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AN INEFFECTIVE WEAPON IN THE FIGHT AGAINST CHILD SEXUAL ABUSE: NEW JERSEY'S MEGAN'S LAW

Jenny A. Montana[*]

INTRODUCTION

On July 29, 1994, Jesse Timmendequas invited seven-year-old Megan Kanka into his home to see his puppy.[1] Once inside, Timmendequas forced Megan into his room, strangled her with a belt and sexually assaulted her.[2] Megan subsequently died of asphyxiation.[3] After Megan's death, Timmendequas wrapped a plastic bag over her head and removed her body from his home in an old toy box.[4] The child's body was found the next day in Mercer County Park.[5]

Megan Kanka's death outraged Mercer County, as well as the rest of New Jersey, when the residents discovered that the state permitted convicted sex offenders[6] to live anonymously in their

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[*] Brooklyn Law School Class of 1996. The author wishes to thank Brooklyn Law School Professor Ursula Bentele and Mr. Brian Parkhurst for their valuable assistance in the preparation of this Note.

[1] Ralph Siegel, *Suspect Admits Killing Girl, 7*, RECORD, Aug. 2, 1994, at A-1.

[2] *Id.*

[3] *Id.*

[4] *Id.* at A-1, A-4.

[5] Stephen W. Dill, *Pink Ribbons Symbolize Drive for 'Megan's Law,'* RECORD, Aug. 3, 1994, at A-3.

[6] The clinical name for a sex offender is pedophile. A pedophile is a person who is "sexually interested in children . . . ." DAVID FINKELHOR, A SOURCEBOOK ON CHILD SEXUAL ABUSE 91 (1986). "[P]edophilia is essentially a state in which an individual is predisposed to use children for his or her sexual gratification." *Id.* at 90.

communities.[7] Only after Megan's death did authorities reveal Timmendequas' previous convictions for child sexual abuse.[8] The court had sentenced Timmendequas to ten years at the Adult Diagnostic and Treatment Center, commonly referred to as Avenel.[9] Avenel, however, released Timmendequas in February, 1988, after serving only six years.[10] At the time of Megan's murder, Timmendequas lived across the street from the Kankas' with two other convicted sex offenders.[11] The circumstances surrounding Megan Kanka's death and similar incidents[12]

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[7] *See* Siegel, *supra* note 1, at A-4.

[8] Timmendequas was convicted of attempted sexual contact in 1981 and of aggravated assault and attempted sexual assault in 1982. Siegel, *supra* note 1, at A-4; *see, e.g.*, N.J. STAT. ANN. § 2C:14-2 (West Supp. 1994). Currently, Timmendequas is charged with murder, felony murder, kidnapping and aggravated sexual assault. *See* N.J. STAT. ANN. § 2C:11-3, :13-1, :14-2 (West Supp. 1994). The prosecution has indicated that it will seek the death penalty if Timmendequas is convicted of the murder of Megan. Guy Sterling, *Death Penalty Call in Megan Murder*, STAR LEDGER, Oct. 20, 1994, at 1. If the jury finds Timmendequas guilty of murder, he will face either the death penalty or life imprisonment in which parole will be set after a minimum of thirty years of incarceration. *Id.* at 12. Although Timmendequas confessed to the murder in August of 1994, he has plead not guilty. *Id.*

[9] Timmendequas was sentenced to 10 years imprisonment at Avenel for his 1982 conviction. Eugene Kiely, *State Weighs Registering Sex Offenders*, RECORD, Aug. 3, 1994, at A-3. Avenel is a New Jersey institution for compulsive sex offenders. Dill, *supra* note 5, at A-3.

[10] Dill, *supra* note 5, at A-3. Timmendequas was released early for good behavior.

[11] Timmendequas met these men while serving his sentence at Avenel. Dill, *supra* note 5, at A-3.

[12] On March 6, 1994, Kevin Aquino sexually assaulted and killed his neighbor, Amanda Wengert, a Manalapan Township girl. Ivette Mendez, *Sex Crime Package Voted by Assembly*, STAR LEDGER, Aug. 30, 1994, at 1. Aquino had a history of child sexual abuse. *Id.* In 1993, Conrad Jeffrey, an ex-convict with a history of mental illness, raped and killed Divina Genao, a Passaic girl. Michelle Ruess, *Whitman: Monitor All Sex Offenders*, RECORD, Aug. 10, 1994, at A-10 [hereinafter *Monitor All Sex Offenders*]; *see also Tougher Controls for Sex Offenders*, RECORD, Aug. 7, 1994, at A-20 [hereinafter *Tougher Controls*]. In 1992, Avenel released Donald Chapman, a sex offender who was convicted of raping and torturing a woman. Kiely, *supra* note 9, at A-3. Doctors at Avenel released Chapman even though he posed a "clear and present danger to others." David Glovin, *Rapist's Care Under Fire*, RECORD, Dec. 22, 1992, at A-1. Bergen

prompted community members to take a critical look at the sex offender policies in the state of New Jersey.

Shortly after Megan's death, her family and neighbors launched a campaign calling for legislation that would require authorities to notify community members when a convicted sex offender moved into their community.[13] In memory of Megan, her family and friends coined the legislation 'Megan's Law.'[14] Prompted by public outrage, New Jersey legislators agreed that community members had a right to know if convicted sex offenders moved into their communities and quickly responded to the public's demands.[15] The New Jersey Legislature proposed a number of measures[16] which mandated harsher penalties and guidelines for

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County Prosecutor John J. Fahy ordered a 24-hour surveillance of Chapman's home. *Id.* Chapman was eventually sent to the Forensic Psychiatric Hospital in Trenton. Michelle Ruess, *Identification of Released Sex Offenders Sought*, RECORD, Aug. 2, 1994, at A-4 [hereinafter *Identification Sought*].

[13] Dill, *supra* note 5, at A-3. The original campaigners for Megan's Law wanted community notification of any convicted sex offender who moved into their community. Michelle Ruess, *Sex Offender Bill Garners Wide Support*, RECORD, Oct. 26, 1994, at A-1, A-14 [hereinafter *Bill Garners Wide Support*].

[14] Dill, *supra* note 5, at A-3. New Jersey residents circulated a petition calling for the passage of a community notification law, which was signed by nearly 300,000 residents. Michelle Ruess, *A Mother's Plea: Pass Megan's Bill*, RECORD, Sept. 27, 1994, at A-1 [hereinafter *Mother's Plea*].

[15] Legislators reacted so quickly that they were criticized as "pandering to public outrage." *See* Michelle Ruess, *Assembly Approves Megan's Law; Foes Cite 'Public Relations Show,'* RECORD, Aug. 30, 1994, at A-1. For example, Assembly Speaker and then-U.S. Senate candidate Chuck Haytaian "declared a legislative emergency" and prohibited committee hearings on sex offender legislation. Michelle Ruess, *Megan's Law Signed by Governor*, RECORD, Nov. 1, 1994, at A-1 [hereinafter *Megan's Law Signed*].

[16] The New Jersey Assembly measures included mandatory life sentences for certain repeat offenders, N.J.A.B. No. 256, 206th Leg., 1st Reg. Sess. (1994); a public notification law, N.J.A.B. No. 85, 206th Leg., 1st Reg. Sess. (1994); a registration law for sex offenders, N.J.A.B. No. 84, 206th Leg., 1st Reg. Sess. (1994); involuntary confinement for certain sex offenders after they have served their sentence, N.J.A.B. No. 86, 206th Leg., 1st Reg. Sess. (1994); the creation of a sex offenders' DNA data bank, N.J.A.B. No. 1592, 206th Leg., 1st Reg. Sess. (1994); mandatory minimum sentences for certain repeat offenders, N.J.A.B. No. 82, 206th Leg., 1st Reg. Sess. (1994); and a task force to study the treatment of sex offenders sent to Avenel, N.J.A. Con. Res. No. 8, 206th Leg.,

sex offenders.[17] The New Jersey Legislature passed a total of ten bills concerning sex offenders.[18] Governor Christine Todd Whitman signed this package of sex offender legislation into law on October 31, 1994,[19] notwithstanding its constitutional uncertainty.[20] Megan's Law authorizes certain law enforcement

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1st Reg. Sess. (1994); *see also* Mendez, *supra* note 12, at 1, 26. Senate measures included a community notification law, N.J.S.B. No. 14, 206th Leg., 1st Reg. Sess. (1994); a registration law, N.J.S.B. No. 13, 206th Leg., 1st Reg. Sess. (1994); the "Violent Predator Incapacitation Act of 1993," which clarified the authority of the state attorney general and local prosecutors to have dangerous sex offenders involuntarily committed to mental hospitals after their release from prison, N.J.S.B. No. 320, 206th Leg., 1st Reg. Sess. (1994); extended terms of imprisonment for sexually violent predators, N.J.S.B. No. 11, 206th Leg., 1st Reg. Sess. (1994); creation of a DNA database and a requirement that sex offenders provide blood samples for DNA testing, N.J.S.B. No. 995, 206th Leg., 1st Reg. Sess. (1994); eliminating repetitive and compulsive offenders at Avenel from eligibility for early release due to "good behavior" if they refuse to participate in therapy, N.J.S.B. No. 15, 206th Leg., 1st Reg. Sess. (1994); and creation of a legislative task force to study the effectiveness of treatment at Avenel, N.J.S.B. No. 78, 206th Leg., 1st Reg. Sess. (1994); *see also* Michelle Ruess, *Senate Passes Sex-Offender Crackdown*, RECORD, Oct. 4, 1994, at A-3.

[17] Mendez, *supra* note 12, at 1, 26. Prior to Megan's death, authorities did not notify community members when they released a convicted sex offender from prison. *See Identification Sought*, *supra* note 12, at A-4. The Department of Corrections, however, notified local police when an offender was released into their community. *Identification Sought*, *supra* note 12, at A-4. In addition, the Department of Corrections notified the Department of Youth and Family Services if the offender committed a sexual crime. *Identification Sought*, *supra* note 12, at A-4.

[18] *See* N.J. STAT. ANN. §§ 2C:7-1 to -11, :43-6.4, -7, :44-3, :47-1, -3, -5, -8, :52-2, 30:4-27.2, -27.10, -27.12, -27.13, -27.15, -27.17, -82.4, 45:14B-28, 53:1-20.17 to -20.28 (forthcoming West Supp. 1995); N.J.A. Con. Res. No. 8, 206th Leg., 1st Reg. Sess. (1994) (enacted); *see also* Jerry Gray, *Sex Offender Legislation Passes In the Senate*, N.Y. TIMES, Oct. 4, 1994, at B6.

[19] Joseph F. Sullivan, *Whitman Approves Stringent Restrictions on Sex Criminals*, N.Y. TIMES, Nov. 1, 1994, at B1.

