Public Disclosure of "America's Secret Shame:
Child Sex Offender Community Notification in Illinois

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Our country will not truly be safe again until all Americans take personal responsibility for themselves, their families, and their communities.²

I. INTRODUCTION

Every parent's nightmare became a horrifying reality for Mika Moulton of Kankakee, Illinois, on August 7, 1995. On that day, she reported her ten-year-old son, Christopher Meyer, missing.³ In the next few days, Christopher's bicycle and shoes, as well as a pair of boys' underpants, were recovered.⁴ Finally, on August 15, 1995, police found Christopher's body, evidencing over forty stab wounds, in a shallow grave among trees and shrubbery in an Illinois state park.⁵

1. CONFERENCE ON THE SEXUALLY ABUSED CHILD—SELECTED PAPERS AND COMMENTS 51 (Gad J. Bensinger & Thomas Frost eds., 1982) [hereinafter CONFERENCE] (Richard J. Elrod, Sheriff of Cook County, Illinois, explained that because child sexual abuse is extremely under-reported, it has been coined "America's secret shame.").

2. Carolyn Skorneck, Crime Law Cannot Do the Job Alone; President Asks Americans to Help, REC. (Trenton, N.J.), Sept. 14, 1994, News, at 3 (quoting President Clinton as he signed the Violent Crime Control and Law Enforcement Act into law). President Clinton continued by saying that "'[e]ven this great law . . . cannot do the job alone . . . By its own words, it is still a law. It must be implemented by you. And it must be supplemented by you.'" Id.


3. Tim Tierney, Suspect Held in Kankakee; Murder Conviction Told: 10-year-old Still Missing, CHI. TRIB., Aug. 11, 1995, § 2, Metro S.W., at 1. James Meyer, Christopher's father, came from his home in Walla Walla, Washington, to aid the police in their investigation. Id. Christopher's parents divorced seven years ago. Id. Meyer has custody of his three children, including Christopher. Id. During the summer, the children stay with Moulton in Kankakee. Id.

4. Id. Police recovered the bicycle and one of the shoes in an Illinois state park where Christopher was last seen. Id. The other shoe was found four to five miles away. Id. Volunteers found the underpants on a tree branch approximately twenty miles from the park. Louise Kiernan & Jeffrey Bils, Kankakee Area Relives Shock After Kidnap Arrest: As Search Continues for Boy, Buss' Past Comes into Focus, CHI. TRIB., Aug. 13, 1995, § 2, Chicagoland, at 1.

5. Patrick Tuite, Ready or Not, Here They Come, CHI. LAW., Oct. 1995, at 11. "The murder of Christopher Meyer, 10, is a tragedy of monumental proportions. No child should be subjected to that type of death." Id.
The man charged with his murder, Timothy Buss, had previously been convicted and imprisoned for murdering a five-year-old girl in 1981. In reaction to Christopher Meyer's tragic death and to the fact that his alleged murderer lived in the community, residents of Illinois began to demand greater protection for their children and themselves. In response to this community outrage, Illinois legislators

6. Tierney, supra note 3, at 1. Police focused on Timothy Buss after “preliminary DNA test results showed that blood stains found in the trunk of a car driven by Buss matched blood samples taken from the boy’s parents and material taken from an oral inhaler the boy used.” Grand Jury to Hear Meyer Case, UPI, Aug. 24, 1995, available in LEXIS, Nexis Library, UPI file.


Although Buss was never convicted of a sex crime, evidence showed that the girl had been molested before being murdered. Kiernan & Bils, supra note 4, at 1. The conviction for the murder charge only, however, means that Buss would not have been eligible for sex offender notification. Christi Parsons & John Kass, City, State Sex-offender Alerts Proposed, CHI. TRIB., Nov. 2, 1995, § 2, Metro Chicago, at 2. “Buss was a convicted child killer but never had been convicted of sex crimes.” Id. See infra note 18.

8. Convicted Murderer, supra note 7, at A12. On May 21, 1981, Tara Sue Huffman, of Bradley, Illinois, disappeared. Kiernan & Bils, supra note 4, at 1. Buss, who also lived in Bradley, actually joined the other volunteers in the search for the young girl. Id. Consequently, police found Tara Sue’s bludgeoned and sexually assaulted body in a nearby trash can. Id.


Because imprisonment expresses society’s disapproval of the charged crime and removes the offender from the victim’s environment, some believe that “using the criminal justice system is about the only really effective method we have of dealing with this problem of child sexual abuse.” CONFERENCE, supra note 1, at 43 (quoting Wayne A. Meyer, Chief of Felony Review Section, Cook County, Ill., State’s Attorney Office). For example, in response to Christopher Meyer’s murder, Jim Edgar, Governor of Illinois, introduced three pieces of legislation imposing harsher penalties on violent offenders: (1) requiring mandatory life sentences when, during an assault, a child is murdered; (2) requiring mandatory life sentences for offenders as young as 13 years of age who, during a sexual assault or aggravated kidnapping, murdered a child under 13; and (3) trying minors 13 years of age or older as adults if charged with first-degree murder in connection with a sexual assault or aggravated kidnapping. Emily Wilkerson, Edgar Signs Truth-in-Sentencing Law; State Will Contract with Private Firms to Build More Prisons, ST. J.-REG. (Springfield, Ill.), Aug. 21, 1995, at 1.


recently adopted a sex offender community notification law.\textsuperscript{11}

At the time of Meyer's death, a majority of states, including Illinois,\textsuperscript{12} had already enacted sex offender registration laws.\textsuperscript{13} In general, registration laws attempt to aid law enforcement officials in protecting the community by requiring convicted sex offenders who are out of prison to register with local police in the community where they reside.\textsuperscript{14} Nationwide, however, a growing perception has emerged that these registration laws provide insufficient protection for children.\textsuperscript{15} The continued commission of violent acts against children,
often by ex-convicts who returned to the community after committing similar acts of violence, has led to calls for stricter laws. As a result, a growing number of states are enacting sex offender community notification laws permitting, or mandating, law enforcement agencies to give information to a community regarding sex offenders who move there.  

Even though a sex offender notification law may not have protected Christopher Meyer, his death provided the necessary fuel to renew the debate over the enactment of a similar notification law in Illinois. Within three months of Christopher's death, several Illinois legislators proposed bills providing for a sex offender notification law in Illinois. The Illinois Child Sex Offender Community Notification Act supplements the existing registration law by requiring local law enforcement agencies to notify certain members of the community of
the sex offender's presence there.\textsuperscript{21} While the new law appears to offer further protection for children, concerns remain about the law's constitutionality, as well as its pragmatic effects.\textsuperscript{22}

This Comment examines some of the legal and social issues surrounding sex offender notification laws, focusing on the new Illinois notification law.\textsuperscript{23} This Comment first discusses the national trend in enacting both sex offender registration\textsuperscript{24} and sex offender community notification laws, as well as the motivation for passing these laws.\textsuperscript{25} Next, this Comment examines the different types of community notification required in some jurisdictions.\textsuperscript{26} This Comment then reviews two potential constitutional challenges to the validity of community notification laws: cruel and unusual punishment and right to privacy.\textsuperscript{27}

Next, this Comment discusses the development of registration laws in Illinois and the shift towards promoting a sex offender notification law.\textsuperscript{28} This Comment then analyzes the recently enacted Child Sex Offender Community Notification Act in Illinois.\textsuperscript{29} As part of this analysis, this Comment focuses particular attention on the constitutional concerns the Act raises, as well as the harmful societal impact of community notification laws.\textsuperscript{30} This Comment then proposes a general plan aimed at preventing sexual abuse, emphasizing a proactive approach rather than a reactive approach as illustrated by community notification.\textsuperscript{31} Finally, this Comment concludes that community

\textsuperscript{21} Id. See infra notes 175-81 and accompanying text for a detailed discussion of the components of the new Act.

\textsuperscript{22} See infra part IV.

\textsuperscript{23} See infra part IV.

\textsuperscript{24} This Comment discusses sex offender registration laws only inasmuch as they relate to sex offender notification laws. For a detailed review of sex offender registration laws, see Houston, supra note 14, at 729-70.

\textsuperscript{25} See infra part II.A.

\textsuperscript{26} See infra part II.A.1-2.

\textsuperscript{27} See infra part II.B. An examination of every constitutional issue relevant to community notification laws is beyond the scope of this Comment. Rather, this Comment primarily focuses on the major avenues of attack which appear to have particular viability with regard to the Illinois sex offender notification provision. Accordingly, these two challenges will be the central focus in this Comment's background.

For a brief discussion of the variety of constitutional challenges to sex offender notification laws, see infra note 80 and accompanying text. Because notification laws are relatively new, there have been few constitutional challenges. More challenges are likely to emerge, however, with the growing trend of enacting sex offender notification laws.

\textsuperscript{28} See infra part III.

\textsuperscript{29} See infra part IV.

\textsuperscript{30} See infra part IV.

\textsuperscript{31} See infra part V.
notification alone will not protect communities from sex offenders. Nonetheless, because of the national trend of enacting notification laws, the Illinois General Assembly had no choice but to adopt some form of a sex offender notification law in order to prevent an influx of sex offenders into the state.

II. BACKGROUND

Many state legislatures have enacted laws to protect potential victims of sex offenders, including both registration and notification provisions. This Part will discuss the national trend in enacting both types of laws, examine the different types of community notification required in some jurisdictions, and review potential constitutional challenges to the validity of community notification laws.

A. National Trend in the Development of Notification Laws

Sex offenders represent a distinct threat to the community at large. Not only do the majority of research studies indicate that sex offenders pose a relatively high rate of recidivism compared to other convicts, but the number of sex crimes reported has also increased. Although

32. See infra part VI.
33. See infra parts V and VI.
34. Robert A. Prentky, The Assessment and Treatment of Sex Offenders, CRIM. JUST. & BEHAV., Mar. 1994, at 6. The increased number of sexual offenses reported each year discloses a "problem of epidemic proportions." Id.
Most surveys of child sexual abuse have been unable to find a relationship between abuse and social class. David Finkelhor & Assocs., A Sourcebook on Child Sexual Abuse 67 (1986). "[S]exual abuse appears to be very democratic in its social class distribution." Id. at 80. Because "the vast majority of [sex] offenders are male," this Comment will use male pronouns when referring to sex offenders. U.S. Dep't of Justice, National Symposium on Child Molestation 25 (1984) [hereinafter National Symposium].
35. Generally, "recidivism" has been defined as the likelihood of reoffense after capture and punishment. Finkelhor, supra note 34, at 130. Also, a "recidivist" is "[a] habitual criminal; a criminal repeater. An incorrigible criminal. One who makes a trade of crime." Black's Law Dictionary 1269 (6th ed. 1990).
36. Recent Legislation: Criminal Law—Sex Offender Notification Statute—Washington State Community Protection Act Serves as a Model for Other Initiatives by Lawmakers and Communities, 108 Harv. L. Rev. 787, 791 (1995) [hereinafter Recent Legislation]. The majority of experts believe that sex offenders cannot be cured. Kiernan & Bils, supra note 4, at 4. But see Sutherland, supra note 10, at 547 (noting that sex offenders have a low rate of recidivism when compared with other types of offenders). See also Silva, supra note 14, at 1965-66 (arguing that "it is difficult to determine whether sex crime recidivism is higher than the recidivism rates for other crimes").
37. Prentky, supra note 34, at 6. Authorities are unsure whether the increased number of reported sex offenses actually represents an increase in sex offenses or simply an increase in the reporting of crimes. Gordon C. N. Hall & Richard Hirschman, Sexual
experts disagree as to whether or not sex offenders can be rehabilitated, their studies do converge on the notion that sex offenders are, at the very least, difficult to treat. These studies also lend credibility to the frightful reality that sex offenders typically harm more than one

Aggression Against Children—A Conceptual Perspective of Etiology, CRIM. JUST. & BEHAV., Mar. 1992, at 8. Even today, sex offenses are notoriously underreported. *See, e.g.,* CHILD SEXUAL ABUSE 132-33 (Emily Driver & Audrey Droisen eds., 1989) (noting that only 3% of the estimated 22,000 cases of incest against children are reported in the State of Illinois). *See also* Silva, *supra* note 14, at 1967 (explaining that although the National Committee to Prevent Child Abuse confirmed nearly 200,000 cases of child abuse in 1992, “many experts believe that the actual abuse rate is close to 1.4 million per year, much greater than reported figures, because of the tendency for sexual crimes to go unreported”). From the number of reported sex crimes, it is not difficult to recognize the enormity of the dangers of sexual abuse by taking into consideration the unreported crimes. CONFER., *supra* note 1, at 51. In addition, it has been noted that the unreported incidents of rape also “contribute to the problem of undetected recidivism.” Marie A. Bochniewich, Comment, *Prediction of Dangerousness and Washington's Sexually Violent Predator Statute*, 29 CAL. W. L. REV. 277, 297 (1992).

38. Experts disagree for two reasons: first, recidivism rates vary among different types of sex offenders, and second, researchers use different methods of measuring recidivism. Joseph J. Romero & Linda M. Williams, *Recidivism Among Convicted Sex Offenders: A 10-year Follow-up Study*, FED. PROBATION, Mar. 1985, at 58 (“Much of the confusion in the research can be attributed to differences in measuring recidivism of sex offenders.”). Compare, *e.g.,* FINKELHOR, *supra* note 34, at 134-36 (detailing a list of sex offenders which are most likely to recidivate: offenders against minor boys, not including incestual offenders; offenders with personality disorders; and offenders with a history of prior offenses) with Lisa Anderson, *Demand Grows to ID Molesters—States Weigh Children's Safety versus Offenders' Rights*, CHI. TRIB., Aug. 15, 1994, News, at 1 (cataloguing repeat-offense rates for untreated sex offenders from the Handbook of Sexual Assault by Canadian researchers William Marshall and Howard Barbaree: incest, 4-10%; rapists, 7-35%; molesters of girls, 10-29%; and molesters of boys, 13-40%). Nonetheless, in Illinois alone, 3416 ex-convicts committed new crimes and returned to prison last year. Tim Novak, *Crime and Crime Again, State’s Parole System Leaves Ex-Cons Unsupervised*, CHI. SUN-TIMES, Oct. 24, 1995, at 1. This recidivism has been well documented:

A Sun-Times analysis of 3,400 parolees who were returned to prison within the last year found that a majority had been arrested within eight months of their earlier release dates. Four were arrested on the same day they got out, and all but four percent were arrested within two years. *Id.* at 14. Additionally, of the 19,187 inmates released from Illinois prisons last year, it is estimated that approximately one-third of those former convicts will commit another crime and be sent back to prison within three years. *Id.* at 1.

