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# The Expansion of Criminal Registries and the Illusion of Control

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# The Expansion of Criminal Registries and the Illusion of Control

*Molly J. Walker Wilson\**

## ABSTRACT

The American public consistently ranks crime prevention as the single most important objective for the criminal justice system, putting this goal ahead of punishment, enforcement, and rehabilitation. One popular but controversial method recently employed to prevent recidivism is the use of offender registries. The most common type of registry currently in use is the sex-offender registry. Responding to the public's perception that sex offenders pose a particular risk to society, federal legislators—as well as legislators in all 50 states and the District of Columbia—have enacted legislation creating mandatory sex-offender registries. The primary rationale for tracking and notification requirements was that giving the public access to information would allow citizens to protect themselves and other vulnerable members of society. A wealth of evidence suggests that sex-offender registries have not accomplished the goal of making citizens safer. Nevertheless, lawmakers in a number of states have proposed new crime registries for offenses ranging from crimes against children, to the manufacture of methamphetamine, to murder. Moreover, poll data has revealed that the American public supports expanding registries to include crimes other than sex offenses. The rising popularity of public crime registries in spite of evidence of their inefficacy is perplexing, until one considers the social science research revealing individuals' need to perceive control over anxiety-provoking threats. The illusion of control and attribution literature provides a rich body of work suggesting that the implementation of such registries, rather than providing any real instrumental advantage, serves to bolster feelings of self-efficacy and minimize public anxiety.

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## INTRODUCTION

The desire to exercise control over potential threats is a driving force behind much of human behavior. When it comes to crime, members of society demand legislation designed to protect them against those offenders whom they perceive to be most dangerous. One example of legislative attempts to satisfy the public's desire for protection is the promulgation of sex-offender registries.<sup>1</sup> Public support for these registries has been fueled by a perception that sex offenders prey on the most vulnerable members of society and cannot be rehabilitated.<sup>2</sup> Pedophiles, a subset of sex offenders, are deemed especially dangerous because they target children. The often secretive nature of sex crimes and the shame that the victims experience create special problems for detection and reporting. Lawmakers and proponents of sex-offender registries argue that making sex offenders readily identifiable makes it easier for citizens to avoid contact with offenders and assists law enforcement in apprehension following the commission of an offense.<sup>3</sup> Ultimately, the public and legislators have concluded that tracking sex offenders through public registries is a sensible approach, providing a measure of protection against future attacks.<sup>4</sup>

However appealing the strategy may be, empirical evidence belies common wisdom regarding sex offenders. Two findings suggest that registries are not the panacea they are assumed to be. First, statistical data indicates that sex offenders are *less* likely than other types of offenders to recidivate (at least with respect to sex crimes).<sup>5</sup> Second, detailed empirical studies suggest that registries have failed in curtailing sex offenses.<sup>6</sup> In fact, some evidence suggests that registries, particularly in concert with residency restrictions, have *increased* the likelihood of recidivism among sex

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1. An April 29–May 1, 2005, Gallup survey found 94% of Americans in favor, and only 5% opposed, to laws requiring registration of people convicted of child molestation. Lydia Saad, *Sex Offender Registries Are Underutilized by the Public*, GALLUP, June 9, 2005, available at <http://www.gallup.com/poll/16705/sex-offender-registries-underutilized-public.aspx>. See also Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 ANALYSES SOC. ISSUES & PUB. POL'Y 1, 2–3 (2007).

2. Levenson et al., *supra* note 1, at 3.

3. *Id.* at 3–5.

4. See *id.* at 4.

5. Bob Edward Vásquez et al., *The Influence of Sex Offender Registration and Notification Laws in the United States: A Time-Series Analysis*, 54 CRIME & DELINQ. 175, 176 (2008).

6. See *infra* Part I.

offenders.<sup>7</sup> These findings suggest that resources may be better spent on education and prevention or on identifying potential offenders. The research also suggests that current registries and related measures may be exacerbating the very problem that they are designed to address.<sup>8</sup>

In spite of serious questions about the efficacy of sex-offender registries, the popularity of other types of offender registries is burgeoning. New criminal registries have been proposed in a number of states.<sup>9</sup> One category of registry involves tracking offenders who have committed violent offenses.<sup>10</sup> In some cases, these registries are limited to crimes against minors.<sup>11</sup> Other violent-offense registries include crimes involving all types of victims.<sup>12</sup> Still others include specific types of violent offenses, such as murder.<sup>13</sup> A number of states have enacted registries designed to track the production of methamphetamine.<sup>14</sup> In other states, proposals have focused on registering perpetrators of domestic violence or those convicted of animal abuse and neglect.<sup>15</sup>

This Article explores the question of why lawmakers continue to propose new criminal registries in light of the questionable utility of the registries we currently have. What is it about crime registries that appeals to legislators and the public? Why do members of society perceive that publicly tracking offenders will

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7. Jill S. Levenson & Andrea L. Hern, *Sex Offender Residence Restrictions: Unintended Consequences and Community Reentry*, 9 JUST. RES. & POL'Y 59, 66–69 (2007).