[20] Critics argue that Megan's Law raises constitutional questions. Robert Carter, professor of law at Rutgers School of Law - Newark, stated that community notification laws "impinge on the offender's rights to privacy, due process, and freedom from cruel and unusual punishment." Patricia Alex, *Experts Question Rush to Change Sex-Offense Laws*, RECORD, Aug. 11, 1994, at B-7. Recently, sex offenders have challenged Megan's Law as a violation of the Ex

officials[21] in the municipality in which a released sex offender[22] plans to reside, to notify community organizations and residents of an inmate's release in certain situations.[23] Although the law as passed applied retroactively,[24] the U.S. District Court for the District of New Jersey recently held that the retroactive application of Megan's Law was unconstitutional.[25] The federal court ruling

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Post Facto Clause of the U.S. Constitution. Compl. § V, ¶ (b), Artway v. Attorney Gen., No. 94-6287, 1995 U.S. Dist. LEXIS 2403, at *2-*3 (D.N.J. Feb. 28, 1995). Legislators, however, contend that community notification laws may infringe upon the rights of sex offenders in order to protect children. Fred J. Aun, *Paroled Sex Offender an 'Unwelcome' Sight*, STAR LEDGER, Sept. 16, 1994, at 1, 14.

[21] Megan's Law authorizes the chief law enforcement officer of the municipality in which a released sex offender plans to reside or the superintendent of the New Jersey State Police, if the municipality does not have a police force, to provide public notification. N.J. STAT. ANN. § 2C:7-6.

[22] The legislature defined a "sexual offense" as:

> aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S. 2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S. 2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S. 2C:24-4; or luring or enticing pursuant to section 1 of P.L. 1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S. 2C:14-39 if the victim is a minor; kidnapping pursuant to N.J.S. 2C:13-1, criminal restraint pursuant to N.J.S. 2C:13-2, or false imprisonment pursuant to N.J.S. 2C:13-3 if the victim is a minor and the offender is not the parent of the victim; or an attempt to commit any such offense.

Id.

[23] Megan's Law provides for three levels or tiers of notification based upon the potential risk that an offender poses to society. If an offender poses a low risk of reoffending, law enforcement officials will be notified of the offender's presence ("Tier I notification"). If an offender poses a moderate risk of reoffending, organizations in the community, such as schools, youth and religious groups will be notified ("Tier II notification"). If the offender poses a high risk of reoffending, community members will be notified of the offender's presence ("Tier III notification"). *Id.*

[24] *Id.*

[25] Artway v. Attorney Gen., No. 94-6287, 1995 U.S. Dist. LEXIS 2403, at *92 (D.N.J. Feb. 28, 1995). Judge Nicholas H. Politan held that the retroactive application of community notification for moderate and high-risk offenders

violated the Ex Post Facto Clause of the U.S. Constitution. *Id*; *see* U.S. CONST. art. I, § 10. Judge Politan, however, held that "registration . . . does not offend the ex post facto or any other constitutional doctrine . . . ." *Artway*, 1995 U.S. Dist. LEXIS 2403, at *78. Although Artway also challenged Megan's Law on the grounds that it violated the Eighth Amendment's prohibition against cruel and unusual punishment and the Due Process and Equal Protection Clauses, Judge Politan did not rule on whether Megan's Law violated these constitutional provisions. *See id.* at *92.

Prior to this ruling, Carlos Diaz, convicted for the kidnaping and aggravated sexual assault of a 20-year-old woman in 1983, challenged Megan's Law on the grounds that it violated his due process and privacy rights. Lisa Peterson, *Rape Victim Was Ripped Off Street*, STAR LEDGER, Jan. 4, 1995, at 5. U.S. District Court Judge John Bissell issued a preliminary injunction preventing Passaic County law enforcement officials from notifying community groups in the area to which Diaz planned to return after his release from prison. Diaz v. Whitman, No. 94-6376 (D.N.J. Jan. 6, 1995) (order granting preliminary injunction); Guy Sterling, *Rapist Gains Temporary Ban on Megan's Law Notification*, STAR LEDGER, Jan. 4, 1995, at 1, 4. Judge Bissell was concerned that community notification may subject Diaz to the type of public stigma and ostracism that may affect his quality of life and have a punitive impact. Telephone Interview with Ronald K. Chen, assistant professor of law, Rutgers School of Law - Newark and special pro bono counsel for plaintiff (Mar. 31, 1995). Judge Bissell found that Megan's Law may violate the Constitution's Ex Post Facto Clause because the law applies to offenders who committed crimes prior to the passage of the law. *Id.* In addition, Judge Bissell stated that Megan's Law may violate the Due Process Clause because it authorizes county prosecutors to determine the risk levels of offenders without providing offenders an opportunity for a hearing or appeal. *Id.* Judge Bissell's injunction, however, only applied to Carlos Diaz. *Id.* The state appealed Bissell's order. Bill Sanderson, *New Jersey to Fight Ruling on Megan's Law*, RECORD, Jan. 6, 1995, at A-1. The Justice Department submitted an amicus curiae brief supporting the constitutionality of Megan's Law against Diaz's constitutional challenge. J. Scott Orr, *Justice Dept. Files Brief Defending Constitutionality of Megan's Law*, STAR LEDGER, Feb. 17, 1995, at 1. Although Judge Bissell prohibited Passaic County law enforcement officials from notifying community groups of Diaz's arrival, the Guardian Angels, led by Curtis Sliwa, in an act of defiance to Judge Bissell's order, distributed notices of Diaz's presence to local residents. Ivette Mendez, *State Will Challenge Judge's Bar on Enforcement of Megan's Law*, STAR LEDGER, Jan. 6, 1995, at 19.

In addition, a convicted sex offender challenged the constitutionality of the registration and community notification provisions of Megan's Law in state court as a "John Doe." *See* Doe v. Poritz, No. 1-5-95, slip op. (N.J. Super. Ct. Law Div. Feb. 22, 1995). Authorities released this offender 3 years ago after he served 6 years of a 10-year prison sentence. *Id.* at 2. New Jersey Superior Court

Judge Harold B. Wells III struck down the provisions of Megan's Law "which may subject Doe to Tier II or Tier III public notification" as unconstitutional. *Id.* at 32. He found fault with the provision authorizing county prosecutors to determine which sex offenders' identities should be made public knowledge. *Id.* at 31; Kathy Barrett Carter, *Judge Rules Megan's Law Constitutional but Temporarily Bars Warnings to Public*, STAR LEDGER, Feb. 23, 1995, at 1. Judge Wells stated that registration and community notification "do not amount to punishment in the constitutional sense . . . . [The provisions] only seek[] to protect the public. Any punitive effects are incidental to the legislature's overriding purpose of safeguarding the public." *Doe*, slip op. at 9-10. After determining that Megan's Law "clearly does impose certain burdens on the plaintiff . . . ," Judge Wells examined whether the burdens infringe on the plaintiff's fundamental rights of privacy, equal protection and due process. *Id.* at 17. Although he found that the plaintiff was not "ultimately protected by a constitutional privacy interest," *Id.* at 21, and that Megan's Law survives equal protection scrutiny because it is "rationally related to a legitimate state interest," *viz*, "protecting the public from recidivistic sex offenders," *Id.* at 23, Judge Wells had due process concerns with the Tier II and Tier III notification provisions. *Id.* at 24. "[F]undamental concepts of justice and due process demand that the plaintiff be given a hearing before any" Tier II or Tier III notification takes place. *Id.* at 24-25. Moreover, Judge Wells stated that a judge, rather than a prosecutor, should determine whether the state should warn community members of the offender's presence. *Id.* at 30-32, 36; Carter, *supra*, at 1. He consequently issued a temporary ban on Tier II or Tier III notification until the attorney general's office adopts new rules governing the implementation of Megan's Law. *Doe,* slip op. at 36. Judge Wells noted that this "constitutional defect" did not affect any other provisions of Megan's Law applicable to Doe, such as the registration requirements. *Id.* at 32.

Although Judge Politan did not rule on whether Megan's Law violated the Due Process or Equal Protection Clauses, he stated that "the absence of a provision for objective judicial scrutiny in at the pre-classification stage is, at the very least, troubling." *Artway*, 1995 U.S. Dist. LEXIS 2403, at *14 n.7. Several states have faced constitutional challenges to their registration and community notification laws. *See* Rowe v. Burton, No. A 94-206, slip op. (D. Alaska July 27, 1994) (registration violates ex post facto laws); *In re* Reed, 663 P.2d 216 (Cal. 1983) (en banc) (mandatory registration of sex offenders convicted of misdemeanors violates the Eighth Amendment). *But see* Arizona v. Noble, 829 P.2d 1217 (Ariz. 1992) (en banc) (registration does not constitute an ex post facto violation); People v. Adams, 581 N.E.2d 637 (Ill. 1991) (registration does not violate the Eighth Amendment or the Due Process or Equal Protection Clauses); State v. Costello, 643 A.2d 531 (N.H. 1994) (registration does not violate ex post facto laws). The Washington Supreme Court held that registration and public notification of sex offenders do not impose additional punishment on

bars state authorities from notifying community members of a convicted sex offender's presence unless the offender was sentenced after the passage of the law in October 1994.[26] Although the district court's decision temporarily restricts the scope of Megan's Law,[27] it does not minimize the significant policy concerns raised by such community notification laws.

Many New Jersey citizens believe that public notification laws will prevent convicted sex offenders from reoffending in their community, thus, creating a safer environment for their children. This Note, however, argues that community notification laws, such as Megan's Law, neither prevent incidents of child sexual abuse nor make communities safer.[28] Rather than preventing incidents of child sexual abuse, community notification laws create adverse consequences[29] that undermine efforts to deter convicted sex offenders from reoffending. Part I of this Note describes the adverse consequences that ensue from community notification laws, which, in turn, undermine efforts to prevent incidents of child sexual abuse. Part II focuses on the particular failings of Megan's Law. Part III reviews alternative methods that New Jersey should consider to control child sexual abuse.

Unfortunately, notifying community members of the presence

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convicted sex offenders. *See* Washington v. Ward, 869 P.2d 1062, 1066 (Wash. 1994) (en banc).

[26] *See Artway*, 1995 U.S. Dist. LEXIS 2403, at *92; *see also* Robert Rudolph, *Judge Strikes Down Sex Offender Notification*, STAR LEDGER, Mar. 1, 1995, at 1. The ruling, therefore, might grant "more than 4,000 persons already sentenced as sex criminals, including some 2,000 persons already released from custody" immunity from the community notification requirement. *Id.*

[27] *See* Rudolph, *supra* note 26, at 1.

[28] Jerry Sheehan, the legislative director of the American Civil Liberties Union, 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 benefits to the community." Linda Keene, *Legal Dilemma: Rapists's Rights vs. Public's Right to Know*, SEATTLE TIMES, July 13, 1993, at 1, A14. Ed Martone, executive director of the New Jersey Chapter of the American Civil Liberties Union, said, "[W]e won't be any safer with [the sex offender bills] than without them." *Megan's Law Signed*, *supra* note 15, at A-3.