39. *Sexual Predators and Kids' Safety*, CHI. TRIB., Aug. 22, 1994, Editorial, at 10. See also Hall & Hirschman, *supra* note 37, at 9 (explaining that the effectiveness of treatment programs directed at sexual offenders is limited); R. Karl Hanson et al., *Long-Term Recidivism of Child Molesters*, 61 J. CONSULTING & CLINICAL PSYCHOL. 651 (1993) (arguing that because of findings of long-term recidivism, researchers do not believe that short-term treatment will be successful in controlling the risk posed by child molesters). But see W.L. Marshall & W.D. Pithers, *A Reconsideration of Treatment Outcome with Sex Offenders*, CRIM. JUST. & BEHAV., Mar. 1994, at 19-21 (finding that treatment could positively affect the recidivism rate of sex offenders but only if the treatment is comprehensive).
victim. Most significantly, children, more than any other class of victims, suffer the greatest risk of harm at the hands of sex offenders. These statistics serve to emphasize the magnitude of the problems surrounding sex crimes and society’s need for legislative protection.

The likelihood of recidivism, as well as the lack of any definitive evidence of the effectiveness of treatment programs, has led states to enact laws to protect potential victims of these sex offenders. In addition, the heightened public awareness of sex crimes, frequently following well-publicized sex offenses, often acts as a catalyst for the creation of both registration and notification laws. Recently, research again diverges, however, with respect to the average number of victims that fall prey to sex offenders. Compare id. at 296-97 (suggesting a mean rate of 11.7 victims per offender) with NATIONAL SYMPOSIUM, supra note 34, at 25 (explaining that some sex offenders have admitted to molesting hundreds of children).

Statistics show that as many as 2.5 million cases of child molestation occur every year in the United States. NATIONAL SYMPOSIUM, supra note 34, at 19. Although child molestation is very difficult to measure because the term “molestation” has numerous interpretations, it has been estimated that approximately one in every three girls, and at least one in every three boys, are molested before their 18th birthday. Id. at 21.

Generally, the term “child molester” is “used to describe a person who has engaged in sexual activity with a child.” Judith V. Becker & John A. Hunter, Jr., Evaluations of Treatment Outcome for Adult Perpetrators of Child Sexual Abuse, CRIM. JUST. & BEHAV., Mar. 1992, at 75. It is important to note that the term “child molester” is not used synonymously with the term “pedophile.” FINKELHOR, supra note 34, at 89. Rather, pedophilia is a state in which an individual is predisposed to use children for his or her sexual gratification. Id. Child molesting is evidence of the existence of that state of pedophilia.” Id. at 90.

In a self-reporting survey, 207 convicted adult male sex offenders reported attempting or completing sexual offenses against adult women 796 times (or 3.9 victims per offender). Herman, supra note 10, at 909 n.186. The same group of 207 men reported attempting or completing 14,950 sexual acts against children (or 72.2 victims per offender). Id. Additionally, “[t]wenty-nine percent of all forcible rapes in America occurred when the victim was less than 11-years-old.” NATIONAL VICTIM CENTER, CRIME AND VICTIMIZATION IN AMERICA, STATISTICAL OVERVIEW 5 (Aug. 1993) [hereinafter NATIONAL VICTIM CENTER].

40. Bochnewich, supra note 37, at 297. Research again diverges, however, with respect to the average number of victims that fall prey to sex offenders. Compare id. at 296-97 (suggesting a mean rate of 11.7 victims per offender) with NATIONAL SYMPOSIUM, supra note 34, at 25 (explaining that some sex offenders have admitted to molesting hundreds of children).

41. Id. at 296-97. The same group of 207 men reported attempting or completing 14,950 sexual acts against children (or 72.2 victims per offender). Herman, supra note 10, at 909 n.186. The same group of 207 men reported attempting or completing 14,950 sexual acts against children (or 72.2 victims per offender). Id. Additionally, “[t]wenty-nine percent of all forcible rapes in America occurred when the victim was less than 11-years-old.” NATIONAL VICTIM CENTER, CRIME AND VICTIMIZATION IN AMERICA, STATISTICAL OVERVIEW 5 (Aug. 1993) [hereinafter NATIONAL VICTIM CENTER].
legislatures and Congress have increasingly focused on notification laws in response to the public outcry. The federal government and many state governments have initiated a reactive response to the problem by authorizing law enforcement personnel to inform community residents that convicted sex offenders are living among them. The scope and impact of these notification laws vary in each jurisdiction.

1. The Federal Approach

On September 13, 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 ("Federal Crime Control Act") into law. The Jacob Wetterling Crimes Against Children Registration Act ("Crimes Against Children Act") is a provision of the Federal Crime Control Act that requires states, as a condition to receiving undiminished federal crime fighting funds, to register certain types of sex offenders with state law enforcement agencies. Additionally, the Crimes Against Children Act permits the disclosure of other notorious sex offenses" incite communities to act. See also supra note 9 (detailing Governor Edgar’s response to Christopher Meyer’s death).


47. See infra part V for a discussion of the reactive nature of sex offender community notification laws.

48. See infra parts II.A.1 and II.A.2.

49. See Kiernan & Bils, supra note 4, at 1 (acknowledging that notification laws range from "making lists of sex offenders available for public inspection to posting signs on the offenders’ homes"). For a detailed description of several state notification laws, see infra part II.A.2.


52. Id. § 14071(f)(2)(A). States have until September 13, 1997, to comply with the Crimes Against Children Act before their crime fighting funds will be reduced. Id. § 14071(f)(1).

53. Id. § 14071(a)(1)(A), (B). Those who must register include persons who are "convicted of a criminal offense against a victim who is a minor," "convicted of a sexually violent offense," or declared to be "sexually violent predators." Id.
some of the registrants' personal information when necessary to protect the public from certain offenders.\textsuperscript{54} In essence, the Crimes Against Children Act encourages states to establish registration, notification, and tracking policies as a means of protecting individuals from child molesters\textsuperscript{55} and other sex offenders.\textsuperscript{56} The federal requirements regarding sex offender registration, as well as the authorization for community notification, constitute a floor, rather than a ceiling, for state sex offender registration and notification laws.\textsuperscript{57} States may therefore impose additional or more demanding requirements on sex offenders.\textsuperscript{58}

2. State Approaches

Many states took the initiative and enacted sex offender community notification laws even before the Federal Crime Control Act was signed into law.\textsuperscript{59} To date, twenty-nine states have adopted some type of sex offender notification laws requiring different degrees of disclosure.\textsuperscript{60} Although the Federal Crime Control Act does not require that

\textsuperscript{54} Id. § 14071(d)(3). The federal law also provides immunity from civil and criminal liability for all state law enforcement agencies and personnel who act in good faith pursuant to the Act. 42 U.S.C. § 14071(e).

\textsuperscript{55} Id. § 14071(d)(3). For a definition of "child molester," see supra note 41.

\textsuperscript{56} 42 U.S.C.A. § 14071(a)(1)(A), (B) and 42 U.S.C.A. § 14071(d)(3). The Proposed Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act provide that the "general objective of the [Crimes Against Children] Act is to protect people from child molesters and violent sex offenders through registration requirements." 60 FED. REG. 18613 (1995) (proposed Apr. 12, 1995). See also Blacher, supra note 46, at 917 (illustrating that "[f]rom its onset, the purpose of the proposed federal legislation was to encourage states to establish registration and tracking procedures and community notification with respect to released sexually violent predators").

\textsuperscript{57} 60 Fed. Reg. 18613. The proposed guidelines explain that "states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling . . . ." Id.

\textsuperscript{58} Id. at 18616. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Crimes Against Children Act, or requires address verification for such offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Id. at 18613.


\textsuperscript{60} The following states provide for some type of community notification: ALASKA STAT. § 18.65.086 (1994); ARIZ. REV. STAT. ANN. § 13-3825 (1994); CAL. PENAL CODE §
notification laws be retroactive, twenty-one of the twenty-nine state notification statutes apply retroactively. Most importantly, not all

61. The following states apply their notification laws retroactively: Alaska, Arizona, California, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Montana, Nevada, New Jersey, New York, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, Washington. See supra note 60 for the full citation to the notification laws of each of these states.

Generally, a “retroactive law” is a law “which take[s] away or impair[s] vested rights acquired under existing laws, impose[s] a new duty, or attach[es] a new disability in respect to the transactions or considerations already past.” BLACK'S LAW DICTIONARY 1317 (6th ed. 1990).

The retroactive application of these laws raises several issues. For instance, the Ex Post Facto Clause of the United States Constitution prohibits the states from enacting a law that renders an act punishable when it was lawful when committed or increases the severity of the punishment attached to the crime from that applicable when it was committed. U.S. CONST. art. 1, § 10. When applied retroactively, sex offender registration and community notification laws appear to increase the burden of punishment for sex offenders convicted before the adoption of the laws. State v. Ward, 869 P.2d 1062, 1066 (Wash. 1994). The majority of courts, however, have held that registration and notification laws are regulatory, rather than punitive; as such, they do not impose any punishment on the sex offender, and do not violate Article 1, § 10 of the U.S. Constitution. See, e.g., id. at 1074 (holding that Washington’s sex offender registration and notification laws are regulatory and do not constitute punishment); State v. Noble, 829 P.2d 1217, 1224 (Ariz. 1992) (concluding that Arizona’s sex offender registration statute “is regulatory in nature and not an unconstitutional ex post facto law”); State v. Manning, 532 N.W.2d 244, 249 (Minn. Ct. App. 1995) (holding that Minnesota’s sex offender registration statute is not punitive and therefore does not violate federal and state constitutional prohibitions against ex post facto laws).

But see Rowe v. Burton, 884 F. Supp. 1372, 1380 (D. Alaska 1994) (indicating that, although Alaska’s sex offender registration law was constitutional, the state’s notification provision would likely violate an ex post facto challenge because it is punitive in nature); Artway v. Attorney Gen., 876 F. Supp. 666, 692 (D.N.J. 1995) (finding New Jersey’s sex offender registration provision regulatory and constitutional, but its notification statute violates the Ex Post Facto Clause because it applied retroactively).
states with community notification require law enforcement personnel to notify individual community residents of the sex offender's presence. At this time, New Jersey is the only state which mandates that law enforcement personnel inform the public when sex offenders are living among them. By far, Washington, Louisiana, Oregon,

62. See, e.g., Me. Rev. Stat. Ann. tit. 16, § 615 (West 1994) (stating that a registrant's personal information "may be disseminated to any person for any purpose") (emphasis added); Tenn. Code Ann. § 40-39-106(c) (Supp. 1995) (providing that local law enforcement agencies "may release relevant information deemed necessary to protect the public concerning a specific sexual offender who is required to register") (emphasis added); Va. Code Ann. § 19.2-390.1 (Michie 1995) (prohibiting dissemination of sex offender registry information except on inquiries, and only to authorized officers or employees of schools, child welfare agencies, or day-care centers).

63. Doe v. Poritz, 662 A.2d 367, 429 (N.J. 1995) (Stein, J., dissenting) (stating that other states' notification provisions "either do not require law enforcement to notify the public, or authorize far more limited public notification than that mandated by New Jersey's statute"). See also Blacher, supra note 46, at 916-17 (giving a brief description of New Jersey's sex offender community notification law). Notably, law enforcement officials in New Jersey are mandated to disseminate a registrant's personal information only if the sex offender poses a moderate or high risk of recidivism. Jenny A. Montana, An Ineffective Weapon in the Fight Against Child Abuse, 3 J. L. & Pol'Y 569, 587 (1995).

New Jersey's sex offender registration and sex offender notification laws are commonly referred to together as "Megan's Law." Poritz, 662 A.2d at 372. New Jersey named these laws after Megan Kanka, a seven-year-old girl who was raped and murdered by a repeat sex offender. Id. See also Decter, supra note 46, at 61 (providing the facts surrounding Megan's disappearance).

64. Wash. Rev. Code Ann. § 4.24.550. In 1990, Washington enacted its Community Protection Act and became the first state to permit community notification of sex offenders. Recent Legislation, supra note 36, at 787. It has therefore served as a model for other community notification laws. Id. Washington adopted this legislation after a recently released sex offender lured a seven-year-old boy into a wooded area, raped him, and then severed his penis. Blacher, supra note 46, at 908. Washington's law does not provide specific notification guidelines; rather, local law enforcement agencies establish the procedures by which information about sex offenders will be disclosed to their community. Wash. Rev. Code Ann. § 4.24.550(2) (West 1995).

65. La. Rev. Stat. Ann. § 15.546.A (West Supp. 1995). Louisiana's sex offender community notification law is unique in that it requires a convicted sex offender to personally send a notice by mail to those residents within one mile of his residence in a rural area, or within a three block square radius in an urban or suburban area, as well as to the superintendent of the school district in that community. La. Code Crim. Proc. Ann. art. 895(H) (West 1995). Additionally, the sex offender must publish a notice of his presence and past conviction in the local paper two separate times. Id. Moreover, the state reserves the right to require the sex offender to publicize his presence in other ways. Id.