8. Meanwhile, a growing body of scholarship questions the wisdom of sex-offender registries on other grounds. One line of inquiry focuses on the constitutionality of such measures. *See, e.g.*, Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295 (2006); *see also* Corey Rayburn Yung, *One of These Laws Is Not Like the Others: Why the Federal Sex Offender Registration and Notification Act Raises New Constitutional Questions*, 46 HARV. J. ON LEGIS. 369 (2009). Another group of scholars emphasizes the over-inclusiveness of sex-offender registries, the incidence of harassment of registrants, and the counterproductive consequences of marginalization and ostracization of this offender population. *See, e.g.*, Jill S. Levenson et al., *Megan's Law and Its Impact on Community Re-Entry for Sex Offenders*, 25 BEHAV. SCI. & L. 587, 587–88 (2007) (background on why Megan's Law was implemented); James Q. Whitman, *What Is Wrong With Inflicting Shame Sanctions?*, 107 YALE L.J. 1055 (1998).

9. *See infra* Part II.

10. *See infra* Part II.A.

11. *See infra* Part II.A.1.

12. *See infra* Part II.A.2–4.

13. *See infra* Part II.A.

14. *See infra* Part II.B.

15. *See infra* Part II.C.

make the public safer? Behavioral research provides clues to these questions. Specifically, empirical psychological studies have revealed that crime registries accomplish the goal of making people feel safer by providing an increased sense of control over the sources of risk that seem most threatening.<sup>16</sup> Registries are flexible in that they can theoretically target any type of crime that needs addressing, and they “work” by putting power into the hands of those who are in a position to avoid the harm. Crime registries empower would-be victims (and those who care for them) by providing a particularly compelling tool—information.

Crime prevention tools are especially likely to garner support when they target the types of crimes that seem most threatening. Behavioral research shows that individuals are most afraid of risks that are unfamiliar and uncontrollable, independent of whether these risks statistically pose the greatest threat.<sup>17</sup> For example, people fear health risks posed by nanotechnology and nuclear power more than they fear health risks posed by other harms that are far more likely to cause death.<sup>18</sup> Nanotechnology and nuclear power are beyond the purview of most people, whereas the average person has had experience with second-hand cigarette smoke. Importantly, people perceive that they can control their own exposure to second-hand smoke, and they do not feel the same for nuclear power and nanotechnology.<sup>19</sup> Targets of crimes report feeling violated; they express feelings of helplessness and powerlessness.<sup>20</sup> Hence, this source of harm is often associated with a particularly acute need for empowerment and control.

The need to feel in control is not only an important factor in determining which risks people fear most; it is also central to preferences about how to manage risks. In choosing between various approaches to minimizing harms, people often prefer those that give them the greatest sense of personal power.<sup>21</sup> This preference is likely because, as research tells us, individuals perceive that they have more control over events than they actually do.<sup>22</sup> A robust body of scholarship reveals that human beings

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16. See *infra* Part III.

17. See *infra* Part III.

18. Dan M. Kahan et al., *Cultural Cognition of the Risks and Benefits of Nanotechnology*, 4 NATURE NANOTECHNOLOGY 87 (2009).

19. *Id.*

20. *Id.*

21. Ellen J. Langer, *The Illusion of Control*, 32 J. PERSONALITY & SOC. PSYCHOL. 311 (1975).

22. Suzanne C. Thompson, Wade Armstrong & Craig Thomas, *Illusions of Control, Underestimations, and Accuracy: A Control Heuristic Explanation*, 123 PSYCHOL. BULL. 143 (1998).

overestimate the degree to which they can alter the course of future events; they misjudge their abilities and are overconfident in their judgments (including judgments about their own abilities).<sup>23</sup> Information seeking is one important way in which individuals strive to become more instrumental. Even when having information is unlikely to influence outcomes, people continue to look for ways to increase knowledge about threats.<sup>24</sup> By examining behavioral science findings, lawmakers can begin to comprehend why members of the public support measures like crime registries that offer information and provide a sense of control to the citizenry but have little practical value.