[29] Megan's Law precipitates vigilantism and community migration, while it prevents convicted sex offenders from reassimilating into society. *See* discussion *infra* part I.

of convicted sex offenders will not prevent offenders from reoffending.[30] In addition, notifying community members of released sex offenders neither confronts the causes of child sexual abuse nor looks to help offenders control their deviant behavior.[31] Thus, Megan's Law represents a short-term solution that will not deter convicted sex offenders from reoffending.[32] Released sex offenders will continue to pose a threat to New Jersey communities regardless of whether community members know of the offenders' presence.

I. NEGATIVE CONSEQUENCES OF COMMUNITY NOTIFICATION LAWS

A. Encouragement of Lawlessness

Community notification laws heighten community fears concerning the threat of convicted sex offenders[33] and create an

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[30] As one sex offender warned, "The man who is still repetitive and compulsive in his desire . . . is still going to commit that crime." Michelle Ruess, *Offenders Fear Vigilantism*, RECORD, Sept. 18, 1994, at A-4 [hereinafter *Offender's Fear*]. Community notification laws "will do nothing to change [a sex offender's] behavior." *Identification Sought, supra* note 12, at A-4.

[31] Inmate advocacy groups contend that treatment is a viable means to control deviant urges. Telephone interview with Karen J. Spinner, director of Public Education and Policy for the New Jersey Association on Correction (Sept. 20, 1994). Sex offenders can learn how to control their deviant behavior with adequate treatment. Daniel Goleman, *Therapies Offer Hope for Sex Offender*, N.Y. TIMES, Apr. 14, 1992, at C1.

[32] Spinner, *supra* note 31. The state of Washington has enforced a community notification law since 1990. *See* WASH. REV. CODE ANN. § 4.24.550 (West Supp. 1993). Washington, however, has not experienced a decrease in the number of sexual offenses committed. According to a Washington State Institute for Public Policy survey, incidents of rape have increased from 3,081 in 1990 to 3,303 in 1993. Jim Hooker, *Megan's Law Has a Harsh Prototype*, RECORD, Oct. 10, 1994, at A-6. For the text of Washington's registration law, see WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1994).

[33] Neighbors of a convicted sex offender in Washington experienced "deep-seated fears and sleepless nights following the notification." *See* Hooker, *supra* note 32, at A-6.

environment that is ripe for acts of vigilantism.[34] Critics of Megan's Law argue that providing New Jersey residents with the names and locations of convicted sex offenders will arouse community tensions[35] and spark acts of vigilantism.[36] Proponents of Megan's Law, however, argue that citizens will not turn into vigilante groups, but instead become "more eyes and ears in the neighborhood."[37] Although community notification laws will awaken residents to the potential threat of sex offenders, the question remains whether community members can responsibly handle this information. Even the most level-headed citizens will have difficulty remaining calm when they discover that a convicted sex offender plans to move into their community.[38] Sex offenders and the crimes that they commit provoke extreme public outrage.[39] Megan's Law will feed this outrage and create the impetus

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[34] *Issues of Sex Offender Registration and Notification, 1994: Hearings on A-165 and S-1211 Before the Senate Law and Public Safety Committee*, 206th Leg., 1st Reg. Sess. 2 (1994) (statement of Karen J. Spinner, director of Public Education and Policy for the New Jersey Association on Correction) [hereinafter *Senate Hearings on A-165 and S-1211*].

[35] For example, in one area in Washington where local police notify members of the presence of sex offenders, community members openly discuss "the guns that they keep handy, the family dog that will turn on a prowler, and the tight reigns they keep on the children." *See* Hooker, *supra* note 32, at A-6.

[36] "This kind of notification, instead of helping, has the potential for breeding lawlessness in otherwise law-abiding citizens." *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 2.

[37] Robert Re, *Even Other Criminals Ostracize Child Molesters*, RECORD, Sept. 5, 1994, at A-13. Maureen Kanka, the main proponent of Megan's Law, argued, "We're not vigilantes . . . . We're not animals. We're human beings." Ivette Mendez, *Senate Panel Approves Sex-Offender Measures, Modified Notification Bill*, STAR LEDGER, Sept. 27, 1994, at 34.

[38] "Sex crimes make people crazy . . . ." Spinner, *supra* note 31. One of the reasons why many states have found that notification laws do not work is because community notification has led to acts of vigilantism by people "who [were not] wild about the idea." Ed Martone, Issue of Sex Offender Registration and Notification 2 (1994) (on file with *Journal of Law and Policy*).

[39] "There are few things viewed as more obscene and that provoke as much public outrage as sex crimes against children." RONALD M. HOLMES, SEX CRIMES 31 (1991). "Sexual contact with children . . . is viewed as one of the most abominable actions an adult can perpetrate upon a child." *Id.* at 32.

for harassment and violence.[40]

In Washington, community notification laws have prompted several incidents of community vigilantism directed toward known sex offenders.[41] The most vivid example concerns the release of convicted child rapist Joseph Gallardo. When Gallardo's hometown was informed of his intention to return to the community following his release from prison,[42] the community held a protest rally, concluding with the burning of Gallardo's home.[43] Community members armed with similar information have made death threats against sex offenders, picketed outside the offenders' homes and apartments, thrown rocks through offenders' windows[44] and physically assaulted offenders.[45] Community members have not only directed their anger and fear toward offenders, but also toward the offenders' family and friends.[46] In response to incidents of

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[40] Professor John La Fond of the University of Puget Sound School of Law stated that notification laws create hysteria, "which can in turn lead to an increased sense of insecurity and fear, and also cause citizens to take rash and illegal steps." Keene, *supra* note 28, at A14. For example, a father and son broke into a home and beat an innocent man whom they believed was a convicted sex offender after authorities notified the community of the offender's presence. The targeted offender, however, left the area days before the attack. Jerry DeMarco, *Innocent Man Beaten, Mistaken for Sex Offender*, RECORD, Jan. 11, 1995, at A-1.

[41] *See* Keene, *supra* note 28, at 1, A14.

[42] The sheriff's office described Gallardo as "an extremely dangerous untreated sex offender with a very high probability for re-offense." *Gallardo Again Forced to Get Out of Town*, SEATTLE TIMES, July 19, 1993, at B1 [hereinafter *Gallardo Forced Out*]. Posters distributed by the sheriff's office stated that Gallardo had "sadistic and deviant sexual fantasies which include[d] torture, sexual assault, human sacrifice, bondage and the murder of young children." *Vigilante Justice Is No Answer to Sex Crimes*, SEATTLE TIMES, July 13, 1993, at B4 [hereinafter *Vigilante Justice*].

[43] *Vigilante Justice*, *supra* note 42, at B4. After Gallardo's home was burned, one neighbor exclaimed, "They torched it, and there's no problem with that here." Robert Davis & Deeann Glamser, *Sex Offender Notification: Help or Harassment?*, USA TODAY, July 16, 1993, at 2A.

[44] Keene, *supra* note 28, at A14.

[45] Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, (Magazine), at 13, 36.

[46] After Megan Kanka's death, community members threw stones at Jesse Timmendequas' roommates. *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 2. In Timberlane, Washington, residents threw eggs at a sex offender's

harassment and violence, some law enforcers in Washington have decided to cut back on the amount of information that they release to the community.[47] Washington's experience indicates that community notification laws will arouse great anxiety and fear which will inevitably lead to violence and harassment in New Jersey communities.

B. Community Migration

Many sex offenders subjected to community notification laws flee the notified community.[48] Offenders flee the notified community because they are unable to deal with the harassment that is directed toward them and the resulting negative consequences.[49] For instance, many landlords evict convicted sex offenders from their homes or apartments when authorities reveal the offenders' identity.[50] Thus, community notification laws force these offenders

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grandparents' home and his family received death threats. Keene, *supra* note 28, at A14.

[47] King County will no longer release the home addresses of Level One offenders to the public. Washington considers Level One offenders as the least likely to reoffend. Wayne Wurzer, *Sex-Offender Addresses Mostly Will Be Private*, SEATTLE TIMES, July 29, 1994, at B3.

[48] Studies show that nearly 50% of the sex offenders subjected to notification laws in Washington relocate to less intrusive states. Golden, *supra* note 45, at 34. For example, when neighbors burned Joseph Gallardo's home, Gallardo moved to New Mexico, a state which does not require community notification of convicted sex offenders. Davis & Glamser, *supra* note 43, at 2A. In addition, Carlos Diaz, the sex offender who successfully petitioned U.S. District Judge Bissell to enjoin Passaic officials from notifying community groups of his presence, has also fled New Jersey. Although law enforcement officials did not notify community groups of Diaz's presence, the Guardian Angels distributed notices and posted warnings of Diaz's presence. DeMarco, *supra* note 40, at A-8.

[49] Neighbors of Paul Wood, a convicted sex offender, posted his picture around the community, honked their horns whenever they passed his trailer home and parked their cars across the street from his home at night and directed their headlights into his home. After one week of this harassment, Wood moved to West Virginia. Golden, *supra* note 45, at 34.

[50] John Curtis Peterson, a convicted child rapist, was evicted by his landlord when authorities revealed his criminal past. Keene, *supra* note 28, at A14. Alan Groome, an 18-year-old who raped two young boys, moved in with his mother after his release from prison. Soon after police informed Groome's neighbors of

to leave the notified community in search of shelter elsewhere.[51] Some communities have forced convicted sex offenders out before the offenders even arrived.[52] In addition, many employers refuse to hire convicted sex offenders subject to notification laws,[53]

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his past, his landlord evicted Groome and his mother from their apartment. Golden, *supra* note 45, at 13. Groome and his mother then moved in with his grandmother. When the grandmother's community was informed of Groome's past, the company that owned the grandmother's apartment threatened to evict them all if Groome did not leave. Groome, consequently, moved out. The company went so far as to threaten Groome's mother and grandmother with eviction if Groome ever visited them at the apartment. Groome now sleeps at night in the only shelter that will house him, the First Baptist Church Shelter in Olympia, Washington. Golden, *supra* note 45, at 24. Due to the lack of housing available to convicted sex offenders in Washington, Harley Walker, a twice-convicted sex offender in Everett, Washington, established several halfway houses which specifically house sex offenders who have no place to live. Karen Alexander, *Ex-Convict Runs Homes for Sex Offenders*, SEATTLE TIMES, Feb. 23, 1994, at B1.

[51] Community notification laws create "a wandering nomadic tribe of sex offenders who go from town to town seeking anonymity to avoid negative repercussions when people find out they're in the community." Aun, *supra* note 20, at 1.