66. Or. Rev. Stat. § 181.508(3) (1994). Oregon has an innovative, and perhaps the most public, sex offender community notification law. After the agency supervising the sex offender determines that community notification is necessary, the agency is permitted to use any means of communication that it deems appropriate. Id. In fact, high risk sex offenders in Oregon must place a "stop sign-shaped" black and yellow poster in the front window of their homes which reads "Sex Offender Residence." Charlie Cain, Police Can Pinpoint Predators, DETROIT NEWS, Sept. 28, 1995, at 6D. See
and New Jersey\textsuperscript{67} have the most active and formal procedures for community notification.\textsuperscript{68}

Nonetheless, New Jersey's sex offender notification law\textsuperscript{69} goes further than any other law of its kind.\textsuperscript{70} These notification and registration laws represent an attempt to prevent future incidents of sexual abuse and to protect New Jersey citizens from sex offenders.\textsuperscript{71} New Jersey's sex offender registration and sex offender notification laws are commonly referred to together as "Megan's Law."\textsuperscript{72} "Megan's Law" requires varying degrees of notification after sex offenders are released from prison.

Specifically, "Megan's Law" provides a three-tiered approach to the dissemination of a registrant's personal information based on the sex offender's risk of reoffense.\textsuperscript{73} First, if the sex offender poses a low

\begin{itemize}
  \item also, Anderson, \textit{supra} note 38, at 1 (describing the use of these signs in Oregon).
  \item 67. N.J. STAT. ANN. §§ 2C:7-1 to 2C:7-11 (West 1995).
  \item 68. Anderson, \textit{supra} note 38, at 1.
  \item 69. On March 15, 1996, a United States district court issued a preliminary injunction banning community notification as it is set forth in "Megan's Law." \textit{Sex Offenders Win Round vs. Megan's Law in N.J.: U.S. Judge Prohibits Alerting Communities}, Mar. 16, 1996, § 1, at 2. The court determined that the law is unconstitutional in its retroactive application. \textit{Id.} See \textit{supra} note 61 for a brief discussion of the constitutional concerns that exist when sex offender registration and notification laws are applied retroactively. This ruling, however, does not affect New Jersey's sex offender registration requirements. \textit{Sex Offenders Win Round, supra}, at 2.
  \item For a detailed analysis of New Jersey's notification law, see Lawrence S. Lustberg, \textit{There They Go Again; The State Justices Affirm Their Independence on Constitutional Issues}, 140 N.J. L.J. 2268 (Supplement, Sept. 4, 1995); Montana, \textit{supra} note 63, at 588-89; Bill Sanderson, \textit{Megan's Law Scaled Back; Notification to be Limited}, \textit{RECORD} (Trenton, N.J.), Sept. 15, 1995, at A1; William Woo, \textit{Children and Rights Both at Risk Over Sex Offenders}, \textit{ARIZ. DAILY STAR}, Aug. 12, 1995, at 17A.
  \item 70. Doe v. Poritz, 662 A.2d 367, 427-30 (N.J. 1995) (Stein, J., dissenting) (explaining that New Jersey's notification policies are more extensive than any other notification law in the United States). \textit{See also} Artway v. Attorney Gen., 876 F. Supp. 666, 689 (D.N.J. 1995) (explaining that "a convicted sex offender's likeness, place of employment, a description and identification of his motor vehicle, as well as" his name, address, nature of crime and conviction are all disseminated to the public, and that "Megan's Law goes well beyond all previous provisions for public access to an individual's criminal history").
  \item 71. \textit{Poritz}, 662 A.2d at 372.
  \item 72. \textit{Id.} \textit{See also} Decter, \textit{supra} note 46, at 61 (providing the facts surrounding Megan's disappearance). "Called 'Megan's Law' after the slain child, the statute seeks to prevent recurrences by requiring varying degrees of public notice whenever sex offenders are released into the community." \textit{Id.}
  \item 74. N.J. STAT. ANN. § 2C:7-8(c) (West 1995). \textit{See also} Montana, \textit{supra} note 63, at 573 n.23 (detailing the three-tiered system of community notification adopted by New Jersey).
risk of reoffense, only law enforcement agencies are notified of his presence in the community.\textsuperscript{75} Second, if the offender poses a moderate risk of reoffense, officials notify schools, religious groups, and youth organizations in the community.\textsuperscript{76} Finally, if the offender poses a high risk of reoffense, then individual residents in the community in which the offender resides will be notified.\textsuperscript{77} Because “Megan’s Law” and other notification statutes call for community-wide notification in certain circumstances,\textsuperscript{78} sex offender community notification laws have been subjected to significant constitutional challenges.\textsuperscript{79}

\section*{B. Constitutional Challenges to Registration and Notification Laws}

Sex offender registration and community notification laws have been challenged on myriad federal and state constitutional grounds.\textsuperscript{80}

\begin{itemize}
\item \textsuperscript{75} Id. \textsection 2C:7-8(c)(1).
\item \textsuperscript{76} Id. \textsection 2C:7-8(c)(2).
\item \textsuperscript{77} Id. \textsection 2C:7-8(c)(3).
\item \textsuperscript{78} Initially, “Megan’s Law” called for “community-wide notification in the case of the most dangerous sex offenders.” Lawrence Arnold, \textit{New Jersey & You This Week}, ASBURY PARK PRESS (Asbury Park, N.J.), Sept. 17, 1995, at A3.
\item The Poritz court found, however, that such disclosure sufficiently impinged on protected liberty interests in privacy and reputation so as to require due process procedural safeguards prior to classification. Doe v. Poritz, 662 A.2d 367, 420 (N.J. 1995). Additionally, the Poritz court noted the likelihood that community residents would react to the information received on sex offenders with acts of vigilantism and ostracism. \textit{Id.} at 421.
\item State Attorney General Deborah Poritz, as instructed by the Poritz court, established guidelines for “Megan’s Law” providing, in part, for a “two-week window allowing offenders to appeal notification decisions.” Michelle Ruess, \textit{Megan’s Law Notification to Proceed; Exceptions Allowed in Three Cases}, RECORD (Trenton, N.J.), July 28, 1995, at A3. \textit{See infra} parts II.B.1 and II.B.2 for further discussion of the Poritz decision. Additionally, “notification through ‘community meetings, speeches in schools, and religious congregations’” was prohibited. Sanderson, \textit{supra} note 69, at A1. Instead, individuals determined “likely to encounter” the released sex offender will be notified of an offender’s presence in the community and, most importantly, will be asked to keep such information confidential. \textit{Id.} As defined by “Megan’s Law” guidelines, “likely to encounter” constitutes those people “in a location or in close geographic proximity to a location which the offender visits or can be presumed to visit on a regular basis.” \textit{Id.} This may include, but is not limited to, the sex offender’s residence, place of employment, or a drinking establishment. \textit{Id.}
\item For a discussion of the constitutional concerns inherent in registration and notification laws, see \textit{infra} part II.B.1 and II.B.2; see also \textit{infra} note 80 and accompanying text.
\item Some opponents have challenged the laws on the grounds that they constitute cruel and unusual punishment, in violation of the Eighth Amendment. \textit{See, e.g.}, State v. Douglas, 586 N.E.2d 1096, 1097 (Ohio Ct. App. 1989) (arguing that Ohio’s habitual sex offender registration act violated the Eighth Amendment). Other opponents have characterized the laws as violating a sex offender’s right to privacy. \textit{See, e.g.}, People v. Mills, 81 Cal. App. 3d 171, 175 (Cal. Ct. App. 1978) (holding that California’s registration statute did not impinge on the defendant’s constitutional right to privacy).
\end{itemize}
Opponents of such laws most frequently argue that these laws constitute cruel and unusual punishment and violate the sex offender's right to privacy. Despite these concerns, the majority of state registration and notification laws have withstood such constitutional attacks.

1. Cruel and Unusual Punishment

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." To determine when the imposition of a law is cruel and unusual and, hence, violates the Eighth Amendment, courts must apply a two-part test. First, a court must determine whether the law constitutes punishment. If the court finds that the law is a form of punishment, the court then moves to the second part of the analysis.

Opponents of community notification also claim that such a law violates the Ex Post Facto Clause, U.S. CONST. art. I, § 10. See, e.g., State v. Manning, 532 N.W.2d 244, 245 (Minn. Ct. App. 1995) (holding that the Minnesota sex offender registration law was not an impermissible ex post facto law). In addition, the laws have been challenged as a violation of the Fourteenth Amendment's Equal Protection Clause. See, e.g., State v. Ward, 869 P.2d 1062, 1066 (Wash. 1994) (holding that Washington's notification and registration laws did not violate defendant's equal protection rights). Moreover, opponents claim that sex offender community notification laws violate due process guarantees found in the Fifth and Fourteenth Amendments. See, e.g., People v. Younghans, 156 Cal. App. 3d 811, 814 (Cal. Ct. App. 1984) (holding that the statute did not compel a defendant to testify against himself, nor did it deprive him of his right to confront the victim). Finally, sex offender community notification laws have been challenged on the grounds that they constitute double jeopardy, which is prohibited by the Fifth Amendment of the Constitution. See, e.g., Doe v. Poritz, 662 A.2d 367, 404 (N.J. 1995) (rejecting argument that New Jersey's sex offender registration and notification laws constitute double jeopardy).

81. See infra section II.B.1.
82. See infra section II.B.2.
83. 60 FED. REG. 18613 (1995) (stating that "a majority of courts that have dealt with the issue have held that registration systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights").
84. U.S. CONST. amend. VIII.
85. Trop v. Dulles, 356 U.S. 86, 101-03 (1958). This two-part test originated in Trop where the United States Supreme Court offered a detailed analysis of the basic concepts of the Eighth Amendment's cruel and unusual punishment provision. See id. at 101-03. See infra note 88 for a discussion of the Trop Court's analysis. See also Houston, supra note 14, at 748 (stating that: "[A]n Eighth Amendment analysis of a Sex Offender Registration Act will generally consist of two parts. First, the registration requirement must be categorized as 'punishment,' and second, the punishment must be evaluated under the current 'cruel and unusual' test.").
86. Houston, supra note 14, at 748. See also Artway v. Attorney Gen., 876 F. Supp. 666, 678 (D.N.J. 1995) (explaining that when analyzing "Megan's Law" under the cruel and unusual punishment provision of the Eighth Amendment, "the court must first focus on whether the registration act passed by the New Jersey Legislature may be categorized as 'punishment'").
and determines whether the punishment is grossly disproportional to the crime committed. ⁸⁷

To determine whether a law is penal, rather than regulatory, the United States Supreme Court requires courts to look at the purpose of the statute. ⁸⁸ In examining a statute’s purpose, a court may initially consider the legislature’s intent in enacting the statute. ⁸⁹ Even if the court characterizes the legislative intent as non-penal, the court then determines whether the actual effect of the statute is so punitive as to negate the legislature’s non-penal intent. ⁹⁰

If a court finds the legislation to be penal in purpose or effect, it must then determine whether the punishment is significantly disprop-

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⁸⁸. Trop, 356 U.S. at 97-99. In Trop, the United States Supreme Court declared that a law is penal if it imposes a disability for the purpose of punishment. Id. at 96. If a law imposes a disability for some other legitimate governmental purpose, however, it is non-penal and, therefore, removed from Eighth Amendment constitutional analysis. Id. If a statute has both penal and non-penal effects, the statute will be declared non-penal so long as the clear purpose of the legislation is of a regulatory nature. Id.

Some sex offender registration statutes have already been challenged under the Eighth Amendment. See, e.g., State v. Costello, 643 A.2d 531, 533 (N.H. 1994) (finding New Hampshire’s sex offender registration law non-penal based on the legislative intent of the statute to assist law enforcement agencies in their investigative procedures). See also State v. Ward, 869 P.2d 1062, 1074 (Wash. 1994) (holding that Washington’s sex offender registration law does not constitute punishment).

⁹⁰. Id. In addition to inquiring into the intentions of the legislature, the court must “also examine whether the actual effect of the statute is so punitive as to negate the Legislature’s regulatory intent.” Id. (emphasis omitted).

For assistance in analyzing the effect of a statute, courts have applied seven factors. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963). The seven factors a court should use in determining whether a statute has penal or regulatory effects are as follows: (1) whether the sanction entails an affirmative disability or restraint; (2) whether the sanction has historically been regarded as punitive; (3) whether the sanction depends upon a finding of scienter; (4) whether the sanction will operate to promote traditional punishment objectives; (5) whether the sanction applies to behavior which is already a crime; (6) whether there is an alternative non-punitive purpose for the sanction; and (7) whether the sanction is excessive in relation to the alternative purpose. Id. These factors focus “appropriate attention on the . . . rationality between the [registration and notification] requirement and its purported non-punitive function.” State v. Noble, 829 P.2d 1217, 1221 (Ariz. 1992).
portionate in relation to the crime.\textsuperscript{91} In \textit{Solem v. Helm},\textsuperscript{92} the United States Supreme Court created a three-part test to be applied by courts when determining proportionality.\textsuperscript{93} According to the \textit{Solem} Court, a court should consider (1) "the gravity of the offense and harshness of the penalty, [(2)] the sentences imposed on other criminals in the same jurisdiction, [and (3)] the sentences imposed for commission of the same crime in other jurisdictions."\textsuperscript{94}

Opponents of sex offender registration and notification laws have challenged both laws, arguing that they constitute punishment grossly disproportionate to the crime in violation of the Eighth Amendment.\textsuperscript{95} These critics assert that such statutes place a life-long stigma on the sex offender.\textsuperscript{96} Nonetheless, state courts have consistently held that sex offender registration laws do not violate the Eighth Amendment's


\textsuperscript{92} 463 U.S. 277 (1983), \textit{overruled in part by Harmelin v. Michigan}, 501 U.S. 957 (1991). In \textit{Harmelin}, a highly divided court held, 5-4, that a life sentence for a drug conviction was not "cruel and unusual" for Eighth Amendment purposes. \textit{Id.} at 957. The court split, however, on whether the \textit{Solem} decision remained good law. Two Justices argued that \textit{Solem} should be overruled. \textit{Id.} at 985. Three Justices voted to narrow the scope of \textit{Solem}, finding an Eighth Amendment violation only if the punishment was "grossly disproportionate" to the crime. \textit{Id.} at 1004 (Kennedy, J., concurring). Four dissenting Justices voted to uphold \textit{Solem}. \textit{Id.} at 1009 (White, J., dissenting).