This Article proceeds in four parts. Part I discusses the origins of the criminal registry, describing the advent of the first of the present-day registries of this type—the sex-offender registry. In addition to providing historical background, Part I suggests that sex-offender registries, although well-intentioned, are designed based upon faulty premises. As such, they are at best, ineffectual, and at worst, exacerbate the problem. With Part I as a background, Part II illustrates how the registry model, in spite of its dubious usefulness, is gaining popularity. Part II describes enacted and proposed laws creating registration and notification requirements for a variety of criminal activities. Part III then turns to behavioral science to explain why legislators continue to propose, and the public continues to support, the expansion of criminal registries. Part III focuses on psychological theory explaining the human need to feel control and discusses empirical findings in social and cognitive psychology, as well as psychometric risk investigations. Finally, Part IV provides a psychological framework for predicting which crimes legislators are most likely to target with criminal registries. Part IV discusses the *availability heuristic*, an empirically demonstrated cognitive rule of thumb whereby individuals develop particular concern over threats that are cognitively available. Part IV argues that crimes that are the subject of criminal registries tend to be sensational and receive significant media coverage. The Article concludes by proposing that, rather than looking to crime registries, lawmakers address crime through other methods, such as early intervention and education.

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23. *Id.*

24. SCOTT PLOUS, THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING 171 (1993).

## I. THE CRIME REGISTRY MODEL

Today, most criminal registries are modeled on sex-offender registries. Over the past several decades, state legislatures and Congress have enacted a variety of laws to prevent sexual violence. The most publicized of these laws are the sex-offender registration and notification laws.<sup>25</sup>

*A. The Development of the Sex-Offender Registry*

The first major law enacted as part of the Federal Violent Crime Control and Law Enforcement Act of 1994 was the Jacob Wetterling Act.<sup>26</sup> The impetus for passing the Wetterling Act was the abduction of Jacob Wetterling, who was taken in October 1989 in St. Joseph, Minnesota, by an armed, masked man.<sup>27</sup> Following Jacob's abduction, it was revealed that ten months prior, another boy had been kidnapped, placed into a car, and sexually assaulted before being released.<sup>28</sup> Evidence suggested that the perpetrator of the earlier crime was the same person who abducted Jacob and sexually assaulted him.<sup>29</sup> It is unknown what happened to Jacob, as his body was never recovered, but his parents began the Jacob Wetterling Foundation and have been advocating for child safety and protection laws ever since.<sup>30</sup>

The basic premise of the Wetterling Act was to enable law enforcement agencies to track the whereabouts of known sex offenders, allowing for the speedy apprehension of sex-crime suspects.<sup>31</sup> The Wetterling Act required states to form registries of offenders convicted of sexually violent offenses or sexual offenses against children and to enact rigorous registration requirements for

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25. ELIZABETH J. LETOURNEAU ET AL., EVALUATING THE EFFECTIVENESS OF SEX OFFENDER REGISTRATION AND NOTIFICATION POLICIES FOR REDUCING SEXUAL VIOLENCE AGAINST WOMEN 1, 5 (2010), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf>.

26. J.J. Prescott & Jonah H. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & ECON. 161, 162 (2011).

27. *Jacob's Story*, JACOB WETTERLING RESOURCE CTR., <http://www.jwrc.org/WhoWeAre/History/JacobsStory/tabid/108/Default.aspx> (last visited Jan. 14, 2013).

28. *Id.*

29. *Id.*

30. *Id.*

31. Levenson et al., *supra* note 8, at 587–88 (background on why Megan's Law was implemented).



sex offenders.<sup>32</sup> Initially, the registries were designed for use by police departments.

In 1996, Congress approved the “Megan’s Law” amendment to the Wetterling Act, which required states to develop strategies for releasing information about convicted sex offenders to the public.<sup>33</sup> Megan’s Law was named for Megan Kanka, who at age seven was murdered by a sex offender who lived in her neighborhood.<sup>34</sup> Jesse Timmendequas and four other sex offenders lived across the street from Kanka.<sup>35</sup> Because communities were not notified of sex offenders living nearby, Megan’s parents had no way of knowing that Timmendequa and his housemates had committed offenses in the past.<sup>36</sup> In the wake of Megan Kanka’s death, lawmakers perceived a need for a public notification system to help members of the public protect their children from convicted sex offenders.