[52] The Division of Parole was scheduled to release Carl DeFlumer, a convicted child rapist, from prison on September 9, 1994. The division, trying to place DeFlumer with relatives, asked his sister, Mrs. Wood, if DeFlumer could live with her for a few months. The division promised to supervise DeFlumer with an electronic bracelet. Mrs. Wood agreed, but her neighbors objected. Due to community pressure, Mrs. Wood recanted her offer. The division then placed DeFlumer in a "residential treatment program" which, according to Mrs. Wood, highly resembles prison. Janny Scott, *Sex Offender Due for Parole, But No Place Will Have Him*, N.Y. TIMES, Sept. 19, 1994, at A1, B7. In Washington, convicted sex offender Craig A. Anderson was held for five months beyond his parole date simply because no landlord would accept him. He has since moved to a halfway house. Hooker, *supra* note 32, at A-6. Seventy-four-year-old sex offender Joe Caro, Jr. selected Chino, California as the place where he wanted to live after his release from prison. Jill Gottesman, *Downey Blocks Plan for Molester*, L.A. TIMES, July 16, 1994, at B3. Police and school officials, however, blocked this move by arguing that the motel in which Caro was to reside was near "two preschools, a church, a liquor store and an adjacent large apartment complex in which several children reside." *Id.* at B8.

[53] Employers have rejected Alan Groome for every job for which he has applied. Golden, *supra* note 45, at 24.

leaving sex offenders to look for employment elsewhere.[54] Community notification laws, therefore, provide community members with a powerful weapon. Community members can use these laws to prevent convicted sex offenders from entering their community or to force convicted sex offenders out of their community.[55]

Convicted sex offenders who relocate due to community notification laws tend to relocate to areas that do not have such laws[56] or to areas that do not strictly enforce their notification laws.[57] These areas attract sex offenders because offenders can achieve a level of anonymity within them.[58] In particular, sex offenders find large cities and inner city areas attractive because law enforcement agencies in these areas usually lack the time and

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[54]John Curtis Peterson lost three jobs before he finally decided to leave Washington. Keene, *supra* note 28; at A14. David Lewis, a released sex offender living in Sussex County, New Jersey, lost his job as a construction worker when authorities notified the community of his past. As a result, Lewis decided to move to California, a state which does not subject convicted sex offenders to community notification. Mike Kelly, *Fleeing the Law*, RECORD, Dec. 13, 1994, at C-1.

[55] Community members have chased Martin Bruce, a convicted sex offender who sexually assaulted a 10-year-old girl, out of three towns since his release from prison. Aun, *supra* note 20, at 1. In two of the towns, community members protested outside of Bruce's hotel room. He remained in the last town for only 12 to 18 hours before he fled. Aun, *supra* note 20, at 14.

[56] After neighbors burned Joseph Gallardo's home in Washington, he moved to Deming, New Mexico to live with his brother. New Mexico does not require authorities to notify community members of convicted sex offenders. Davis & Glamser, *supra* note 43, at 2A. Deming residents, however, learned of Gallardo's arrival and protested. Gallardo and his brother eventually fled Deming. *Gallardo Forced Out*, *supra* note 42, at B1. The Violent Crime Control and Law Enforcement Act of 1994, which was signed into law by President Bill Clinton on September 13, 1994, requires every state to establish a registry of sex offenders. *See* H.R. 3355, 103d Cong., 2d Sess. (1994) (enacted), *reviewed by* Memorandum from the American Civil Liberties Union to Interested Persons 16 (Sept. 13, 1994) (on file with *Journal of Law and Policy*) [hereinafter ACLU Memo]. States that fail to create a registry and provide for community notification will lose 10% of their funding under the crime bill. *Id.*

[57] Golden, *supra* note 45, at 34.

[58] Spinner, *supra* note 31.

resources to enforce community notification laws.[59] As a result, large cities and inner city areas have become havens for migrating sex offenders.[60]

Unfortunately, legislators passed Megan's Law without appropriating any funds for its enforcement.[61] As a result, law enforcement agencies will have to assume the monumental task of informing residents of convicted sex offenders and keeping track of these offenders with existing funds. Middle- and upper-middle-class neighborhoods, which do not suffer from high levels of crime or a lack of funding, can successfully enforce Megan's Law.[62] Success in these regions, however, will drive convicted sex offenders into low-income areas where crime proliferates.[63] Without the proper funding and manpower, large cities and low-income areas cannot enforce Megan's Law.[64] Thus, community notification laws enable middle- and upper-class communities to pick and choose their neighbors, while these same laws force potentially dangerous, convicted sex offenders to areas that simply lack the money and political clout to object.[65] Community notification laws, therefore, serve as a tool for "organized or politically astute" communities to transfer the problem of child sexual abuse to communities that are ill-equipped to deal with it.[66]

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[59] Spinner, *supra* note 31.

[60] "If a sex offender can find obscurity anywhere in Washington, it is in Seattle, the largest city. Seattle police have not released the addresses of offenders since 1990." Golden, *supra* note 45, at 35. Sex offenders, therefore, "gravitate to the inner city areas." Spinner, *supra* note 31. New Jersey's inner cities, such as Trenton, Newark, Perth Amboy and Paterson, are already overridden with crime and suffer from a lack of funding. Spinner, *supra* note 31.

[61] Sullivan, *supra* note 19, at B6. Governor Whitman has promised to allocate funds to this program in next year's budget even though such an allocation of funds contradicts her platform to reduce spending. Sullivan, *supra* note 19, at B6.

[62] *See* Spinner, *supra* note 31.

[63] *See* Spinner, *supra* note 31.

[64] Spinner, *supra* note 31.

[65] *See* Spinner, *supra* note 31.

[66] *See* Michelle Ruess, *Haytaian Gets Jump on Sex-Offender Bills Pushing Package to Full Assembly for Vote*, RECORD, Aug. 15, 1994, at A-16.

C. *Failure to Reassimilate*

Criminal offenders have varying degrees of difficulty in readjusting to society depending upon the nature of the crime committed.[67] Although released offenders have supposedly paid their debt to society, society tends to attach negative stigmas to offenders long after their release from prison. These stigmas interfere with an offender's ability to secure employment,[68] find a place to live[69] and resume a normal life. Community notification laws reinforce these stigmas by branding convicted sex offenders as dangerous and uncontrollable. These laws resemble the practice of scarlet letter sentencing used during the Middle Ages and colonial America.[70] Community notification laws not only

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[67] *See* Spinner, *supra* note 31. "If we're talking about finding ways of reintegrating convicted offenders into society, that's always been a problem . . . ." Aun, *supra* note 20, at 14.

[68] Spinner, *supra* note 31; *see also supra* notes 53-54 and accompanying text.

[69] *See supra* notes 50, 52 and accompanying text.

[70] Scarlet letter sentencing was the "practice of labeling a criminal with symbols or words expositive of the offense committed . . . ." Rosalind K. Kelley, *Sentenced to Wear the Scarlet Letter: Judicial Innovations in Sentencing - Are They Constitutional?*, 93 DICK. L. REV. 759, 760 (1989). For example, in 1656 in Plymouth, Massachusetts, a woman was punished for her blasphemous words by having a "Roman B cutt out of ridd cloth . . . [sown] to her vper garment on her right arm in sight." *Id.* at 759 (quoting ALICE M. EARLE, CURIOUS PUNISHMENTS OF BYGONE DAYS 88 (1896)). In 1633, a Boston man was punished for his drunkenness by standing with a "white sheet of paper on his back wheron Drunkard [was] written in great Ires . . . ." *Id.* Penologists have long declared such methods of punishment as an "archaic and unacceptable means of dealing with anti-social behavior." *Id.* at 760. Modern courts, however, have ordered offenders to wear labels that expose their crimes. For instance, a Florida court sentenced a man convicted of driving under the influence of alcohol to affix a bumper sticker on his vehicle which read, "CONVICTED DUI—RESTRICTED LICENSE." *Id.*, *quoted in* Goldschmitt v. State, 490 So. 2d 123 (Fla. Dist. Ct. App.) (per curiam), *appeal denied*, 496 So. 2d 142 (Fla. 1986). An Oregon court ordered a convicted child molester to post a sign on both of his car doors and also above the front door of his home that read, "DANGEROUS SEX OFFENDER—NO CHILDREN ALLOWED." *Id.*

interfere with an offender's attempt to resume a normal life,[71] but they also prevent sex offenders from reintegrating with society.[72] Community notification laws also prohibit sex offenders from reassimilating into society because they "prevent sex offenders from letting go of their past."[73] While sex offenders should never forget about the crimes that they committed and those that they harmed, they deserve the chance to rebuild their lives.[74] Community notification laws, however, prevent community members from accepting convicted sex offenders back into society.[75]

Ostracizing sex offenders yields counterproductive results in dealing with child sexual abuse. Generally, pedophiles have difficulty relating to adults and look to children for companionship and sexual gratification.[76] By ostracizing sex offenders, community members may reinforce their attraction toward children.[77] In addition, the stress generated by community notification laws may actually compel offenders to reoffend.[78] Studies indicate that certain emotions, such as "frustration, anger, or sadness," trigger deviant behavior.[79] Community notification laws stir these emotions in sex offenders and trigger deviant behavior.

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[71] *Offender's Fear*, *supra* note 30, at A-4.

[72] *Mother's Plea*, *supra* note 14, at A-30.

[73] Spinner, *supra* note 31.

[74] *See* ACLU Memo, *supra* note 56, at 17.

[75] ACLU Memo, *supra* note 56, at 17.

[76] "[M]any pedophiles select children as sexual objects because youths are less demanding, more easily dominated, and less critical of their partners' performance than are adults." HOLMES, *supra* note 39, at 38 (citing BARRY R. BURG, SODOMY AND THE PERCEPTION OF EVIL: ENGLISH SEA ROVERS IN THE SEVENTEENTH-CENTURY CARIBBEAN (1983)).

[77] HOLMES, *supra* note 39, at 38.

[78] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3. For example, Jerry Robert Sharp, convicted of raping a 10-year-old boy, went on a rampage after his photograph appeared on the local television news. Sharp tried to lure several boys into his car before he picked up a developmentally disabled boy outside of a bowling alley. Two men rescued the boy before Sharp drove away with him. Sharp was convicted of attempted kidnapping and sent back to prison. Golden, *supra* note 45, at 36.

[79] In some cases, these emotional reactions may initiate a chain of behaviors that lead to sexual abuse. BARRY M. MALETZKY, TREATING THE SEXUAL OFFENDER 153 (1991).