In light of the split over the current status of \textit{Solem}, lower courts continue to apply the decision in Eighth Amendment cases. Houston, \textit{supra} note 14, at 752 n.139. Moreover, "[a]lthough the \textit{Harmelin} decision leaves the future of proportionality review somewhat in doubt, the result reached by the majority of courts applying the \textit{Solem} test would not change under \textit{Harmelin}." \textit{Id.}

\textsuperscript{93} \textit{Solem}, 463 U.S. at 290-92.

\textsuperscript{94} \textit{Id.} at 292.

\textsuperscript{95} See infra notes 101-02 and accompanying text.

\textsuperscript{96} Critics of registration and notification laws maintain that such laws mark a return to the "scarlet letter laws" of colonial United States. Michelle P. Jerusalem, Note, \textit{A Framework for Post-Sentence Sex Offender Legislation: Perspectives on Prevention, Registration, and The Public's "Right" to Know}, 48 \textit{VAND. L. REV.} 219, 224 (1995). They argue that, similar to the scarlet "A" worn on the chest of adulteress Hester Prynne in Nathaniel Hawthorne's book, \textit{The Scarlet Letter}, sex offender registration and community notification "brand" sex offenders for life and cause extreme humiliation as a form of punishment. Jon A. Brilliant, Note, \textit{The Modern Day Scarlet Letter: A Critical Analysis of Modern Probation Conditions}, 1989 \textit{DUKE L. J.} 1357, 1357. See also Blacher, \textit{supra} note 46, at 918 (noting that "[t]he practice of labeling a criminal with symbols or words exposing the offense committed was used in colonial America as a form of punishment by humiliation").
prohibition against cruel and unusual punishment. More than once, however, courts have upheld registration requirements only after noting that the laws did not provide for community notification.

In *Rowe v. Burton,* for example, a federal district court considered whether the state’s registration and notification laws constituted punishment. The court upheld both laws, but forbade the state from disseminating the registrants’ information to the public. The court implied that the disclosure of personal data under a notification provision could stigmatize the sex offender and would therefore constitute cruel and unusual punishment.

On the other hand, the Supreme Court of New Jersey, in *Doe v. Poritz,* rejected a similar argument that the State’s sex offender com-

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97. See, e.g., State v. Noble, 829 P.2d 1217, 1224 (Ariz. 1992); State v. Manning, 532 N.W.2d 244, 248-49 (Minn. Ct. App. 1995); State v. Ward, 869 P.2d 1062, 1074 (Wash. 1994). The majority of the courts have determined that the law is regulatory and not punitive in nature. See supra notes 88-90. As such, courts rarely move to the second prong of the cruel and unusual punishment analysis. See, e.g., Noble, 829 P.2d at 1224 (determining that the sex offender registration statute did not constitute punishment because its regulatory purpose outweighed its punitive purpose); Manning, 532 N.W.2d at 248 (finding Minnesota’s sex offender registration law to be non-punitive); Ward, 869 P.2d at 1074 (declaring that Washington’s registration law does not constitute punishment). But see In re Reed, 663 P.2d 216, 222 (Cal. 1983) (holding California’s registration law mandating registration of all misdemeanants, including sex offenders, to be unconstitutional as cruel and unusual punishment, because it imposed a life-long stigma that was not in proportion to the offender’s crime).

98. See State v. Costello, 643 A.2d 531, 533-344 (N.H. 1994) (holding New Hampshire’s sex offender registration law constitutional after indicating that a notification law would inflict greater punishment than a simple registration requirement); see also People v. Adams, 581 N.E.2d 637, 641 (Ill. 1991) (holding that Illinois’ sex offender registration law, which does not permit public disclosure of the data contained in the registry, does not constitute punishment). For a detailed discussion of Adams, see infra part III.B.


100. Id. at 1377-80.

101. Id. at 1388. In the context of a request for a preliminary injunction, the court decided that “[p]laintiffs James Rowe and John Doe must register under ch. 41 SLA 1994, provided, however, that defendants shall not disseminate the information concerning James Rowe and John Doe received pursuant to registration to the public. . . .” Id.

102. Id. (noting that “but for the provision requiring public dissemination of information, the Registration Act would likely withstand [constitutional] scrutiny. . . .”). Id. at 1380. “[P]ublic dissemination of information about a sex offender may elicit a strong reaction which has unpleasant consequences for the offender. The public’s reaction . . . will result in embarrassment, harassment, ostracism, or worse. These consequences may have a deterrent effect on offenders and may visit retribution on registrants.” Id. at 1379.

103. 662 A.2d 367 (N.J. 1995). In Poritz, the plaintiff brought forth a variety of constitutional claims in addition to the Eighth Amendment claim. Id. at 380. The court ruled against the plaintiff on all claims. Id. at 380-81, 387, 399, 412-13.
munity notification law constituted cruel and unusual punishment.\textsuperscript{104} In \textit{Poritz}, the court stated that “Megan’s Law” was not punitive, even though it might carry a deterrent effect.\textsuperscript{105} The court noted that the purpose of the sex offender registration and community notification laws was to protect society from the risk of further offenses by convicted sex offenders and not to inflict punishment.\textsuperscript{106} Therefore, the court held that the registration and community notification provisions of the New Jersey law were non-penal and did not constitute cruel and unusual punishment.\textsuperscript{107}

2. Right to Privacy

As one court has explained, “[t]he right to privacy under the United States Constitution is well-recognized, though ill-defined.”\textsuperscript{108} In essence, there are two types of privacy interests which arise under the Due Process Clauses of the Fifth\textsuperscript{109} and Fourteenth\textsuperscript{110} Amendments.


\textsuperscript{105} \textit{Poritz}, 662 A.2d at 405. “The fact that some deterrent punitive impact may result does not . . . transform those provisions into ‘punishment’ . . . .” \textit{Id}.

\textsuperscript{106} \textit{Id}. at 404 (noting that “[i]t is not intended as punishment but rather is a consequence that is simply unavoidable, for it goes to the very heart of the remedy: that which is allegedly punitive, the knowledge of the offender’s record and identity, is precisely what is needed for the protection of the public”).

\textsuperscript{107} \textit{Id}. at 404-05. Nonetheless, because of concerns expressed by the New Jersey Supreme Court in \textit{Poritz}, notification must be confined to those members and organizations in the public “likely to encounter” the offender. \textit{Id}. at 384. Additionally, those notified of a sex offender’s presence in the community must keep such information confidential. \textit{Id}. \textit{See also supra} note 78 (briefly discussing the changes imposed by the new guidelines to “Megan’s Law”).

\textsuperscript{108} Rowe v. Burton, 884 F. Supp. 1372, 1384 (D. Alaska 1994) (citing National Treasury Employees Union v. United States Dep’t of the Treasury, 25 F.3d 237, 242 (5th Cir. 1994)).

\textsuperscript{109} The Fifth Amendment of the United States Constitution provides in pertinent part that “[n]or shall any person . . . be deprived of life, liberty, or property, without due process of law . . . .” U.S. \textit{CONST.} amend. V.

\textsuperscript{110} The Fourteenth Amendment of the United States Constitution provides in pertinent part that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .” U.S. \textit{CONST.} amend. XIV.
The first component concerns an individual's interest in avoiding disclosure of personal matters. The second component protects an individual's interest in making important and intimate decisions regarding fundamental issues.

In order for an individual to assert either component of the privacy interest in a due process claim, he must demonstrate a reasonable expectation of privacy in the particular area. If a court finds the existence of such an expectation, the court must then determine whether the state law violates that expectation; if a violation is found, the court next examines if there is a state interest that justifies the infringement of the individual's right. When analyzing whether the registration and community notification laws violate a sex offender's right to privacy, a court must first determine whether the sex offender can establish a reasonable expectation of privacy regarding the information that is contained in the registry or disclosed under notification laws. This position stems from the fact that the matters in consideration—the sex offenders' criminal records—are already available to the public.

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111. Houston, supra note 14, at 762. This type of privacy right is evidenced in Griswold v. Connecticut, 381 U.S. 479, 485 (1965) (striking down a Connecticut law prohibiting the use of contraceptives because enforcement of the law would require queries into intimate aspects of the marital relationship).
112. Houston, supra note 14, at 762 (citing Roe v. Wade, 410 U.S. 113, 153 (1973)) (holding that a pregnant woman has a fundamental privacy interest in seeking an abortion).
113. Rowe, 884 F. Supp. at 1384. Therefore, neither privacy right can be asserted against matters already considered to be a part of the public domain. Id. at 1384.
115. Id. at 406.
116. See, e.g., Rowe, 884 F. Supp. at 1384 (explaining that the privacy right "does not attach to matters already within the public domain"); People v. Adams, 555 N.E.2d 761, 768 (Ill. App. Ct. 1990) (finding that the Illinois Sex Offender Registration Law did not implicate the sex offender's right to privacy because the registrant's personal information remained confidential), aff'd, 581 N.E.2d 637 (Ill. 1991); Poritz, 662 A.2d at 407 (stating that "information that is readily available to the public, which an individual cannot expect to remain private, is not within the ambit of constitutional protection").
117. See Artway v. Attorney Gen., 876 F. Supp. 666, 689 (D.N.J. 1995) (stating that "[i]t has long been a facet of United States law that criminal records should be available to . . . public . . . scrutiny and investigation. Such criminal records normally would include an individual's name, address, the nature of his crime and conviction and the period for which he was imprisoned therefor [sic]").
While registration laws have not been found to violate the offenders’ right to privacy, notification laws may not so easily withstand constitutional scrutiny. For instance, in Poritz, the court held that certain aspects of New Jersey’s community notification provision impinged on a sex offender’s privacy interests. The Poritz court determined that while the state infringed upon a sex offender’s privacy interest by disseminating in a packaged form, various pieces of the registrant’s personal history, the state’s strong interest in protecting its citizens through public disclosure substantially outweighed the sex offender’s privacy interest. The Poritz court concluded that the broad-based notification provision of “Megan’s Law” significantly furthered the state goal of protecting its citizens from acts of sexual violence and therefore did not violate the sex offender’s right to privacy.

III. DISCUSSION

Illinois has enacted both child sex offender registration and notification laws. The Illinois General Assembly adopted the registration act in 1986, and has since amended the law several times. In

118. See, e.g., Rowe, 884 F. Supp. at 1384 (finding that the plaintiffs could not “establish a reasonable expectation of privacy in the information” contained in the sex offender registry); People v. Mills, 81 Cal. App. 3d 171, 181 (Cal. Ct. App. 1978) (determining that even though California’s sex offender registration law implicates the sex offender’s right to privacy, the state’s interest in promoting safety outweighs the sex offender’s interests).

119. Poritz, 662 A.2d at 411.

120. Id. “Megan’s Law” mandates the disclosure of the registrant’s name, appearance, address, and crime. N.J. STAT. ANN. § 2C: 7-4(b)(1)-(3) (West 1995).

The Poritz court explained:

[The notification law] eliminates the costs . . . that members of the public would incur in assembling the information themselves. Those costs, however, may severely limit the extent to which the information becomes a matter of public knowledge. The Notification Law therefore exposes various bits of information that, although accessible to the public, may remain obscure.

Poritz, 662 A.2d at 411.

121. Poritz, 662 A.2d at 411. See infra note 122 and accompanying text.

122. Poritz, 662 A.2d at 412. The court detailed the potency of the state’s interest:

Counterbalanced against plaintiff’s diminished privacy interest is a strong state interest in public disclosure. There is an express public policy militating toward disclosure: the danger of recidivism posed by sex offenders. The state interest in protecting the safety of members of the public from sex offenders is clear and compelling . . . . The Legislature has determined that there is a substantial danger of recidivism by sex offenders, and public notification clearly advances the purpose of protecting the public from that danger.

Id. (citations omitted).

1991 the Illinois Supreme Court, in *People v. Adams*, held that the registration law was constitutional under the Illinois and United States Constitutions. As a result of the tragic murder of Christopher Meyer, the Illinois General Assembly also enacted a sex offender notification law in 1995. This Part discusses the development of the registration law in Illinois and the shift toward promoting a sex offender notification law.

A. The Development of the Sex Offender Registration Law in Illinois

In reaction to a proliferation of sex crimes against children, the Illinois General Assembly adopted the Habitual Child Sex Offender Registration Act (the “Habitual Registration Act”) in 1986. The Habitual Registration Act mandated the registration of all sex offenders convicted of at least two sex crimes where the victim was under the age of eighteen. The General Assembly intended for the Habitual Registration Act to aid law enforcement agencies in protecting the children of Illinois from repeat sex offenders. By requiring sex offenders to register with local law enforcement agencies, sex offender registration laws assist law enforcement personnel in expeditiously locating child molesters.

The 1986 version of the Illinois registration law, however, proved to provide insufficient protection against child molesters. In 1992,
public outcry against the kidnapping, sexual assault, and murder of a six-year-old girl in Illinois inspired the General Assembly to expand the coverage of the Habitual Registration Act. The amended Child Sex Offender Registration Act required the registration of all child sex offenders upon their first conviction.

