 5–6.

<sup>287</sup> Christopher Mikton & Alexander Butchart, *Child Maltreatment Prevention: A Systematic Review of Reviews*, 87 BULL. WORLD HEALTH ORG. 353, 354 (2009), available at <http://www.who.int/bulletin/volumes/87/5/08-057075.pdf>. Most of these programs “teach children about body ownership, the difference between good and bad touch, and how to recognize abusive situations, say no, and disclose abuse to a trusted adult.” *Id.*

<sup>288</sup> Finkelhor, *supra* note 17, at 172.

<sup>289</sup> Wurtele, *supra* note 280, at 9–14. Some programs now include take-home educational material or follow-up assignments for parents. *Id.* at 9. Potential ways of reaching parents and educators include hosting brown-bag lunches or employer sponsored trainings, or groups at parenting centers, libraries, religious institutions, homes in the communities, or medical establishments. *Id.* at 11.

<sup>290</sup> *Id.* at 12–13.

<sup>291</sup> Finkelhor, *supra* note 17, at 177; Levenson, *supra* note 85. Some experiments have failed to find a difference in recidivism between those offenders who completed therapy and those who did not. *Id.* However, others found a forty percent decrease in the rate of sexual re-offense after completion of therapy. *Id.*

<sup>292</sup> Levenson, *supra* note 85; ILL. JUVENILE JUSTICE COMM’N, *supra* note 185, at 34 (noting that cognitive behavioral treatments use “modeling, practice and positive reinforcement to change thinking patterns and improve skills and behaviors”).



other victims. This method of intervention has had mixed results as well; however, research shows that current behavioral therapy treatments tend to decrease recidivism rates for sexual abusers.<sup>293</sup> The most effective type of therapy has been based on risk, need, and responsivity: offenders who are likely to recidivate are identified, the therapy targets their characteristics that could lead to re-offense, and then matches treatment to the offenders' capabilities.<sup>294</sup> For juveniles specifically, behavior therapy is an effective intervention in sexually abusive behavior.<sup>295</sup> Specifically, family-based therapy called Multisystemic Therapy ("MST") has been found to be one of the best interventions for juvenile offenders.<sup>296</sup> This type of treatment combines cognitive-behavior therapy with "intensive family intervention that targets parenting skills, affiliations with delinquent peers, and school problems."<sup>297</sup> Interventional therapy is an important prevention tool in addressing childhood sexual abuse, particularly among juveniles, and focusing on long-term solutions.

### C. Encourage Disclosure

For a child to actually have recourse against his or her abuser when the abuse is happening, he or she must know the abuse is wrong, tell someone, and have someone believe him or her.<sup>298</sup> If new reforms were able to affect the first step in that process and teach children that sexual abuse is never their fault or a punishment they deserved, then the process of telling someone would be slightly easier. Although striving for more disclosure through education of children and those who care for them may seem like a small step, a child simply telling someone that he or she is experiencing abuse could help disrupt an abusive relationship, prevent future abuse, and even help to identify other victims. Ensuring that adults in a child's life know how to identify and appropriately respond to suspected childhood abuse could lead to children feeling more comfortable coming forward. Child sex abusers usually commit abuse repeatedly before getting caught, but after being discovered have a relatively low recidivism rate.<sup>299</sup> Thus, identifying and "catching" abusers is crucial and possible through increased disclosure.<sup>300</sup>

Once these abusers are identified, another important preventative step is focusing on effective behavioral therapy to decrease their likelihood of re-offending. Disclosure and treatment can interrupt the cycle of violence that many people experience as a result of childhood sexual abuse. Focusing on disclosure could help make communities feel safer, knowing that abusers were openly identified and treated, which would decrease the need for public notification programs. Additionally, early disclosure would allow victims increased access to justice, because their claims would be less likely to be time barred. In combination with the existing and future legislation, these types of reforms could help curb the overall rate of abuse.

<sup>293</sup> R. Karl Hanson et al., *First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders*, 14 *SEXUAL ABUSE: J. RES. & TREATMENT* 169, 186 (2002); R. KARL HANSON ET AL., *PUB. SAFETY CAN., A META-ANALYSIS OF THE EFFECTIVENESS OF TREATMENT FOR SEXUAL OFFENDERS: RISK, NEED, AND RESPONSIVITY* 23 (2009) [hereinafter *META-ANALYSIS*], available at <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2009-01-trt/index-eng.aspx>.

<sup>294</sup> *META-ANALYSIS*, *supra* note 293, at 2.

<sup>295</sup> ILL. JUVENILE JUSTICE COMM'N, *supra* note 185, at 34; Finkelhor, *supra* note 17, at 177. The research evidence regarding juvenile offenders is more persuasive than that of adults. *Id.* Two studies found that cognitive behavioral therapy can stem inappropriate behavior in juveniles. *Id.*

<sup>296</sup> Finkelhor, *supra* note 17, at 177 (citing three studies that supported this type of therapy); ILL. JUVENILE JUSTICE COMM'N, *supra* note 185, at 34. One study compared a group of juvenile offenders who participated in MST to a group of juvenile offenders who were treated as usual in group therapy. *Id.* The researchers found that the MST group had a forty-five percent reduction in their delinquent behavior as compared to an eight percent decrease in the regular group. *Id.*

<sup>297</sup> Finkelhor, *supra* note 17, at 177.

<sup>298</sup> Khorram, *supra* note 12, at 407-08.

<sup>299</sup> Finkelhor, *supra* note 17, at 177; LANNING, *supra* note 207. "A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime . . . . Although pedophiles vary greatly in personality characteristics, their sexual behavior is often repetitive and highly predictable." *Id.*

<sup>300</sup> LANNING, *supra* note 207.

## VI. CONCLUSION

Although childhood sexual abuse is still a rampant problem in the United States, tools exist to help prevent future abuse. The first and second wave of legal reforms have imparted the gravity of sex crimes against children by tracking and registering those who commit them and attempting to make the justice system a more accessible means of remedy for victims seeking justice. Moving forward, efforts should focus on continuing to reform laws that prevent children from bringing claims against their abusers and increasing the amount of education surrounding abuse offered to juveniles, parents, and communities. By focusing on increasing disclosure by victims and identifying abusers, existing patterns of abuse may be disrupted.

*Yeah there's a story behind every single scar that I show  
I made it out, this is a me nobody's gotten before,  
I had to open my wounds, I had to bleed 'til I stopped it,  
Thanks for joining me here as I cleaned out my closet.<sup>301</sup>*

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<sup>301</sup> *Angel Haze - Cleaning out My Closet, supra* note 1.