II. THE FAILINGS OF MEGAN'S LAW

Beyond the inherent defects in community notification laws,[80] Megan's Law particularly fails to achieve the goal that community members and legislators proposed. Legislators passed Megan's Law in response to the public's desire to know whether convicted sex offenders lived in their communities. Not all convicted sex offenders, however, will fall within the reach of Megan's Law's

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[80] The New Jersey legislative process presents overwhelming evidence that legislators did not consider the ill-effects of community notification laws. The Assembly, for example, passed a community notification law within a month of Megan Kanka's death. Gray, *supra* note 18, at B6. No committee hearings were held, even though they are a customary practice, because Assembly Speaker Chuck Haytaian called for an expedited process to deal with the emergency situation presented by sex offenders. *See* Gray, *supra* note 18, at B6; *see also* Mendez, *supra* note 12, at 1. While this expedited process appeased outraged constituents, several assembly members questioned the need for an expedited process and criticized the legislation that it produced. Mendez, *supra* note 12, at 1; *see also Megan's Law Signed*, *supra* note 15, at A-5. Civil liberties groups, such as the New Jersey Chapter of the American Civil Liberties Union, criticized the Assembly for not consulting experts. *See* Ron Marsico, *Notification on Sex Offenders Passes Key Senate Committee*, STAR LEDGER, Aug. 30, 1994, at 26. Although the Senate held hearings on the bill, it was evident that it would pass a community notification law with only token debate. *See* Gray, *supra* note 18, at B6. Similar to the Assembly, the Senate stifled opposition to Megan's Law. *See What Kosco Says, Goes*, RECORD, Sept. 4, 1994, at A-33.

In addition, when compared to other states that have passed community notification laws, it is evident that the New Jersey Legislature failed to perform an exhaustive review of the subject. Similar to New Jersey, Washington passed a community notification law in response to tragedy. David Boerner, *Confronting Violence: In the Act and in the Word*, 15 U. PUGET SOUND L. REV. 525, 526 (1992); *see* WASH. REV. CODE. ANN. § 4.24.550 (West Supp. 1993). Before Washington passed any legislation, Governor Booth Gardner set up a task force to study and recommend a release policy for convicted sex offenders. The task force held public hearings across the state to hear the opinions of citizens. The task force also consulted a number of experts in the field and analyzed recent studies on the subject of sexual abuse. Norm Maleng, *The Community Protection Act and the Sexually Violent Predators Statute*, 15 U. PUGET SOUND L. REV. 821, 821 (1992). Washington's notification and registration laws have withstood constitutional scrutiny. *See* Washington v. Ward, 869 P.2d 1062 (Wash. 1994) (en banc).

community notification provision[81] and even if they do, these sex offenders can easily defeat Megan's Law.[82] Therefore, Megan's Law fails to provide New Jersey residents with adequate protection against child sexual abuse.

A. Predictions of Dangerousness

Megan's Law provides for varying degrees of notification depending upon the degree of risk that a sex offender poses to society.[83] Megan's Law divides sex offenders into three risk categories of reoffenders: high, moderate and low.[84] Law enforcement officials will only notify community members of released sex offenders who present a high risk of reoffending.[85] Although the

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[81] Megan's Law only requires authorities to inform community members of high risk offenders. N.J. STAT. ANN. § 2C:7-6. The U.S. District Court for the District of New Jersey, however, ruled that community members and community organizations will not be notified of offenders who were sentenced prior to the enactment of Megan's Law. *See* Artway v. Attorney Gen., No. 94-6287, 1995 U.S. Dist. LEXIS 2403, at *92 (D.N.J. Feb. 28, 1995).

[82] For example, sex offenders may move frequently and fail to notify authorities of their whereabouts. Martone, *supra* note 38, at 2.

[83] N.J. STAT. ANN. § 2C:7-8(c); *see also Mother's Plea, supra* note 14, at A-1.

[84] N.J. STAT. ANN. § 2C:7-8(c); *see also Mother's Plea, supra* note 14, at A-1.

[85] "If the risk of re-offense is high, the public shall be notified through means in accordance with the attorney general's guidelines designed to reach members of the public likely to encounter the registered . . . ." N.J. STAT. ANN. § 2C:7-8(c)(3). Governor Whitman has urged authorities to notify community members of only the most dangerous offenders. *Bill Garners Wide Support, supra* note 13, at A-14. Governor Whitman and legislators appointed members to an advisory panel that worked with the attorney general to establish guidelines for community notification. Governor Whitman selected Maureen Kanka and Karen Wengert to serve as members of the advisory board. The daughters of both women were killed by convicted sex offenders. Ivette Mendez, *Officials Name Panel for Sex Offender Rules*, STAR LEDGER, Nov. 3, 1994, at 30. The guidelines, issued on December 20, 1994, apply to all 21 county prosecutors in New Jersey. Under the guidelines, law enforcement officials may provide neighbors with the "name, physical description, and criminal history of any sex offender—even a juvenile" if prosecutors determine that the offender presents a high risk of re-offense. Notification form lists will include the "offender's

three-tiered system of community notification remains, a New Jersey Superior Court judge recently criticized its implementation.[86] Megan's Law, as passed, authorizes "[t]he county prosecutor of the county where the [offender] was convicted and the county prosecutor of the county where the [offender] will reside, . . . [to] assess the risk of re-offense by the [offender] . . . ."[87] These prosecutors will consider a number of factors to determine an offender's risk level. These factors include:

> (1) . . . [W]hether the offender is under supervision of probation or parole; receiving counseling, therapy or treatment; or residing in a home situation that provides guidance and supervision; (2) Physical conditions that minimize risk of re-offense, including but not limited to advanced age or debilitating illness; (3) Criminal history

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physical description, type of vehicle, license plate number, address, and place of employment." Michelle Ruess, *State Gives Shape to Megan's Law*, RECORD, Dec. 21, 1994, at A-1, A-12.

[86] Superior Court Judge Harold B. Wells III cast doubt upon the existing implementation of Megan's Law. *See* Doe v. Poritz, No. 1-5-95, slip op. (N.J. Super. Ct. Law Div. Feb. 22, 1995). He held that judges, not prosecutors, should determine the risk level of sex offenders. Elizabeth Moore, *Megan's Law Mired in Judicial Conflict*, STAR LEDGER, Mar. 2, 1995, at 1. Judge Wells stated:

> [T]he delegation to the county prosecutors to decide the risks presented by a discharged sex offender like Doe, for regulative and non-punitive public notification purposes, without any of the usual formalities attendant to Court proceedings, is overboard, vests the decision in a partisan official and simply does not accord Doe procedural due process.

Doe, slip op. at 30-31.

U.S. District Court Judge Nicholas H. Politan was troubled by the implementation of Megan's Law, but he did not decide whether judges or prosecutors should determine which sex offender should be subjected to community notification. Artway v. Attorney Gen., No. 94-6287, 1995 U.S. Dist. LEXIS 2403, at *14 n.7 (D.N.J. Feb. 28, 1995).

[87] N.J. STAT. ANN. § 2C:7-8(d)(1). The costs associated with assessing the risk of sex offenders will be paid from existing funds. Similar to the community notification and registration procedures, the state has given a mandate for enforcement, but has not provided any funds to cover the costs of these programs. Ivette Mendez, *Sex Offender Measures Go to Governor*, STAR LEDGER, Oct. 21, 1994, at 1, 18.

> factors indicative of high risk of re-offense including: (a) Whether the offender's conduct was found to be characterized by repetitive and compulsive behavior; (b) Whether the offender served the maximum term; (c) Whether the offender committed the sex offense against a child. (4) Other criminal factors to be considered in determining risk, including: (a) The relationship between the offender and the victim; (b) Whether the offense involved the use of a weapon, violence, or infliction of serious bodily injury; (c) The number, date and nature of prior offenses; (5) Whether psychological or psychiatric profiles indicate a risk of recidivism; (6) The offender's response to treatment; (7) Recent behavior . . . ; and (8) Recent threats against persons or expressions of intent to commit additional crimes.[88]

Superior Court Judge Wells declared this method of implementing Megan's Law void.[89] In addition, he vacated the guidelines established by the attorney general, in consultation with an advisory board, because they were adopted improperly.[90] Notwithstanding whether a county prosecutor or a judge determines the risk level of sex offenders, the inaccuracy inherent in risk assessment remains.

Much debate has centered on whether trained professionals can accurately predict whether sex offenders will reoffend.[91] Critics contend that trained professionals cannot accurately predict an

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[88] N.J. STAT. ANN. § 2C:7-8(b).

[89] *Doe*, slip op. at 30-35. Carter, *supra* note 25, at 1. Judge Wells stated that prosecutors alone should not determine which sex offenders' identities to make public. Carter, *supra* note 25, at 1. "[T]he proper role of the prosecutor is that of presenter of the relevant evidence while leaving to the Court, under appropriate guidelines, the final judgment as to the degree of risk and the level and manner of notification." *Doe*, slip op. at 31.

[90] *Doe*, slip op. at 32-35; Carter, *supra* note 25, at 18.

[91] Marie A. Bochnewich, *Prediction of Dangerousness and Washington's Sexually Violent Predator Statute*, 29 CAL. W. L. REV. 277, 279 (1992). This debate arose when Washington passed the Washington Sexually Violent Predator Statute. WASH. REV. CODE ANN. § 71.09.010 (West 1992). This statute imposes civil commitment on offenders found to have a propensity to reoffend. *Id.* A panel of mental health professionals who evaluate the offenders predict whether the offenders will reoffend in the future. Bochnewich, *supra*, at 277.

offender's propensity to reoffend and thus warn against using professionals to determine which sex offenders' identities to reveal.[92] Studies indicate that predictions of an offender's dangerousness or propensity to reoffend average a one-third accuracy rate.[93] In other words, predictions of dangerousness are inaccurate an average of two out of every three cases.[94] The above factors create an arbitrary system in which some convicted sex offenders will fall into the category of high risk offenders while others will not.[95] Thus, potentially dangerous sex offenders may escape community notification under Megan's Law and live anonymously in New Jersey communities.

B. Reliance on Sex Offender Cooperation

The success of Megan's Law ultimately depends upon the cooperation of convicted sex offenders.[96] Before the process of community notification begins, a convicted sex offender must register the address at which the offender plans to reside.[97]

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[92] Dr. Daniel Greenwald, president of the New Jersey Psychiatric Association, stated "[I]t's really impossible for psychiatrists to know [whether a] person is no longer dangerous." Michelle Ruess, *Hard to Say Which Sex Offenders Pose Threat, Experts Say*, RECORD, Aug. 25, 1994, at A-3 [hereinafter *Hard to Say*].

[93] Bochnewich, *supra* note 91, at 293-94.

[94] Bochnewich, *supra* note 91, at 294.

[95] *See* Bochnewich, *supra* note 91, at 279. "In any kind of legislation, it must be clear who is to be subject to its regulation." *Violent Predator Incapacitation Act of 1993: Hearings on S-320 Before the Senate Judiciary Committee on S-320*, 206th Leg., 1st Reg. Sess. 2 (1994) (statement of Karen J. Spinner, director of Public Education and Policy for the New Jersey Association on Correction) [hereinafter *Senate Hearings on S-320*]. Although Ms. Spinner's comments were directed at New Jersey's Violent Predator Incapacitation Act, they are applicable to the ambiguity in Megan's Law. The Violent Predator Incapacitation Act mandates that offenders who commit certain sexual offenses will receive in addition to their sentence, a "special sentence of community supervision . . . ." N.J. STAT. ANN. § 2C:43-6.4.