The Child Sex Offender Registration Act ("Registration Act") provides certain procedures that courts and law enforcement personnel must follow after a child sex offender is first convicted. Upon conviction of a first sex offense against a minor, the court must certify the defendant as a "child sex offender." Subsequently, the child sex offender learns of his obligation to register from the court that convicted him, as well as the facility that releases or paroles him. A child sex offender must then register with the local police chief thirty days before moving into the county in which he plans to reside. If the registrant moves, he must inform the law enforcement agency of his new address within ten days. The sex offender must also sign a


Six-year-old Kahla Lansing disappeared on September 28, 1991. Matt Murray, Fate of Girl's Killer Goes to Another County, CHI. TRIB., Sept. 26, 1992, § 2, at 5. Police discovered Kahla's body two weeks later in an abandoned grain storage bin in eastern Iowa. Id. Twenty-nine-year-old Jeffrey Rissley admitted to kidnapping Kahla, molesting her, and finally strangling her with an electrical cord. Id. Rissley had previously served time in a Texas prison following conviction on two counts of child molestation in that state. Sen. Dixon, supra note 132. Moreover, Rissley sexually assaulted another child in Galesburg, Illinois before kidnapping Kahla. Id.

See supra note 129 and accompanying text. See infra notes 137-45 and accompanying text.

Specifically, § 150/2(A) provides in part that "[u]pon conviction the court shall certify that the person is a 'child sex offender' and shall include the certification in the order of commitment." Id. (amended 1995).

Id. § 150/5 (amended 1995).

Id. § 150/4 (amended 1995).

Id. § 150/3 (amended 1995). Section 150/3 also states that "in the event no police chief exists or if he resides in an unincorporated area he shall register with the sheriff of the county." Id. (amended 1995).

Id. § 150/6 (amended 1995). After receiving this information, "[t]he law enforcement agency shall, within 3 days of receipt, forward the information to the Department of State Police and to the law enforcement agency having jurisdiction of the new
statement and provide specific information as requested by the Department of State Police.\footnote{142} Under the Act, the law enforcement agency must keep this information confidential.\footnote{143}

If the sex offender fails to register, he will be guilty of a Class A misdemeanor.\footnote{144} If the child sex offender does not commit another sex offense, however, his registration requirement expires after ten years.\footnote{145}

In 1995, the Illinois General Assembly further modified the state’s registration act, requiring all convicted sex offenders—not just those who commit sex crimes against children—to register with the proper law enforcement agency.\footnote{146} Furthermore, the amendment expanded the definition of a sex offender by characterizing an additional eight criminal acts as sexual offenses.\footnote{147} The amendment also requires the registrant to report in person to the proper law enforcement agency once a year in order to verify the information on file.\footnote{148}

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142. \textit{Id.} § 150/8 (amended 1995). This information may include “the fingerprints and photograph of the person.” \textit{Id.} (amended 1995).


144. \textit{Id.} § 150/10 (amended 1995). Section 150/10 states that “[a]ny person who is required to register under this Article who violates any of the provisions thereof is guilty of a Class A misdemeanor.” \textit{Id.} (amended 1995).

145. \textit{Id.} § 150/7 (amended 1995).


By expanding the registration law to include adult sex offenders, the Illinois General Assembly brought Illinois’ registration law into compliance with the Crimes Against Children Act. \textit{See supra} note 53 and accompanying text. In so doing, the General Assembly ensured that Illinois’ federal crime fighting funds would not be reduced. \textit{See supra} note 52 and accompanying text.


Specifically, the new law added the following eight crimes, in comparison to the 1992 version of the Child Sex Offender Registration Act: indecent solicitation of a child, sexual exploitation of a child, soliciting for a juvenile prostitute, patronizing a juvenile prostitute, keeping a place of juvenile prostitution, juvenile pimping, exploitation of a child, and ritualized abuse of a child. \textit{Id.} (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/2).

148. \textit{Id.} (West) (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/6). As of January 1, 1996, Section 6 of ILL. COMP. STAT. ch. 730, § 150 states in part that “[a]ny person required to register under this Article shall report in person to the appropriate law enforcement agency with whom he or she last registered one year from the date of that registration and every year thereafter.” \textit{Id.} (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/6).
Significantly, the new law applies retroactively, whereas the earlier version did not. Additionally, the new law specifically addresses the issue of juvenile sex offenders. Finally, the new law increases the severity of punishment for a sex offender's failure to register.

B. Challenge to the Illinois Sex Offender Registration Law: People v. Adams

On December 2, 1987, a DuPage County criminal court convicted Daniel Adams of his second sex crime, perpetrated against his then

149. Id. (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/3).

Applying the registration law retroactively has been upheld as constitutional in Illinois. People v. Starnes, 653 N.E.2d 4, 7 (III. App. Ct. 1995). In Starnes, the appellate court held that the Child Sex Offender Registration Act could be applied to a sex offender convicted before the enactment of the law without violating any constitutional provisions. Id. at 7. The court found that even though the defendant, at the time of his offense, was subject only to the Habitual Child Sex Offender Registration Act, the retroactive application of the Child Sex Offender Registration Act was permissible. Id.

150. Pub. Act No. 89-8, Art. 20, § 20-20, 1995 Ill. Legis. Serv. 286 (West) (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/2). In contrast to the 1992 version of the Child Registration Act, the amended act applies to juvenile sex offenders when they are adjudicated a sexually dangerous person. Id. (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/3).

151. Id. (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/10). A sex offender who fails to register "is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for a second or subsequent offense." Id. (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/10). In addition, the sex offender will "be required to serve a minimum period of 7 days confinement in the local county jail." Id. (to be codified as amended at ILL. COMP. STAT. ANN. ch. 730, § 150/10).

152. 581 N.E.2d 637 (Ill. 1991). The Adams decision is not the first in Illinois to address various aspects of the Illinois sex offender registration laws. See, e.g., People v. Starnes, 653 N.E.2d 4, 7 (III. App. Ct. 1995) (upholding the retroactive application of the Child Sex Offender Registration Act); People v. Calahan, 649 N.E.2d 588, 593 (III. App. Ct. 1995) (finding that defendant was properly certified as a child sex offender under the Child Sex Offender Registration Act after his first conviction of a sexual offense); People v. Doyle, 578 N.E.2d 15, 17-19 (III. App. Ct. 1991) (determining that, even though the sex offender pled guilty to two offenses at the same time, the offenses were separate and, therefore, subjected the sex offender to certification under the Habitual Registration Act); People v. Murphy, 565 N.E.2d 1359, 1360 (Ill. App. Ct. 1991) (holding that "because certification is a collateral consequence of a defendant's conviction for a sex offense against a child rather than a penalty or an enhancement of the sentence, courts are not prohibited from certifying a defendant after his sentence has been imposed"); People v. Taylor, 561 N.E.2d 393, 394 (III. App. Ct. 1990), appeal denied, 567 N.E.2d 340 (Ill. 1991) (concluding that "a court which fails to do its administrative duty [of certifying the defendant as an habitual child sex offender] under the [Illinois Habitual Registration] Act at the time of sentencing does not lose jurisdiction to perform the function in the future"); People v. Rogers, 555 N.E.2d 53, 55 (Ill. App. Ct. 1990) (agreeing with the plaintiff sex offender's contention that "a conviction of criminal sexual abuse, or a 'substantially equivalent' statutory predecessor to criminal sexual abuse, is not a 'sex offense' under the [Habitual Registration] statute unless it is a felony"). The Adams case, however, is the only case to reach the Illinois Supreme Court.
twelve-year-old daughter.\textsuperscript{153} Aside from sentencing Adams to prison, the court certified the defendant as an habitual child sex offender pursuant to the then current Habitual Registration Act.\textsuperscript{154} Adams appealed to the Illinois Appellate Court arguing, among other things,\textsuperscript{155} that the Habitual Registration Act violated the cruel and unusual punishment provisions of the Federal and Illinois Constitutions.\textsuperscript{156} The appellate court affirmed the lower court’s decision, and the Supreme Court of Illinois granted review.\textsuperscript{157}

The Illinois Supreme Court, affirming the lower courts’ holdings, determined that the duty to register under the Habitual Registration Act did not constitute punishment.\textsuperscript{158} Therefore, the court concluded that the Habitual Registration Act did not violate either the United States or the Illinois Constitutions.\textsuperscript{159} The court first examined the General Assembly’s intent when enacting the statute\textsuperscript{160} and found that the General Assembly clearly intended for the act to be regulatory instead of penal.\textsuperscript{161}

The court continued its analysis assuming, \textit{arguendo}, that the Habitual Registration Act was penal in nature.\textsuperscript{162} The court considered Adams’ claim that the Habitual Registration Act conferred a public stigma upon him, which constituted cruel and unusual punishment.\textsuperscript{163}

\begin{itemize}
\item \textsuperscript{153} \textit{Adams}, 581 N.E.2d at 639. Adams had been previously convicted in Stephenson County for aggravated criminal sexual abuse against his daughter in 1985. \textit{Id.}
\item \textsuperscript{154} \textit{Id.}
\item \textsuperscript{155} Adams also claimed that the Habitual Registration Act violated the Equal Protection and Due Process Clauses of the United States Constitution and Article 1, § 11 of the Illinois Constitution. \textit{Id.} at 640. Moreover, Adams argued that the trial court certified him as a habitual child sex offender in an untimely manner. \textit{Id.}
\item \textsuperscript{156} \textit{Id.} at 640. \textit{See supra} notes 80 and 95 and accompanying text.
\item \textsuperscript{157} \textit{Id.} at 639-40.
\item \textsuperscript{158} \textit{Id.} at 641.
\item \textsuperscript{159} \textit{Id.} The court stated, with respect to the federal claim, that “[t]he disability fails to meet the guidelines set forth for determining what constitutes punishment. For these reasons, the Registration Act does not constitute punishment under the [E]ighth [A]mendment.” \textit{Id.} Regarding Adams’s state claim of cruel and unusual punishment, the court ruled that because the registration requirement was not disproportionate to other state penalties, it did not violate the Illinois Constitution. \textit{Id.}
\item \textsuperscript{160} \textit{Id.} at 640-41. This is required in any cruel and unusual punishment analysis. \textit{See supra} part II.B.1 for a discussion of the constitutional analysis in light of a cruel and unusual punishment challenge.
\item \textsuperscript{161} \textit{Adams}, 581 N.E.2d at 640. “Specifically, the legislature sought to create an additional method of protection for children from the increasing incidence of sexual assault and sexual abuse.” \textit{Id.} (citing \textit{HOUSE PROCEEDINGS}, 84th Ill. Gen. Assem., 1st Sess. 208 (June 23, 1986)).
\item \textsuperscript{162} \textit{Id.} at 641.
\item \textsuperscript{163} \textit{Id.} (“Defendant argues the statute is cruel in that it places a stigma upon him after his debt to society has been paid through incarceration.”). \textit{See supra} notes 96-97
\end{itemize}
In dicta, the court explained that the stigma resulted only from community notification, and not from mere registration. Significantly, the court implied that the dissemination of such information to community residents could attach a stigma to the sex offender, and might therefore violate the Eighth Amendment because the punishment would be disproportionate to the crime committed.

**C. The Development of the Child Sex Offender Notification Law In Illinois**

Several Illinois legislators recently proposed bills for the adoption of a sex offender notification law in Illinois. Efforts to pass similar notification laws in Illinois in the past had proven unsuccessful. Nonetheless, influenced by the recent and tragic murder of Christopher Meyer, as well as the public outrage which followed, Illinois lawmakers passed a notification law. Governor Edgar signed the Child Sex Offender Community Notification Act ("Community Notification Act") and accompanying text for a discussion of the sex offender stigma.

164. *Adams*, 581 N.E.2d at 641. The Court specifically stated:

The existence of 'stigma' requires that the knowledge of the registrant's past transgressions be conveyed to the general public. Since it is a criminal offense for law enforcement officials to convey this information to the public, it is unlikely the information the registrant supplies will be distributed to the public, and so no stigma attaches.

Id.

165. Id. See infra part IV.A.1 for an analysis of the impact of the *Adams* decision with respect to a constitutional challenge to the Illinois Child Sex Offender Community Notification Act.


Act”) into law on December 13, 1995.169 The law becomes effective on June 1, 1996.170

The Community Notification Act reached its final form after undergoing several dramatic revisions. The original bill, introduced by House Republicans, was substantially amended171 before unanimously being passed by the House.172 The Illinois Senate incorporated the bill into a larger anti-crime package found in Senate Bill 721.173 Before


171. The original House Bill 2517, similar to the New Jersey law, provided for three tiers of community notification based on an analysis of the sex offender’s risk of reoffense. H.B. 2517. See supra notes 73-77 and accompanying text for a discussion of this aspect of “Megan’s Law.” In addition, the original Bill required the Department of State Police to devise the method by which the sex offender’s risk should be assessed. H.B. 2517. Furthermore, the original Bill offered immunity against liability for individuals who inadvertently gave too much (or too little) information to the community. Id.

172. David Heckelman, House OKs Notice Law Covering Sex Offenders, Chi. Daily L. Bull., Nov. 3, 1995, at 1. House Bill 2517 provided for the Child Sex Offender Community Notification Act. H.B. 2517 (amended, Nov. 3, 1995). The Bill, as amended and passed by the House only, applied notification provisions only to sex offenders whose victims were under 18 at the time of the offense. Id. Also, the amended Bill eliminated the tiers of notification, as set forth in the Bill’s original form. Id. Instead, the amended Bill required that the Department of State Police distribute the names and addresses of all child sex offenders subject to the Community Notification Act to the Department of Children and Family Services, public and private school officials, and child care facilities. Id. Additionally, the amended Bill authorized any law enforcement agency to disclose information contained in the registry to any person that the agency believed was “likely to encounter” a child sex offender. Id. For an example of one state’s definition of “likely to encounter,” see supra note 78. Moreover, the amendment required that a registry of offenders subject to the new law be made available for inspection by any person who made a request in person, in writing, or by telephone. H.B. 2517 (amended, Nov. 3, 1995).