[96] The "entire notification process depends on the ex-offenders cooperation . . . . [When] he moves to another town [and] fails to give his whereabouts . . . [he] once again becomes anonymous." Martone, *supra* note 38, at 2.

[97] N.J. STAT. ANN. § 2C:7-1. This provision established a registration system

Thereafter, the offender has a duty to update his whereabouts every time that he moves to a new location.[98] If an offender obeys the duty to register, the state will always know the location of the

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which "permit[s] law enforcement officials to identify and alert the public when necessary for the public safety" and also "provide[s] law enforcement [officials] with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons." The bill is retroactive and applies to any person who has been "convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense . . . ." N.J. STAT. ANN. § 2C:7-2(a). A sex offense includes:

> (1) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; certain kidnapping offenses if the victim is under age 16, or an attempt to commit any of these crimes if the court found the offender's conduct was characterized by a pattern of repetitive, compulsive behavior;
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> (2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual contact; aggravated criminal sexual contact; criminal sexual contact; kidnapping; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child; endangering the welfare of a child; luring; criminal restraint or false imprisonment if the victim is a minor and the offender is not the parent of the victim; or an attempt to commit any such offense . . . .

SENATE LAW AND PUBLIC SAFETY COMMITTEE, REPORT ON SEX OFFENDER REGISTRATION 1 (1994). Any offender found guilty of such an offense who fails to register is guilty of a crime of the fourth degree. N.J. STAT. ANN. § 2C:7-2(a). Although community notification has been successfully challenged by sex offenders, the registration law has been upheld in its entirety. Artway v. Attorney Gen., No. 94-6287, 1995 U.S. Dist. LEXIS 2403, at *92 (D.N.J. Feb. 28, 1995); *see also* Carter, *supra* note 25, at 1; Rudolph, *supra* note 26, at 1.

[98] If a sex offender's address changes, the offender must "notify the law enforcement agency with which the person is registered and must re-register with the appropriate law enforcement agency no less than 10 days before he intends to first reside at his new address." N.J. STAT. ANN. § 2C:7-2(d). In addition, depending upon the sex offense committed, the offender must verify his address either every 90 days or annually "in a manner prescribed by the attorney general . . . ." An offender "may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later . . . ." N.J. STAT. ANN. § 2C:7-2(f).

offender. Convicted sex offenders, however, can easily defeat Megan's Law by failing to register with the proper authorities.[99] For example, close to twenty percent of the state's sex offenders in Washington have not registered.[100] Almost seventy-five percent of the sex offenders in California have failed to register.[101] In addition, sex offenders can evade the registration process by registering under a phony address.[102] It is difficult to locate a sex offender once a state loses track of the person.[103] Most law enforcement agencies lack the resources to keep track of convicted sex offenders.[104] Sex offenders further complicate this process by

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[99] Bruno Tedeschi, *Critics Decry Efforts to Register Molesters Claim Voluntary Aspect Makes Law Toothless*, RECORD, Sept. 22, 1994, at B-1; Martone, *supra* note 38, at 2. Sex offenders have already refused to register. Defense attorney John Furlong stated that his clients would not register without a court order. Steve Adubato, Jr., *Megan's Law Seems Simple but Is It Workable?*, RECORD, Nov. 8, 1994, at D-7.

[100] This statistic from August 1993 is the latest available. Hooker, *supra* note 32, at A-6. In the wake of the gubernatorial election, Democratic gubernatorial candidate Kathleen Brown claimed that California has nearly 49,000 sex offenders unaccounted for. Bill Stall & Cathleen Decker, *Candidates' Crime Proposals Called Unrealistic*, L.A. TIMES, Aug. 11, 1994, at A29.

[101] Aun, *supra* note 20, at 14. California established its registration program close to 40 years ago. Kenneth Reich, *Sex Offender Registration Not Working, Experts Say*, L.A. TIMES, Aug. 8, 1986, at 1. Penalties for failing to register have not deterred convicted sex offenders from violating the law. Aun, *supra* note 20, at 14.

[102] *See* Don Hannula, *What Good Are New Laws If They're Not Enforced*, SEATTLE TIMES, Aug. 19, 1993, at B4. In response to several instances of convicted sex offenders providing authorities with phony addresses since the enactment of Megan's Law, prosecutors admitted that in the future they need to verify the addresses given by released sex offenders. Jerry DeMarco, *Flaws Surface In Megan's Law*, RECORD, Jan. 12, 1995, at A-15. In California in 1986, thousands of sex offenders failed to register despite penalties for failing to do so. A large number of offenders who registered initially did not re-register when they moved. In addition, many of the addresses that sex offenders gave to the authorities were incorrect. Reich, *supra* note 101, at 1.

[103] *See* Marla Williams, *Where Are Sex Offenders?*, SEATTLE TIMES, Aug. 30, 1990, at A1, A16.

[104] Sergeant Dwight Chamberlain of the King County (Wash.) Police Special Assault Unit said that his unit would track down unregistered sex offenders if it had the necessary resources. *Id.* at A1. He added, "A lot of times, it gets down to a question of, do we try to solve a crime or try to find some guy that hasn't

moving frequently.[105] Even though the failure to register subjects a sex offender to a crime of the fourth degree,[106] the negative consequences that ensue from the registration process greatly outweigh any deterrent effect that this penalty might have.[107] Thus, some convicted sex offenders completely bypass Megan's Law by failing to register or registering under a phony address.

In addition, convicted sex offenders may defeat Megan's Law by committing crimes outside of the notified community.[108] Megan's Law only authorizes the release of information concerning high-risk sex offenders to "members of the public likely to encounter the person registered . . . ."[109] Megan's Law does not require law enforcement officials to notify surrounding communities, presuming that convicted sex offenders will only reoffend within the notified community. Released sex offenders, however, who experience a compulsion to offend, will find a victim regardless of whether the victim resides in a notified or unnotified community.[110]

C. *False Sense of Security*

Megan's Law offers New Jersey residents a false sense of security because the law focuses on a class of offenders who commit a small percentage of the sexual crimes against children.

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registered? . . . And as valuable as I think the sex-offender registry is, my answer has to be, stay on the case." *Id.*

[105] Wurzer, *supra* note 47, at B3.

[106] N.J. STAT. ANN. § 2C:7-2(a).

[107] Once sex offenders realize that registering with authorities could mean a "lost job or apartment or worse," they will refuse to register. Martone, *supra* note 38, at 2. For example, Gary Ridgway, a convicted sex offender, registered with the proper authorities in Thurston County, Washington, upon release from prison. Local authorities passed out fliers with Ridgway's face and criminal history. Soon thereafter, Ridgway's landlord evicted him from his trailer home. Ridgway stated that he would register his new address one more time and after that, "it's 'the hell with their [notification] program.'" Hooker, *supra* note 32, at A-6.

[108] Wurzer, *supra* note 47, at B3.

[109] N.J. STAT. ANN. § 2C:7-8(c)(3).

[110] Wurzer, *supra* note 47, at B3.

After the death of Megan Kanka, New Jersey residents demanded the right to know if convicted sex offenders lived in their community.[111] Megan's Law, therefore, focuses on dangerous offenders who lurk about anonymously in communities. Contrary to public belief, pedophiles usually know their victims and are often related to their victims.[112] Pedophiles who know their victims commit at least 75% of the child sexual abuse cases, whereas strangers commit at most 25% of the child sexual abuse cases.[113] Unbeknownst to parents, their children have a greater risk of being sexually abused by a relative or a friend of the family than by a stranger.[114] For example, in 1986, the National Incidence Study found that parents or caretakers endangered 155,300 children by sexual abuse.[115] Thus, by focusing on the notion that sex

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[111] Dill, *supra* note 5, at A-3.

[112] "[M]ost sex offenders are family members or acquaintances." Keene, *supra* note 28, at A14.

[113] VINCENT DEFRANCIS, PROTECTING THE CHILD VICTIM OF SEX CRIMES COMMITTED BY ADULTS 69 (1969). "On average, each incest pedophile commits from 35-45 acts against one or two children." DEBRA WHITCOMB, WHEN THE VICTIM IS A CHILD 4 (2d ed. 1992). Although incest pedophiles may repeatedly abuse their victims, psychologists usually do not consider them dangerous. *See* HOLMES, *supra* note 39, at 34. "It is a myth that all pedophiles cause either physical or emotional permanent damage." HOLMES, *supra* note 39, at 34. Studies show that sexually abused children often suffer greater negative psychological impact due to their parents' reaction to the crime, rather than from the crime itself. HOLMES, *supra* note 39, at 34.

[114] One study conducted in Snohomish County, Washington, revealed that out of 1,058 felonious sexual assaults against children between 1989 and 1992, 43% were committed by teachers, coaches and other acquaintances; 22% were committed by natural parents; 15% were committed by other relatives; 9% were committed by stepparents; and 4% were committed by strangers. Keene, *supra* note 28, at A14.

[115] NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, STUDY FINDINGS: STUDY OF NATIONAL INCIDENCE AND PREVALENCE OF CHILD ABUSE AND NEGLECT 4-7 (1988), *discussed in* WHITCOMB, *supra* note 113, at 2. Due to technical error, this number was revised to 133,600. *See* A.J. SEDLAK, TECHNICAL AMENDMENT TO THE STUDY FINDINGS - NATIONAL INCIDENCE AND PREVALENCE OF CHILD ABUSE AND NEGLECT: 1988 (1990). "Despite . . . seemingly strong taboo against incest, evidence indicates that it occurs with surprising frequency . . . ." JEFFREY J. HAUGAARD & N.D. REPPUCCI, THE SEXUAL ABUSE OF CHILDREN 108 (1988). Studies indicate that "approximately

offenders do not know their victims, Megan's Law fails to protect children from their most frequent sexual abusers—their friends and relatives.

In addition, Megan's Law offers a false sense of security because it applies only to those convicted sex offenders who prosecutors believe pose a high risk of reoffending. High risk offenders make up only five percent of the pedophile population.[116] Law enforcement agencies cannot notify community members when moderate or low risk offenders intend to move into their communities,[117] nor can authorities guarantee that these offenders will not reoffend.[118] Furthermore, law enforcement agencies can neither detect nor warn communities about first-time offenders.[119] Law enforcement officials also cannot notify community members of those sex offenders who have escaped conviction. Thus, the majority of pedophiles escape the community notification

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1% of children in the United States today (or about one-half to one million children) are involved in an incestuous relationship with a parent or parent figure, and many believe that this is an underestimation . . . ." *Id.* Agencies cannot determine the exact number of incestuous relationships mainly because children and parents fail to report such crimes. WHITCOMB, *supra* note 113, at 4. Several barriers prevent children from reporting crimes of incest. For example, young children may not know how to express that someone has violated them or they may simply not understand that someone has violated them. Older children may not report such incidents because they are embarrassed or "threatened into silence." WHITCOMB, *supra* note 113, at 4. Ironically, when a child does confide in an adult about the abuse, the adult may dismiss the child's statement as "fantasy or outright lies." WHITCOMB, *supra* note 113, at 4. Even when an adult believes the child, the adult rarely reports the incident to the proper authorities. WHITCOMB, *supra* note 113, at 4. A Boston study revealed that out of 48 families in which parents knew of their child's abuse, only 56% of the parents reported the case to the authorities. WHITCOMB, *supra* note 113, at 4 (citing David Finkelhor, *Child Sexual Abuse in a Sample of Boston Families*, *in* CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH (1984)). A second study revealed that out of 156 families who knew of their child's abuse, only 38% of the families reported the incident to the authorities. WHITCOMB, *supra* note 113, at 4 (citing A.P. Cardarelli, *Child Sexual Abuse: Factors in Family Reporting*, 209 NIJ REPORTS 1, 9-12 (1988)).

[116] *See* Sullivan, *supra* note 19, at B1.

[117] N.J. STAT. ANN. § 2C:7-8(c).

[118] *Hard to Say*, *supra* note 92, at A-3.

[119] *See* Spinner, *supra* note 31.

requirement of Megan's Law, whose underinclusiveness defeats any preventative effect that the law may have had. Amending Megan's Law to include all of the aforementioned possibilities, however, would not overcome the fact that community notification laws drive convicted sex offenders underground rather than prevent them from reoffending.[120]

III. ALTERNATIVE SOLUTIONS

In their zeal to appease residents, New Jersey legislators proposed and passed Megan's Law without considering treatment alternatives to prevent incidents of child sexual abuse.[121] Sex offender treatment programs offer New Jersey residents an effective weapon against child sexual abuse. Treatment programs prevent incidents of child sexual abuse by enabling sex offenders to control their deviant urges.[122] Without such treatment, sex offenders are more likely to reoffend.[123]

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[120] A recent telephone survey indicated that 83% of New Jersey citizens polled believed that authorities should notify them when any sex offender moves into their community. *Bill Garners Wide Support*, *supra* note 13, at A-1. Only 13% believed that authorities should notify them when a high risk offender moves into the community. *Bill Garners Wide Support*, *supra* note 13, at A-1, A-14. The poll was based on the response of 1,066 New Jersey residents and the margin of error was estimated at 4%. *Bill Garners Wide Support*, *supra* note 13, at A-1, A-14.

[121] Legislators may have ignored treatment issues because previous studies concluded that sex offender treatment programs failed to rehabilitate sex offenders. Dr. William Pithers, director of Vermont's sex offender program, argues that the previous "treatment programs were based on methods so completely outdated that the conclusions are irrelevant." Goleman, *supra* note 31, at C11. A legislative task force is currently studying Avenel's treatment of sex offenders. The task force has not yet revealed its findings. Legislators, therefore, did not have the opportunity to consult these finding when they proposed and passed Megan's Law. Jeffrey Gold, *Lawmakers Tour Avenel Center for Sex Offenders*, RECORD, Aug. 26, 1994, at A-4.

[122] Goleman, *supra* note 31, at C1.

[123] Martone, *supra* note 38, at 2.

A. Rehabilitation

New Jersey focuses on punishment, rather than rehabilitation, as a method of preventing incidents of child sexual abuse.[124] Under current law, when a court convicts a person of a "sexual offense,"[125] the court sends the offender to Avenel for a psychiatric evaluation.[126] Avenel recommends whether the court should send the offender to Avenel for treatment or to a regular correctional facility.[127] When a correctional facility releases a sex offender for

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[124] Revisions in the New Jersey Code indicate that the state seeks to punish rather than to rehabilitate sex offenders. Peter Martindale, *It May Be Sick, But Is It Criminal?*, RECORD, Feb. 28, 1993, at RO-2. Before 1979, sex offenders who participated in therapy could qualify for early release through parole. The 1979 revisions, however, restricted early parole and thus reduced the incentive to participate in therapy. Michelle Ruess, *Tougher Sex-Crime Laws Can Backfire, Critics Say*, RECORD, Sept. 18, 1994, at A-8 [hereinafter *Tougher Sex-Crime Laws*]. In an effort to encourage sex offenders to participate in therapy, legislation was passed which provides that no inmate confined to Avenel would be eligible for "good behavior" credits unless they fully cooperate with all treatment offered during their confinement. N.J. STAT. ANN. § 2C:47-8.

[125] Such an offense is defined as "aggravated sexual assault, sexual assault, or aggravated criminal sexual contact, or any attempt to commit any such crime." N.J. STAT. ANN. § 2C:47-1 (West 1982).

[126] *Id.*

[127] Avenel recommends that courts send offenders who exhibit conduct characterized by "a pattern of repetitive, compulsive behavior" to Avenel for treatment. N.J. STAT. ANN. § 2C:47-3 (West 1982). Section 2C:47-3 does not define "repetitive compulsive." It stands for a certain pattern of conduct in the offender which makes the offender a danger to society. *See* State v. Hass, 566 A.2d 1181, 1182 (N.J. Super. Ct. 1988) (one criminal act accompanied by subsequent sexual fantasies, constituted repetitive, compulsive behavior). Avenel recommends that courts send offenders who do not exhibit such behavior to regular correctional facilities. N.J. STAT. ANN. § 2C:47-3. The statute, however, does not bind courts to follow Avenel's recommendation. The court may send a repetitive compulsive offender to a state correctional facility, but the court may not send an offender to Avenel unless his conduct is characterized as repetitive compulsive. *Id.*

Juvenile sexual offenders receive different treatment than adults. When a juvenile commits a sexual offense, courts usually put the juvenile on probation or send the juvenile to a group home or detention center. New Jersey presently operates one treatment center for juvenile sex offenders. It houses about 18

good behavior, or when the offender's sentence is completed, the offender leaves prison virtually unrehabilitated.[128] Sex offenders sent to Avenel may also leave the facility untreated.[129] Despite Avenel's reputation as a sex offender treatment facility, it does not make treatment its first priority.[130] For example, Avenel does not require sex offenders to attend or participate in therapy.[131] Sex

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offenders. Martone, *supra* note 38, at 1. The lack of treatment for juvenile sex offenders feeds into the current problem facing New Jersey because studies show that juvenile offenders go on to become adult offenders. Martone, *supra* note 38, at 1. Studies indicate that more than 50% of adult child molesters and rapists began committing sex offenses as adolescents. Mareva Brown, *When Kids Molest Kids, State's Justice System Stumbles*, SACRAMENTO BEE, Oct. 31, 1993, at A16.

[128] Fay Honey Knapp, director of the Safer Society Program in Orwell, Vermont, a national referral service for sex offender treatment programs, stated that over 75% of the incarcerated sex offenders receive no treatment. Goleman, *supra* note 31, at C1.

[129] *See* Russ Bleemer, *To Treat or to Punish?*, N.J.L.J., Dec. 7, 1992, at 1. Critics of Avenel, including Avenel employees, argue "that the center is doing little to rehabilitate. Instead, inmates serve out their maximum sentence and then are returned to the streets without a clean bill of health and without further supervision." *Id.*

[130] Avenel is not a physiatric hospital, but rather an extension of New Jersey's correctional system. Martindale, *supra* note 124, at RO-2. When Avenel began treating sex offenders in 1976, however, it "functioned as an around-the-clock therapeutic community that mixed education with rehabilitation. It provided inmates with individual and small group therapy—sometimes on a daily basis . . . ." Glovin, *supra* note 12, at A-10. Presently, Avenel is one of the worst sex offender treatment facilities in the country. Glovin, *supra* note 12, at A-1. Budgetary constraints and overcrowding has weakened Avenel's ability to treat its inmates. *See* Glovin, *supra* note 12, at A-10. Avenel houses 703 inmates, yet employs only 17 therapists. Each therapist, therefore, cares for 47 inmates. Ivette Mendez, *Avenel Staffers Say Tight Budget Hinders Sex Offender Treatment*, STAR LEDGER, Nov. 2, 1994, at 17. Department of Correction spokesman Jim Stabile, admits that Avenel "started out as a treatment place, but as we got people doing more time, we had to get security beefed up." Glovin, *supra* note 12, at A-10. Avenel, therefore, resembles a regular correctional facility. Martone, *supra* note 38, at 1. "What passes for treatment is one and one half hours of group therapy per week. There are no bilingual counselors and no one-to-one therapy." Martone, *supra* note 38, at 1.

[131] Even though Avenel offers therapy to incarcerated offenders, it does not require offenders to participate. Avenel requires paroled sex offenders to attend therapy but does not require offenders who complete their sentence to attend

offenders can serve their time at Avenel with little or no treatment,[132] leaving Avenel in the same mental condition as they would have left a regular correctional facility.[133]

It is simply intolerable that the state of New Jersey can neglect the treatment needs of convicted sex offenders during incarceration.[134] One commentator stated, "By practically ignoring [sex offenders] while they are in the State's care and to subsequently release them with zero follow-up and no place that will accept them is a guarantee that these incidents will recur."[135] Therefore, when the state notifies community members of the release of these unrehabilitated (and perhaps dangerous) offenders, the state not only ignores the need for treatment, but also transfers the problem posed by sex offenders to community members.[136] New Jersey residents should demand substantive solutions for the problem of child sexual abuse.[137] Residents should encourage state officials to assume their responsibility and treat dangerous offenders that return to communities upon release from incarceration.[138]

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after their release. Gold, *supra* note 121, at A-4.

[132] William Plantier, superintendent of Avenel, attests that only one-third of the 700 inmates voluntarily participate in therapy. Gold, *supra* note 121, at A-4. Jim Stabile, spokesman for the New Jersey Department of Corrections, stated that close to 50 of the sex offenders at Avenel are currently refusing treatment. *Tougher Sex-Crime Laws*, *supra* note 124, at A-8.

[133] Under current law, once sex offenders complete their sentence at Avenel they do not have to attend outpatient therapy or report to any authorities. *Tougher Controls*, *supra* note 12, at A-20. Prior to Jesse Timmendequas' release from Avenel, he admitted during a psychological evaluation that he needed more treatment and that he was afraid that he was not capable of adjusting to life outside of the center. Avenel, however, released Timmendequas because he had completed his sentence. *See Suspect Feared He Needed More Therapy, Report Says*, RECORD, Aug. 6, 1994, at A-7.

[134] *See* Martone, *supra* note 38, at 1.

[135] Martone, *supra* note 38, at 2.

[136] Martone analogized the situation to the government tacking a poster in a community, stating that a dangerous tiger had escaped from the zoo, without doing anything more. Martone, *supra* note 38, at 1.

[137] *See* Martone, *supra* note 38, at 2.

[138] *See* Martone, *supra* note 38, at 2. "[G]overnmental leaders have abdicated certain responsibilities by implementing Megan's Law." Adubato, *supra* note 99, at D-7.