The amended Bill also provided that community notification under House Bill 2517 applied retroactively to child sex offenders who committed offenses prior to the enactment of House Bill 2517. Id. Furthermore, the amended Bill mandated registration of both juvenile and insane sex offenders. Id. Finally, the amended Bill modified the Juvenile Court Act’s confidentiality provisions by authorizing the disclosure of juvenile child sex offenders’ registry information. Id.


The Senate Bill incorporated a variety of other measures. For instance, the Bill requires the movement of teen-aged juveniles to adult courts for the commission of sex-related murders and carjacking, and permits parole hearings to be held every three years rather than annually. S. 721; Rick Pearson & Christi Parsons, GOP Wraps Sex Offenders
passing the bill, however, the Senate amended the sex offender notification portion of the legislation.\textsuperscript{174}

The new Community Notification Act complements the Registration Act by allowing information about sex offenders, already available to law enforcement officials under the Registration Act, to also be given to certain members of the community.\textsuperscript{175} The new law, however, does not apply to all of the sex offenders who must comply with the Registration Act. The notification law defines a "child sex offender" as a sex offender who commits an offense listed in the Registration Act against a person under the age of eighteen.\textsuperscript{176} The notification law also, however, excludes four of those offenses from its definition.\textsuperscript{177} As a result, offenders who commit kidnapping, aggravated kidnapping, unlawful restraint, or aggravated unlawful restraint, must register with the police under the Registration Act, but are not subject to community notification under the new law.\textsuperscript{178}

The Community Notification Act requires local law enforcement agencies to notify the Department of Children and Family Services, as well as child care facilities and school officials, that a sex offender has moved into their community.\textsuperscript{179} In addition, law enforcement agencies must tell these officials not only the sex offender's name and address,

\textsuperscript{174} See infra notes 175-81 and accompanying text.

\textsuperscript{175} Pub. Act No. 89-428, 1995 Ill. Legis. Serv. 4039 (West) (to be codified at ILL. COMP. STAT. ANN. ch. 730, § 152/101-130).

\textsuperscript{176} Id. (to be codified at ILL. COMP. STAT. ANN. ch. 730, § 152/105). The new definition for child sex offender under the notification law cites to the Registration Act, which was amended in the same public act that created the notification law. \textit{Id.} (to be codified at ILL. COMP. STAT. ANN. ch. 730, § 152/101-130) (citing ILL COMP STAT. ANN. ch. 730 §150/2 (West Supp. 1995) (amended by Pub. Act No. 89-428, 1995 Ill. Legis. Serv. 4039 (West) (to be codified at ILL. COMP. STAT. ANN. ch. 730, § 152/101-130))).


\textsuperscript{178} See supra note 177.

\textsuperscript{179} Pub. Act No. 89-428, 1995 Ill Legis. Serv. 4039 (West) (to be codified at ILL. COMP. STAT. ANN. ch. 730, § 152/101-130). The new law states that local law enforcement agencies will create their own procedures for public inspection of the child sex offender registries. \textit{Id.} Furthermore, the Community Notification Law enlarges the immunity clause contained in House Bill 2517, which gave immunity only to officials who mistakenly revealed information, by removing the provision allowing liability for the willful and wanton acts of law enforcement officials. \textit{Id.; see supra note 171.}
but also the nature of the offense for which the child sex offender was convicted.\textsuperscript{180} Finally, community notification under the new law must cease ten years after the sex offender first registers pursuant to the Registration Act.\textsuperscript{181}

IV. ANALYSIS

With the enactment of the Community Notification Act, Illinois’ courts and communities will be forced to address several issues. First, the new Community Notification Act raises important constitutional concerns.\textsuperscript{182} Based on the Illinois and New Jersey Supreme Court decisions in \textit{People v. Adams}\textsuperscript{183} and \textit{Doe v. Poritz},\textsuperscript{184} respectively, it remains uncertain whether Illinois’ Community Notification Act violates the cruel and unusual punishment\textsuperscript{185} and right to privacy prote-
tions found in the United States Constitution. Secondly, the implementation of community notification in Illinois may have pragmatic effects that would work to undermine the purpose of the statute. As a result, community notification may not be an effective way to protect the children of Illinois, as well as other community members, from sex offenders.

A. Constitutional Concerns About the Illinois Child Sex Offender Community Notification Act

This section analyzes two critical constitutional challenges to community notification laws: cruel and unusual punishment and right to privacy.

1. Cruel and Unusual Punishment

When analyzing whether the Community Notification Act violates the Eighth Amendment’s cruel and unusual punishment provision, the court must apply a two-pronged test. First, a court must determine whether the notification provision constitutes punishment. If a court finds the provision to be punitive, it must then examine whether the Community Notification Act is grossly disproportionate to the crime committed. After applying this test, it is evident that Illinois’ Community Notification Act potentially violates the Eighth Amendment.

With respect to the first prong, both the sex offender and the State can present forceful arguments. A sex offender could argue that community notification generates such public stigma and ostracism that it must be viewed as punitive. Additionally, the sex offender could stress that the deterrence and public retribution factors weigh heavily in favor of characterizing the law as punishment. Conversely, the State could maintain that the law is regulatory and intended solely to

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186. See infra part IV.A.2.
187. See infra part IV.B.
188. See infra part IV.B and V.
189. See supra part II.B.1.
190. See supra part II.B.2.
191. See supra notes 85-94 and accompanying text for a discussion of the two-part test employed in Eighth Amendment analyses.
192. See supra notes 85-94 and accompanying text.
193. See supra notes 85-94 and accompanying text.
195. Cohen, supra note 194, at 153 ("[W]hile registration and public notice may not historically be viewed as punishment, deterrence and retribution factors that are present weigh in favor of characterizing the impact as punishment.").
protect the community.\textsuperscript{196} Even if the law infringes upon the rights of the sex offender, the State could further claim that such hardship is incidental to community notification and does not constitute punishment.\textsuperscript{197}

Even though the state’s arguments are compelling, the Illinois courts should characterize the Community Notification Act as punishment. In \textit{Adams}, the Illinois Supreme Court strongly suggested that the stigma accompanying public disclosure might qualify as punishment.\textsuperscript{198} Based on that court’s analysis, it is probable that a lower court will follow \textit{Adams} and conclude that community notification is punitive.\textsuperscript{199}

In determining proportionality under the second prong of the cruel and unusual punishment analysis, the United States Supreme Court has stated that a court should consider several factors.\textsuperscript{200} Although a subsequent Supreme Court decision cast the status of these factors into doubt, lower courts continue to apply them in Eighth Amendment cases.\textsuperscript{201} In this analysis, the court must take into consideration the stigma associated with community notification when determining the harshness of the punishment.

The court must first compare the gravity of the sex offense to the severity of the penalty.\textsuperscript{202} When considering the penalty involved in sex offender community notification, it is clear that public disclosure creates adverse problems in the community such as vigilantism and community migration.\textsuperscript{203} Specifically, sex offender community notification laws not only raise public awareness, they also heighten com-

\textsuperscript{196} \textit{Id.} ("[A] post offense registration law is regulatory and protective of the community.").

\textsuperscript{197} \textit{Id.} ("[A]ny harm to the registrant is incidental but certainly not punishment.").

\textsuperscript{198} \textit{See supra} part III.B. If the law is characterized as regulatory, however, it is likely that the court will determine that the law is non-penal in nature. \textit{See supra} notes 88-90 and accompanying text. As such, the court might end its discussion in the first prong of the cruel and unusual punishment analysis, and conclude that the law does not violate the Eighth Amendment. \textit{See supra} note 97 and accompanying text.

\textsuperscript{199} This analysis is consistent with that of the district court in \textit{Artway} v. Attorney Gen., 876 F. Supp. 666 (D.N.J. 1995). In \textit{Artway}, the court determined that New Jersey’s notification law actually placed a stigma on the sex offender which amounted to punishment. \textit{Id.} at 689. The court explained that “the social stigma attached to any form of branding, whether for criminal offense, moral indiscretion, religious belief, or the mere fact of being different, has historically been a lifelong albatross around the necks of those so branded.” \textit{Id}.


\textsuperscript{201} \textit{See supra} note 92.

\textsuperscript{202} \textit{See supra} notes 92-94 and accompanying text.

\textsuperscript{203} \textit{See infra} notes 206-09 and accompanying text.
community anger and lawlessness.204 Often, after learning that a sex offender is within their midst, community members take it upon themselves to punish and intimidate the offender, the offender’s friends, and his family.205 For example, after being informed of sex offender Joseph Gallardo’s imminent release from prison and intent to return to his home in Snohomish County, Washington, community members burned his house to the ground.206 Similarly, after Megan Kanka’s death in New Jersey, residents threw stones at the sex offender’s roommates.207

In effect, these acts of vigilantism ostracize sex offenders and force them to leave their communities.208 In particular, financially sound,
united communities, armed with information provided by sex offender community notification laws, are able to apply social pressure to drive sex offenders out of their neighborhoods. Running sex offenders out of wealthier communities, however, sends them into low-income areas where crime already runs rampant and where the community is not able to protect itself from an influx of potentially dangerous persons. Sex offender community notification laws, therefore, clearly derogate the lifestyles of sex offenders and cast a heavy doubt on whether community residents are capable of responsibly dealing with information received regarding convicted sex offenders. After considering the dangers and realities presented by vigilante justice, the

TRIB., Oct. 13, 1995, § 1, at 1 (detailing the reinstatement of a Chicago pastor on October 12, 1995, after his removal for sexual misconduct). Rev. John Calicott, a Roman Catholic priest, engaged in sex acts involving two teenage boys in 1976. Id. Nonetheless, the Archdiocese of Chicago, his victims, and his parishioners wanted Calicott back. Id. at 1, 20. See also Andrew Herrmann, Priest Returns Despite Abuse, CHI. SUN-TIMES, Oct. 13, 1995, at 18 (quoting parishioner Jim Brown, father of two minor children, as saying "I feel whatever he did is in the past. He paid his dues."). Additionally, church member Jessica Hamilton explained that warm feelings accompanied Calicott's return when she said that "[w]e feel so good that Father John is coming back .... He has been a role model to a lot of children." Galloway, supra, at 20. See also Past Abuse Casts Cloud on Disney: Director of 'Powder' is Convicted Molester, CHI. TRIB., § 1, at 10 (noting Walt Disney Corporation's support for filmmaker Victor Salva after learning that he served 15 months of a three year sentence in a state prison for sexually abusing a 12-year-old actor in 1987). Salva continued to direct "Powder," a new Disney film about a teenage boy with telekinetic powers, despite the victim's protests. Id. Roger Birnbaum, of Caravan Pictures, explained that Salva "paid for his crime, he paid his debt to society .... What happened eight years ago has nothing to do with this movie." Id.

209. Shankar Vedantam, Sex Offender Notification Law Questioned by Experts: Offenders' Civil Rights One Issue, TIMES—PICAYUNE (New Orleans, La.), Sept. 17, 1995, at A8. Some commentators have noted that "[n]eighborhoods that are united can move these people into communities that can't defend themselves .... It's usually the wealthier communities who can move the person on." Id. (quoting Vernon Quinsey, Professor of Psychology at Queens University, Kingston, Ontario). Consequently, sex offender notification laws "serve a NIMBY—Not In My Back Yard—purpose by encouraging sex offenders to move elsewhere." Woo, supra note 69, at 17A.

210. Montana, supra note 63, at 582. "In particular, sex offenders find large cities and inner city areas attractive because law enforcement agencies in these areas usually lack the time and resources to enforce community notification laws. As a result, large cities and inner city areas have become safe havens for migrating sex offenders." Id. at 582-83. Furthermore, sex offender community notification laws "appear[] to promote sex offender dumping—the notion that if given enough time, a community can attempt to keep the offender from coming to their neighborhood, thereby forcing the released offender to go to some other community, namely, places with less stringent notification laws." Silva, supra note 14, at 1972.

211. See supra note 206 (discussing a sex offender's misfortune when his neighbors burned down his house after learning of his criminal history).
court will likely conclude that the stigma imposed by community notification outweighs the gravity of the sex offense.

After comparing the gravity of the offense to the severity of the penalty, the court must then determine whether the notification policies contained in the Community Notification Act are proportional to penalties imposed on other offenders in Illinois.\textsuperscript{212} Courts have analyzed this issue in either of two ways.\textsuperscript{213} First, a court can view sex crimes as a category of their own, distinct from other offenses.\textsuperscript{214} Under this approach, the court will likely maintain that the same degree of notification is warranted for all sex offenders.\textsuperscript{215} Therefore, the punishment imposed would be proportional to that exacted upon all child sex offenders.\textsuperscript{216}

A court can also, however, opt to compare sex offenses with other offenses generally.\textsuperscript{217} Because no other offender in Illinois is subjected to community notification, the court will likely determine that sex offenders are treated much more harshly than other equally dangerous offenders.\textsuperscript{218} As such, the Community Notification Act would be

\textsuperscript{212} See supra notes 92-94 and accompanying text.

\textsuperscript{213} Houston, supra note 14, at 754. ("When comparing the sentences imposed for other crimes in the same jurisdiction to the sentences imposed by Sex Offender Registration Acts, courts have viewed sex offenses either as within a category by themselves or in comparison to other kinds of offenses.").

\textsuperscript{214} Id.

\textsuperscript{215} Id. Such a position was taken in State v. Lammie, 793 P.2d 134, 139 (Ariz. Ct. App. 1990), where the Arizona Court of Appeals perceived sex crimes as unique from all other crimes. The court reasoned that since all sex offenders are required to register, the punishment imposed on sex offenders is proportional to that imposed for similarly situated offenders. Id. at 139-40. Even though the Solem test does not require strict proportionality between the crime and the sentence, the Illinois law may be found grossly disproportionate where it mandates disclosure of the registrant's information irrespective of the severity and dangerousness of the offense committed by the sex offender.

\textsuperscript{216} Houston, supra note 14, at 754.

\textsuperscript{217} Id.

\textsuperscript{218} Id. Nonetheless, in comparing the registration requirements for sex offenders in Illinois to the severe mandatory life sentence imposed by the Illinois habitual criminal statute, ILL. COMP. STAT. ANN. ch. 720, § 5/33-B (West 1995), the Illinois Appellate Court in Adams determined that the registration requirement was not disproportionate to punishments for other crimes. People v. Adams, 555 N.E.2d 761, 767 (Ill. App. Ct. 1990), aff'd, 581 N.E.2d 637 (Ill. 1991). In doing so, the court distinguished the asperity of life imprisonment from the minimal impediments involved in registration. Id.

A court may hesitate in concluding that the penalties for child sex offenders are proportional to the ones inflicted upon offenders whose victims are over 18, assuming both are convicted of the same crime. It could be argued, however, that such an approach in differentiating between adult sex offenders and child sex offenders merely exemplifies the catalyst of sex offender registration and notification laws—protecting children.
grossly disproportional to penalties imposed on other offenders in Illinois.

Finally, the court must determine whether the sentence imposed under the Community Notification Act is proportional to the laws implemented in other jurisdictions. Because the Community Notification Act represents a unique approach to community notification as compared to other states, it is unlikely that a court will conclude that Illinois' law is proportional to similar laws enacted in other states. Only one other jurisdiction provides for mandatory disclosure of sex offenders. Additionally, the more common approach to sex offender community notification provides for varying degrees of notification based on the dangerousness of the sex offender in order to carefully calibrate the need for public disclosure. Even though the United States Supreme Court has acknowledged that there will always be one state which punishes their offenders more intensely than the other states, an Illinois court would likely find that the Community Notification Act inflicts a punishment that is grossly disproportionate to any other law of its kind.

In sum, assuming a court finds that the stigma accompanying community notification constitutes punishment, the court will proceed to the second prong of the Eighth Amendment analysis. Because the court will likely find that the Community Notification Act is not commensurate with other penalties inflicted on equally dangerous criminals in Illinois, or on child sex offenders in other states, a court will probably find the Community Notification Act to be grossly

219. See supra notes 92-94 and accompanying text.
220. See supra notes 59-79 and accompanying text.
222. For example, both New Jersey's and New York's sex offender community notification provisions provide for three tiers of classification based on the sex offender's risk of reoffense. N.J. STAT. ANN. § 2C:7-8(c); N.Y. CORRECTION LAW § 168-L(6) (McKinney Supp. 1996). See supra notes 69-79 and accompanying text for a description of New Jersey's sex offender community notification law.

Because the Community Notification Act does not provide for three tiers of notification carefully calibrated to the need for public disclosure, the Illinois law is not likely to pass constitutional muster. In failing to differentiate between the offenders' risks of reoffense, the law is likely to impose greater notification requirements on sex offenders than other offenders in Illinois, as well as sex offenders in other states. See supra notes 60-79 and accompanying text.
223. Rummel v. Estelle, 445 U.S. 263, 282 (1980) ("Absent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State will always bear the distinction of treating particular offenders more severely than any other State.").
disproportional to the crime charged. As such, the court should conclude that the Community Notification Act violates the cruel and unusual punishment provision of the Eighth Amendment.

2. Right to Privacy

The right to privacy involves the sex offender’s reasonable expectation of avoiding the government’s unjustified disclosure of private information. 224 To support his privacy claim, the sex offender first must establish that he has a reasonable expectation in keeping his past sex offenses confidential. 225 Second, the sex offender must then establish that his interest in privacy outweighs the state’s interest in infringing upon his right to privacy. 226 Although the sex offender has a strong desire to protect his reputation in the community, the sex offender’s argument for right to privacy fails at each stage of the constitutional analysis. 227

First, sex offenders will have difficulty establishing a reasonable expectation of privacy in their past sex offenses because all adult criminal records are open to public review. 228 The public nature of these records means that adult sex offenders have a reduced expectation of privacy. 229 Consequently, if a court follows Poritz, it will find that the sex offender’s expectation of privacy, while reduced, is still reasonable enough to warrant further analysis of his privacy rights. 230 The Illinois courts should, however, declare that the sex offender’s reduced expectation to privacy does not even trigger a right to privacy claim, and thus, will terminate its constitutional analysis. 231

224. See supra part II.B.2.
225. See supra note 113 and accompanying text.
226. See supra note 114 and accompanying text.
227. See infra notes 228-36 and accompanying text.
228. See supra notes 115-17 and accompanying text.
229. See supra notes 115-17 and accompanying text. The Supreme Court has held that the publication of an arrest record does not violate an individual’s right to privacy. Paul v. Davis, 424 U.S. 693, 701, 713 (1975). In Paul, the Supreme Court determined that reputation alone does not command special constitutional protections, and that the right to privacy does not prohibit a state from publicizing an arrest record. Id. As such, the plaintiff in Paul, named by local police as an “active shoplifter” in flyers distributed to local merchants, had suffered no deprivation of liberty resulting from injury to his reputation. Id. at 697, 713. More likely than not, however, a shoplifter will not have as great an interest in keeping his arrest record private as compared to a sex offender whose behavior is considered to be abusive and deviant by society. One commentator has noted that “[t]he public’s rage against sex offenders is more than understandable. Their crimes, especially when visited upon children, leave life-long scars and offend the community’s deepest sensibilities.” Martone, supra note 73, at 39.
230. See supra notes 119-22 and accompanying text.
231. See infra notes 233-36 and accompanying text.
Assuming that a court continues to the second prong of the right to privacy analysis, it is likely that the court nevertheless will follow Poritz and determine that the sex offender’s interest in maintaining anonymity is outweighed by the state’s interest in protecting its citizens from sex offenders.\textsuperscript{232}

The sex offender’s right to privacy claim fails for an additional reason. Traditionally, the United States Supreme Court has used the right to privacy to protect activities that society considers intimate.\textsuperscript{233} These activities break down into three areas of fundamental rights: reproduction, family relations, and abortion.\textsuperscript{234} In essence, the sex offender’s argument for his right to privacy centers around his desire to protect his reputation.\textsuperscript{235} Notably, an interest in reputation is not considered to be an area of intimacy.\textsuperscript{236} Because this privacy interest falls outside the scope of traditional right to privacy claims, a court will likely determine that the Community Notification Act does not violate the sex offender’s right to privacy.

\textbf{B. Pragmatic Effects of Community Notification}

Sex offender community notification laws are intended to further protect the community from sex offenders.\textsuperscript{237} Nonetheless, the actual success of community notification in serving that purpose is questionable.\textsuperscript{238} The success of sex offender community notification laws

\textsuperscript{232} \textit{See supra} notes 121-22 and accompanying text.

\textsuperscript{233} \textit{See} \textit{Roe v. Wade}, 410 U.S. 113, 152 (1973) (explaining that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in this guarantee of personal privacy”) (citations omitted).

\textsuperscript{234} \textit{Id.} (stating that “the right [of privacy] has some extension to activities relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967); procreation, Skinner v. Oklahoma, 316 U.S. 535, 541-42 (1942); contraception, Eisenstadt v. Baird, 405 U.S. 438, 453-54; \textit{id.} at 460, 463-65 (White, J., concurring in result); family relationships, Prince v. Massachusetts, 321 U.S. 158, 166 (1944); and child rearing and education, Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925), Meyer v. Nebraska, 262 U.S. 390, 399 (1923)”).

\textsuperscript{235} \textit{See supra} note 229.

\textsuperscript{236} \textit{See Paul v. Davis}, 424 U.S. 693, 701, 713 (1975) (holding that reputation alone does not command special constitutional protections, and that the right to privacy does not prohibit a state from publicizing an arrest record).

\textsuperscript{237} Representative Klingler, sponsor of House Bill 2517, “believes that parents and community residents deserve access to the information already collected by police [pursuant to the Illinois Sex Offender Registration Act] so they can protect their children [from sex offenders].” Cindy Richards, \textit{Kids May Get Protection They Need}, CHI. SUN-TIMES, Nov. 3, 1995, at 31.

\textsuperscript{238} Jenny Cuffe, \textit{Protection: The Menace in Their Midst}, \textit{THE GUARDIAN} (London), Oct. 4, 1995, § 2, at 2 (noting that “[r]esearch suggests that notification makes little or no difference to the chances of a high risk offender committing another crime”). \textit{See also} Martone, \textit{supra} note 73, at 38 (stating that “[i]t is debatable whether these
depend, in large part, on the cooperation of the sex offenders.\footnote{239} In order for a community to be notified of a sex offender’s presence, the sex offender, himself, must first register with the proper officials in that community.\footnote{240} Pursuant to the Illinois Sex Offender Registration Act, sex offenders not only must register within thirty days of their release from prison, but also every year thereafter.\footnote{241} If sex offenders fail to register, however, the goal of community notification is defeated.\footnote{242} Already, 40% of the sex offenders in Washington\footnote{243} and almost 75% of the sex offenders in California\footnote{244} have failed to register. Clearly, the penalty imposed for failure to register has not deterred sex offenders from violating community notification laws; in fact, the consequences of registering—facing ostracism in the community—can outweigh this penalty and might actually deter sex offenders from complying with notification laws.\footnote{245}
Moreover, there is little evidence that community notification laws actually protect children or adults from sex offenders. To the contrary, one study found that Washington’s community notification law has not significantly reduced repeat sex offenses. According to the study, sex offenders subject to community notification committed new crimes an average of 25.1 months after their release from prison. Rather than furthering a state’s goal of preventing future sex offenses, community notification serves only as a reactive measure reflecting the community’s outrage over the proliferation of sex crimes against children.

Predictions of dangerousness are also imperative to the success of sex offender community notification laws, especially with respect to notification laws that provide for varying levels of notification dependent upon the degree of risk that a sex offender poses to society. Often these risk assessments are performed by state and
county prosecutors. While the Constitution does not prohibit the use of risk assessments, they are inherently inaccurate. This inaccuracy stems not only from allowing untrained professionals to speculate as to what a person may do in the future, but also because the tools used to make such predictions are accurate only one-third of the time. In essence, two-thirds of the sex offenders will be improperly assessed. The combination of these two impediments

sex offender must register with the local law enforcement agency within 10 days when he moves from one community to another, the law fails to indicate who will decide the proper level of notification to be administered in the new community. See supra note 141 and accompanying text.

251. For example, “Megan’s Law” requires the State’s Attorneys in the counties where the sex offender was convicted and subsequently plans to reside to determine the sex offender’s risk of reoffense. N.J. STAT. ANN. § 2C:7-8(d)(1) (West 1995).

252. Bochnewich, supra note 37, at 301. Bochnewich notes the following: [The United States Supreme Court cases] almost uniformly adopt a choice of public safety from recidivists over the individual liberty interests of the . . . [registrant]. The critical literature almost universally advocates a greater solicitude for the individual liberty interest infringed upon. Since it is apparent that the Constitution has not been interpreted to prevent the use of prediction, then the rationales for choosing one interest over the other, based upon admittedly imperfect prediction tools, rest upon other than a purely legal justification.

Id.

253. Blacher, supra note 46, at 913. See also Bochnewich, supra note 37, at 283 (detailing the lack of accuracy involved in predictions of dangerousness). Moreover, “[o]pponents of sex offender community notification laws] . . . claim that the prediction accuracy of individual recidivism is so low that it seriously threatens individual freedom and autonomy without adequate justification.” Id.; see also Montana, supra note 63, at 589-90 (noting the inherent inaccuracy in risk assessments). Because the risk assessments are arbitrary, there is no way to ensure that the children of Illinois will be protected. See infra notes 254-57 and accompanying text.

254. Montana, supra note 63, at 589-90 (“Critics contend that trained professionals cannot accurately predict an offender’s propensity to reoffend and thus warn against using [untrained] professionals to determine which sex offenders’ identities to reveal.”).

255. Montana, supra note 63, at 590. Although psychological profiles of sex offenders are available, the reliability of such profiles is debatable. Profiling Child Molesters, NATIONAL CENTER FOR THE PROSECUTION OF CHILD ABUSE UPDATE, Oct. 1988. “Studies indicate that predictions of an offender’s dangerousness or propensity to reoffend average a one-third accuracy rate.” Id. See also Bochnewich, supra note 37, at 286, 294 (suggesting that “[i]t has been widely accepted for some time that predictions of an individual’s likelihood of committing future serious violent crime are only one-third accurate”). See also James M. Peters & William D. Murphy, Profiling Child Sexual Abusers—Legal Considerations, CRIM. JUST. & BEHAV., Mar. 1992, at 43 (confirming that evidence characterizing the psychological profile of a child molester is not reliable).

256. Montana, supra note 63, at 590 (“In other words, predictions of dangerousness are inaccurate an average of two out of every three cases.”). See also Bochnewich, supra note 37, at 294 (analyzing the two-thirds “false positive” predictions inherent in predictions of dangerousness).
ensures that potentially dangerous sex offenders will escape community-wide notification, while some low-risk offenders will be subjected to it.\textsuperscript{257}

Aside from the legal problems inherent in community notification, public disclosure also creates adverse reactions in the community such as vigilantism,\textsuperscript{258} community migration,\textsuperscript{259} and intense fear that may undermine offenders’ efforts at reintegration.\textsuperscript{260} Such community reaction could also affect a state’s efforts to deter sex offenders from reoffending.\textsuperscript{261} The stress derived from community harassment may actually compel sex offenders to reoffend.\textsuperscript{262} Opponents of community notification argue that notification laws do little to prevent the occurrence of sex crimes and, instead, cause released sex offenders to relapse due to the difficulties in finding a job and/or reintegrating into the community.\textsuperscript{263} Moreover, in causing sex offenders to relocate from one town to another, community harassment prevents sex offenders from remaining in a stable, supportive, and possibly effective, treatment environment.\textsuperscript{264}

Equally important, notification laws create a false sense of security.\textsuperscript{265} In essence, community notification laws create the illusion

\begin{footnotes}
\item[257] Montana, \textit{supra} note 63, at 590. These factors “create an arbitrary system in which some convicted sex offenders will fall into the category of high risk offenders while others will not. Thus, potentially dangerous sex offenders may escape community notification . . . and live anonymously in . . . communities.” \textit{Id.}

\item[258] See \textit{supra} notes 204-07 and accompanying text.