B. Relapse Prevention

Various studies illustrate that treatment programs can reduce recidivism rates of sex offenders.[139] Perhaps the most promising treatment for sex offenders, called "relapse prevention,"[140] recognizes that sex offenders may never be "cured," but with the proper help, they can learn to control their sexual urges.[141] Relapse prevention helps "sex offenders control the cycle of troubling emotions, distorted thinking and deviant sex fantasies that lead to their sex crimes . . ."[142] by enabling the offenders to develop empathy for their victims.[143] Sex offenders develop empathy for their victims by watching videotapes from a victim's perspective, reading victim accounts of sexual crimes, writing about the offense that they committed from the victim's perspective, and reenacting the crime scene while playing the role of the victim.[144]

Two recent studies on relapse prevention have provided encouraging results. In California, only one out of twenty-six rapists[145] who received treatment was re-arrested for rape, whereas seven rapists in the control group were rearrested for

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[139] Surprisingly, recidivism rates for sex offenders are not as high as commentators claim. Released sex offenders from Avenel have lower recidivism rates than offenders in regular New Jersey correctional facilities. Estimates indicate that only 20% of offenders at Avenel repeat their offenses, while 60% of the offenders in regular New Jersey correctional facilities repeat their offenses. *Senate Hearings on S-320*, *supra* note 95, at 3. This statistic is an estimate by a therapist at Avenel, which does not track recidivism rates. *Senate Hearings on S-320*, *supra* note 95, at 3.

[140] Goleman, *supra* note 31, at C1.

[141] Goleman, *supra* note 31, at C1.

[142] Goleman, *supra* note 31, at C1.

[143] Offenders who develop empathy for their's victims are motivated to refrain from reoffending. Goleman, *supra* note 31, at C11. If a sex offender does not develop empathy for his victim, the offender "will continue to pose a danger regardless of the nature or length of treatment." Tracy Schroth, *Should Punishment Precede the Crime?*, N.J.L.J., Jan. 11, 1993, at 4.

[144] Goleman, *supra* note 31, at C11.

[145] Rapists are considered the most difficult type of sex offender to treat. Goleman, *supra* note 31, at C11.

rape.[146] In addition, only 5% of the child molesters who received treatment reoffended within three years, whereas 9% of the child molesters in the control group reoffended within three years.[147] A second study in Vermont, in which 473 sex offenders underwent long-term treatment, indicated that 93% of the pedophiles did not repeat their crimes.[148]

In addition to treatment programs during incarceration, the state must provide sex offenders with post-release treatment. Post-release treatment provides convicted sex offenders with the ongoing support that they need to make the transition from incarceration to community living. Post-release treatment also provides the state with an opportunity to intercept a sex offender's problems before they lead to a re-offense.[149] Thus, post-release treatment provides the state and its citizens with an effective method to prevent released sex offenders from recommitting their crimes.[150]

C. Societal Responsibility

New Jersey parents have an affirmative duty to protect their children from child sexual abuse.[151] Although the state has the responsibility to treat and supervise sex offenders, the state cannot guarantee that convicted sex offenders will never reoffend.[152] Parents, therefore, must realize that community notification laws do

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[146] Goleman, *supra* note 31, at C11.

[147] Goleman, *supra* note 31, at C11.

[148] Eighty-one percent of the rapists who participated in treatment did not reoffend. *Tougher Controls*, *supra* note 12, at A-20.

[149] Gold, *supra* note 121, at A-4.

[150] *See* Gold, *supra* note 121, at A-4; *see also Senate Hearings on S-320*, *supra* note 95, at 2. The Violent Predator Incapacitation Act of 1994 requires lifetime supervision for certain offenders. This act, however, does not provide treatment for those offenders subject to it. *See* N.J. STAT. ANN. §§ 2C:43-6.4, -7, :44-3, :47-1, -3.

[151] "We have to keep our children safe. That's our job, not the cops[']." Spinner, *supra* note 31.

[152] Governor Whitman stated, "There is nothing we can do . . . . There is no bill I can sign; there is no piece of law that can be written that can guarantee that we will never see this kind of tragedy occur again." *Monitor All Sex Offenders*, *supra* note 12, at A-10.

not eliminate their responsibility to provide for their children's safety.[153] Parents should always think about their children's safety, not just when they know that a convicted sex offender lives in the community.[154] Parents can and should take preventative steps to protect their children from child sexual abuse. Education provides the most powerful tool that parents and children have in the fight against child sexual abuse.[155]

Education enables parents to identify signs of abuse in their children and "to react in a constructive manner if abuse is discovered."[156] Parents must learn that they can "no longer assume that only 'nice' people live in [their] neighborhood"[157] or that their children are safe.[158] Parents must accept the reality that no

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[153] Ed Martone criticized Megan's Law for creating a false sense of security because residents will think that the government is looking after them and their children. Ovetta Wiggins, *Towns Consider Tracking Convicts*, RECORD, Sept. 13, 1994, at D-1. When President Clinton signed the Violent Crime and Control and Law Enforcement Act into law, he stated that "[o]ur country will not truly be safe again until all Americans take personal responsibility for themselves, their families, and their communities." Carolyn Skorneck, *Crime Law Cannot Do the Job Alone*, RECORD, Sept. 14, 1994, at A-1.

[154] "What would [parents] have done differently if [they] knew a sex offender was living next door that [they] shouldn't have done already?" Spinner, *supra* note 31.

[155] *See Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3. Educational programs for children help prevent child sexual abuse from occurring and also encourage children to reveal incidents of abuse. HAUGAARD & REPPUCCI, *supra* note 115, at 313. These programs explain what constitutes sexual abuse; broaden awareness of possible abusers; teach children that they have the right to control the access of others to their bodies; describe proper and improper touches; stress actions that children can take to prevent incidents of abuse, such as saying no to adults who want to touch them in a way that makes them feel uncomfortable, leaving or running away; teach children to report incidents of abuse; and stress that children should tell a trusted adult if touched in an inappropriate manner and should keep telling someone until something is done to protect the child. HAUGAARD & REPPUCCI, *supra* note 115, at 314.

[156] HAUGAARD & REPPUCCI, *supra* note 115, at 317.

[157] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3.

[158] For example, Karen Wengert, Amanda Wengert's mother, stated that before her daughter's rape and murder by a sex offender she "lived [with] the illusion [that] all was safe and perfect in [her] world." Michelle Ruess, *Victims' Kin Work to Pass Megan's Law*, RECORD, Aug. 9, 1994, at A-16.

neighborhood or home can immunize itself completely from the threat posed by child sexual abuse. Parents need to make their children aware of the potential danger that exists.[159] Too often, however, parents fail to explain these dangers and to explain proper safety habits.[160] Educational programs at school can only achieve so much.[161] Even though parents may find it difficult to talk to their children about sex and sex crimes,[162] the failure to do so leaves their children vulnerable to sexual abuse.

CONCLUSION

Although Megan's Law may make citizens feel safer, the New Jersey Legislature has simply created a short-term solution[163] that

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[159] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3. Governor Whitman stressed that "[c]hildren must be taught not to accept rides or gifts or travel from strangers . . . . Parents, educators, church officials, community leaders, and law enforcement officials must constantly reinforce these messages." Michelle Ruess, *Warning Due on Sex Offenders' Release*, RECORD, Aug. 27, 1994, at A-6.

[160] Spinner, *supra* note 31. For instance, barely two months after Megan Kanka's death, an 11-year-old girl was attacked by a convicted sex offender. Jim Consoli, *Girl, 11, Slashes Attacker and Escapes*, RECORD, Sept. 18, 1994, at A-1. The unsupervised girl was selling candy and Christmas paper door-to-door for the annual Parent Teacher Association fund-raising project. The offender, Leo J. Quigley, lured the girl into his home by pretending to get money to make a purchase. Once inside, Quigley threatened to kill the girl with a pocket knife if she did not have sexual intercourse with him. The girl escaped and reported the incident. The county sheriff stated that Quigley was convicted in 1985 for the rape of a 10-year-old relative. Consoli, *supra*, at A-8.

[161] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3.

[162] HAUGAARD & REPPUCCI, *supra* note 115, at 318. One study revealed that out of a random sampling of 521 parents who had children ranging from 6 to 14 years of age, only 29% of those parents spoke to their children about sexual abuse. Perhaps most disturbing is the fact that out of those who did speak to their children about sexual abuse, only 53% mentioned that an abuser might be someone whom the child knew, and only 22% of those parents mentioned that an abuser might be a relative. HAUGAARD & REPPUCCI, *supra* note 115, at 317.

[163] Spinner, *supra* note 31. Karen Spinner stated, "This issue will die down and people will forget." Spinner, *supra* note 31. For example, police officials in Seattle no longer knock on residents' doors to notify them of an incoming sex offender. They simply notify the residents on the block that the offender plans

will not prevent incidents of child sexual abuse. Mere knowledge that a sex offender resides in a community will not prevent a sex offender who is seeking to reoffend from finding a victim.[164] Instead of facilitating reassimilation, notification laws, such as Megan's Law, drive sex offenders out of one community and into another.[165] Community notification laws, therefore, do not address the problem of child sexual abuse.[166] Such laws merely transfer the problem of child sexual abuse from one community to another.[167] The New Jersey Legislature, therefore, created a reckless sex offender policy,[168] which fails to control the deviant behavior of sex offenders. Instead, New Jersey needs to provide adequate treatment for sex offenders during incarceration,[169] and provide sex offenders with a period of supervision and treatment following their release from incarceration.[170] Unfortunately, treatment and supervision cannot guarantee that a pedophile will not reoffend.[171] Thus, parents must ultimately take responsibility for teaching their children proper safety habits[172] without relying on laws for their children's safety.[173] Only when the state offers sex offenders adequate treatment and supervision and parents take responsibility for their children's safety will New Jersey begin to win the war against child sexual abuse.

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to reside. The crime watch volunteer on that block may inform other residents. In addition, the media in Seattle no longer report when a sex offender moves into the city because they have reported so many that "one more is no longer news." Golden, *supra* note 45, at 36.

[164] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3.

[165] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 2.

[166] *See Senate Hearings on A-165 and S-1211*, *supra* note 34, at 2.

[167] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 2.

[168] Aun, *supra* note 20, at 14.

[169] Sullivan, *supra* note 19, at B1, B6.

[170] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3. Governor Whitman approved a lifetime supervision bill for convicted sex offenders. This bill, however, does not focus on rehabilitating sex offenders but rather acts as a tracking device for police. *See* Sullivan, *supra* note 19, at B6.

[171] "[N]ot all sex offenders respond to treatment." Goleman, *supra* note 31, at C11.

[172] *Senate Hearings on A-165 and S-1211*, *supra* note 34, at 3.

[173] *See Monitor All Sex Offenders*, *supra* note 12, at A-10.