\item[259] See \textit{supra} notes 208-10 and accompanying text.

\item[260] See \textit{supra} notes 243-45 and accompanying text.

\item[261] See \textit{supra} notes 246-48 and accompanying text.

\item[262] Montana, \textit{supra} note 63, at 585.

\item[263] See, \textit{e.g.}, \textit{id.}, at 585 n.78 (detailing the accounts of a sex offender who went on a rampage after seeing his photo and criminal history depicted on a television news show).

\item[264] See Jerusalem, \textit{supra} note 96, at 232. Some experts claim:

[I]f a sex offender is in an environment in which certain factors are present, he might be able to curb his recidivistic behavior. For example, if he can maintain a low stress level, achieve employment stability, overcome denial, empathize with the victim, contain his anger, refrain from chemical abuse, and be a part of a social system, he may be at a low risk for recidivistic behavior. \textit{Id.} at 232 n.83.

See also Decter, \textit{supra} note 46, at 61 (explaining that “‘[c]ommunity notification laws do little or nothing to prevent a sex offender from striking again; they simply make it more likely that the offender will be hounded from one town to another’—possibly becoming even more dangerous than he might otherwise be, away from the control of family and friends”) (quoting \textit{Dealing with Sex Offenders}, \textit{N.Y. Times}, Aug. 15, 1994, at 14A); Martone, \textit{supra} note 73, at 39 (arguing that “notification laws cause compulsive sex offenders to run from family, avoid treatment and seek the safety of anonymity by hiding out, thus subjecting the public to even greater risk”).

\item[265] Kiernan & Bils, \textit{supra} note 4, at 1. See also Martone, \textit{supra} note 73, at 39
\end{footnotes}
that society has, within each community, completely dealt with the dangers presented by sex offenders. In actuality, however, not all sex offenders fall within the fullest reach of notification laws. For instance, the Community Notification Act mandates disclosure only to school officials, the Department of Children and Family Services, and child care facilities. Disclosure to those persons most likely to encounter the sex offender is only discretionary. Moreover, there is no guarantee that the sex offenders who remain anonymous to their neighbors will not reoffend. Accordingly, even when a state enacts a notification law, individual community members remain the primary protectors of children and others who may fall victim to a sex offender. As a result, sex offender community notification laws cause anxiety and fear in a community while offering limited benefits to its residents.

(explaining that the New Jersey Civil Liberties Union argued that “[Megan’s] law would merely create an illusion of safety”). Because parents might “view these laws as [an] ‘automatic protection for children,’” sex offender community notification laws may create a false sense of security. Silva, supra note 14, at 1979 n.156 (quoting Steve Wheeler, Sex Laws Protection Not Automatic, SUNDAY ADVOC. (Baton Rouge, La.), Nov. 6, 1994, at B1).

266. See Idaho Law Doesn’t Mandate Public Disclosure of Registry, LEWISTON MORNING TRIB. (Lewiston, Idaho), Dec. 5, 1993, at 5A (stating that “[i]t creates a sense that the problem has been taken care of”).

267. Id. “If a sex offender isn’t on the registry, it doesn’t mean he isn’t a sex offender. ‘It just means he’s not been caught or not been convicted.’” Id. (quoting Bruce Bistline of the ACLU in Boise, Idaho).

268. See supra notes 179-80 and accompanying text.

269. See supra notes 179 and accompanying text. The Community Notification Act directs each local law enforcement agency to create its own procedures for the public inspection of child sex offender registries. Pub. Act No. 89-428, 1995 Ill. Legisl. Serv. 4039 (West) (to be codified at ILL. COMP. STAT. ANN. ch. 730, §§ 152/120(b), (c), 125(b), (c)).

270. See Montana, supra note 63, at 595 (explaining that under “Megan’s Law”, “[l]aw enforcement agencies cannot notify community members when moderate or low risk offenders intend to move into their communities, nor can authorities guarantee that these offenders will not reoffend.”).


It appears then that sex offender community notification laws actually attempt to support neighborhoods in dealing with a problem that the legislators “have failed to solve.” Megan’s Law Puts Burden on the Public, MORNING CALL (Allentown, Pa.), Sept. 25, 1995, at A6. It is as if “[t]he state says ‘We think he’s a danger, a threat, a time bomb waiting to go off and we thought you’d like to know.’ But if the state couldn’t deal with him, what can I do?” Vedantam, supra note 209, at A8 (quoting Edward Martone of New Jersey).

272. Montana, supra note 63, at 576 n.28. Jerry Sheehan of the ACLU stated that “he did not ‘see one whit of evidence of any additional community security created by this notification process. It only causes anxiety and fear, without any additional
V. PROPOSAL

Sex offender community notification laws are an example of a quick-fix, band-aid reaction to the serious threats imposed by sex offenders. Illinois' Community Notification Act will go into effect only after a sex offense has occurred, and only if the sex offender is apprehended and convicted. Furthermore, this so-called "protection" from sex offenders might last for only ten years.

Illinois, however, was left with no choice—it had to enact a sex offender notification law. Even though the Community Notification Act is a reactive measure that will not further the state's goal of protecting its children from initial acts of sexual aggression, it is the approach being adopted by a growing number of states. With the national trend of implementing community notification laws, prudence dictated that Illinois adopt a notification provision. If Illinois had failed to enact a sex offender notification law, it risked becoming a safe haven for sex offenders. Thus, in order to prevent sex offenders from other states with notification laws from moving to Illinois with the intent of remaining anonymous, Illinois had no choice but to enact a sex offender community notification law.

benefits to the community.” Id. (quoting Linda Keene, Legal Dilemma: Rapists' Rights vs. Public's Right to Know, SEATTLE TIMES, July 13, 1993, at A14).

273. Commentators have suggested that sex offender community notification laws are insufficient. Tuite, supra note 5, at 11. "None of these are solutions because they are merely bandages on cancer.” Id. See also Jerusalem, supra note 96, at 245-46 (conceding that, although sex offender community notification laws are an understandable product of the increase in sex offenses, community notification laws "are, however, 'reactive' policies: A community learns of an attack on a citizen and its first reaction is to think that the attack could have been prevented if residents had only known that someone with a history of sex offenses lived among them").

274. Actual community notification does not begin unless a sex offender is arrested and convicted of attempting or completing one of the 14 sex offenses defined in the Sex Offender Registration Act. See supra notes 175-78 and accompanying text.

275. See supra note 181 and accompanying text. For a discussion of other problems relating to the registering of sex offenders, see supra notes 237-43 and accompanying text.

276. See supra note 60 and accompanying text.

277. See supra notes 208-10 and accompanying text.

278. See supra notes 208-10 and accompanying text.

279. The Illinois State General Assembly, however, should have adopted a sex offender community notification law which provides for three tiers of notification based on the sex offender's risk of reoffense in order to carefully calibrate the need for public disclosure. See supra notes 74-77 for a discussion of another statute that establishes tiers of notification. Also, the notification law should have afforded the sex offender an opportunity to challenge the breadth of notification to which he will be subjected. See supra note 78. Additionally, the General Assembly should have limited the application to adult sex offenders. See supra notes 150, 175-78, and accompanying text. However, the General Assembly need not have restricted community notification to only adult sex
Nevertheless, rather than simply reacting to acts of sexual violence, Illinois should also enact a prophylactic measure which aims to diminish the commission of sex crimes against children. A proactive approach should emphasize the interdisciplinary nature of preventing and treating sexual abuse. Moreover, a proactive approach recognizes that societal and parental responsibility for the safety of children and others is desperately needed to properly attack the grave and pervasive problems resulting from sexual abuse. Prevention, via education, emerges as the key to furthering the state's goal of protecting children, and others in society, from sexual abuse. Notably,
prevention techniques should not be directed only toward children.\textsuperscript{284} Rather, preventative efforts must also target parents and professionals.\textsuperscript{285}

When addressing children, the goal of prevention is to arm the child with the knowledge and confidence to respond safely when confronted with a possible sex offender.\textsuperscript{286} Prevention directed toward children encompasses the following tasks: defining the term sexual abuse in language children can understand; teaching children how to distinguish between appropriate and sexual touches; making children more aware of possible potential sexual offenders; teaching children of their right to say "no"; and encouraging children to report any incident of, or attempt at, sexual abuse.\textsuperscript{287} School-based educational programs for children emphasizing prevention have proven successful in other states, and Illinois would be wise to adopt and implement such programs.\textsuperscript{288}

When prevention includes parents and other adults, the educational issues should consist of the basic understanding of what sexual abuse is; symptoms of child abuse; resources available to a sexually abused child and his or her family; and tactical ways to discuss sexual abuse with children.\textsuperscript{289} Finally, prevention techniques must be directed at

\begin{itemize}
\item without the institution of major new social programs.
\end{itemize}

\textit{Id.}\textsuperscript{284} \textit{Id.} at 226.

\textit{Id.} ("Although the objective \ldots is to help children, not all prevention approaches have children as their exclusive or primary audiences.").

\textit{Id.} at 254. In attempts to prevent child sexual abuse, it is imperative to take a child's perspective. \textit{CHILD SEXUAL ABUSE}, supra note 37, at 173. For instance, before addressing children, one must acknowledge that a child's resistance to sexual abuse is rarely effective due to the offender's determination. \textit{Id.} Furthermore, it is important to understand that a child's report of a sexual encounter may go unnoticed not for a lack of care, but because the child may speak in a cryptic manner. \textit{Id.} at 174. The statements "my tummy hurts," "I don't want to go to the toilet," or "I don't like the doctor" may essentially be a child's attempt to expose sexual abuse. \textit{Id.}\textsuperscript{286}

\textit{CONFERENCE}, supra note 1, at 59 (citing to remarks made by Gabriella V. Cohen, Executive Director, Human Effective Learning Program, Chicago); \textit{FINKELHOR}, supra note 34, at 226-27.

\textit{Montana}, supra note 63, at 602 n.155. \textit{See, e.g., FINKELHOR}, supra note 34, at 247-54 (detailing the various sexual abuse prevention programs implemented in grade schools, the programs' success rates, and future tests and approaches that may help improve the effectiveness of these programs). Moreover, the Illinois Supreme Court in \textit{People v. Adams}, 581 N.E.2d 637 (Ill. 1991), suggested that educating the children of Illinois is "the most logical alternative available to the legislature \ldots ." \textit{Id.} at 641.

\textit{FINKELHOR}, supra note 34, at 229-34. Finkelhor states:

\textit{Prevention education directed toward parents has some advantages because of the central role parents play in children's lives. If parents learn to educate children themselves, children may receive repeated exposures to information from a trusted source, a situation that a special classroom presentation cannot
teachers, physicians, mental health professionals, and law enforcement personnel. The focus again should be educating these professionals on what sexual abuse is, the resources available to a victim of sexual abuse, and most importantly, the warning signs of sexual abuse.

Sexual abuse poses a unique challenge to everyone in a community. By carefully crafting, implementing, and involving children, parents and professionals in a sexual abuse prevention program, Illinois can begin to further its goals of protecting its citizens from sex offenders. By enacting a comprehensive prevention plan, the General Assembly can provide Illinois communities with more protection than the Community Notification Act can provide alone.

VI. CONCLUSION

A sex offender community notification law would not have saved ten-year-old Christopher Meyer. In fact, Illinois' Community Notification Act will probably not protect most other children, as well as others in society, from the tremendous threat of sexual offenders. Nonetheless, Illinois had little choice but to enact this ineffective and reactive law in order to prevent an influx of sex offenders into the state.

To actually protect the children of Illinois, the General Assembly should implement proactive educational programs targeting children, parents, and professionals. With such preventative programs, Illinois parallel. Moreover, educating parents also holds out the possibility of dramatically increasing the detection of children who have become victims (because parents will become more sensitive to signs of abuse) and of improving the reactions of parents when they hear about or discover these victimizations.

Id. at 229.

Additionally, "[t]he importance of educating parents is also underlined by the apparent inadequacy of what parents currently do to alert their children about sexual abuse." Id. One study revealed that of 521 parents of children aged 6 to 14, only 29% spoke with their children about sexual abuse. Id. Of the 29% that did discuss sexual abuse with their children, only 53% mentioned that an abuser may be an adult friend. Id. Moreover, only 22% told their children that a sexual abuser could be a relative. Id. Notably, "[m]ost child sexual abuse offenders are not strangers, but persons whom the abused child knows and trusts." NATIONAL VICTIM CENTER, supra note 41, at 5.

Furthermore, it has been argued that "[p]arents who want to protect their children have better options that involve less regulation and government intrusion [than sex offender community notification laws]. Teach children not to talk to strangers. Don't let them go out alone. Get to know their teachers, scout leaders and coaches." CHILD SEX ABUSER BILL IS ASSAULT ON PRIVACY, CHI. SUN-TIMES, Nov. 3, 1995, at 31. In essence, "[b]eing involved in children's lives is much more effective than" community notification. Id. 290. FINKELHOR, supra note 34, at 234-35. 291. Id.
will arm its children with the tools necessary to respond safely to attempts at sexual offenses. As such, the General Assembly will increase the likelihood of reducing the number of sex offenses perpetrated in Illinois.

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