At first, the decision of how communities were to be notified was left to the states. States could choose to notify communities either passively, such as by having registry lists available at local police stations, or actively, such as by holding community meetings, posting flyers, or alerting management at high-risk enterprises like day cares and schools.<sup>37</sup> Congress subsequently limited state discretion by establishing new guidelines for reporting and registry maintenance with two acts: the Adam Walsh and Child Protection Safety Act, which included the Sex Offender Registration and Notification Act (SORNA) and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act.<sup>38</sup> Proponents of these new acts hoped to

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32. Jacob Wetterling Act, 42 U.S.C. § 136(VI) (2006). The Jacob Wetterling Act was repealed and replaced by the Adam Walsh Act. Title I of the Adam Walsh Act puts the Sex Offender Registration and Notification Act (SORNA) in place. *See* The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,069 (July 2, 2008) [hereinafter SORNA Guidelines]; *see also* Lori McPherson, *Practitioner’s Guide to the Adam Walsh Act*, 20 UPDATE, nos. 9 & 10, 2007 at 1–7, available at [http://www.ojp.usdoj.gov/smart/pdfs/practitioner\\_guide\\_awa.pdf](http://www.ojp.usdoj.gov/smart/pdfs/practitioner_guide_awa.pdf).

33. LETOURNEAU ET AL., *supra* note 25, at 6.

34. *Our Mission*, MEGAN NICOLE KANKA FOUNDATION, <http://www.megannicolekankafoundation.org/mission.htm> (last visited Jan. 22, 2013).

35. *See generally id.*

36. *Id.*

37. Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?*, 54 J.L. & ECON. 207, 210 (2011).

38. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered sections of 18, 21, 28, 42, and 47 U.S.C.). For more on the PROTECT Act, see Press Release, U.S. Dep’t of Justice, Fact Sheet: PROTECT Act (Apr. 30, 2003), available at [http://www.justice.gov/opa/pr/2003/April/03\\_ag\\_266.htm](http://www.justice.gov/opa/pr/2003/April/03_ag_266.htm).

eliminate loopholes and inconsistencies resulting from disparate state practices.

The Adam Walsh Act was named for a six-year-old boy who was abducted and murdered in 1981 (it is unknown whether he was sexually assaulted prior to his murder). The Adam Walsh Act repealed the Wetterling Act, replacing it with more explicit registration requirements, leaving less to the states' discretion.<sup>39</sup> State laws regarding enforcement of registration requirements vary, but the National Guidelines for SORNA provide the minimal requirements for compliance.<sup>40</sup> Sex offenders must periodically report to a local authority, usually a local police department, to verify a current address.<sup>41</sup> States vary with respect to how often sex offenders must verify information. Typical requirements range from once per year to quarterly.<sup>42</sup> The PROTECT Act similarly created uniformity by requiring all states to develop publicly accessible Internet sex-offender registries.<sup>43</sup> The Adam Walsh Act and SORNA established a national online sex-offender registry that allows a search beyond one's own state borders.<sup>44</sup>

Well-publicized rapes, abductions, and murders of young children have led the federal government to revise laws to require stricter punishments, broader registration measures, and increased prohibitions for sex offenders.<sup>45</sup> Because the public continues to support tougher laws to protect children, politicians and legislatures have little difficulty garnering support for these acts.<sup>46</sup> After the widely publicized 2005 murder of nine-year-old Jessica Lunsford by a convicted sex offender in Florida, the state passed "Jessica's Law," which created stricter penalties for sex crimes against children and required electronic monitoring of child

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39. Adam Walsh Child Protection and Safety Act, 42 U.S.C. § 16911–16929 (2006).

40. SORNA Guidelines, *supra* note 32, at 38,069.

41. *Id.* at 38,033.

42. Agan, *supra* note 37, at 210–11.

43. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered sections of 18, 21, 28, 42, and 47 U.S.C.).

44. *See* SORNA Guidelines, *supra* note 32, at 38,058; Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered sections of 18, 21, 28, 42, and 47 U.S.C.); Adam Walsh Child Protection and Safety Act, 42 U.S.C. §§ 16911–29 (2006).

45. Lara Geer Farley, *The Adam Walsh Act: The Scarlet Letter of the Twenty-First Century*, 47 WASHBURN L.J. 471, 472 (2008) (discussing the progression of sex-offender laws).

46. *Id.* (discussing the progression of sex-offender laws).

molesters.<sup>47</sup> A 2006 San Francisco Chronicle poll reported that “Jessica’s Law” had 73% voter support in California.<sup>48</sup>

When sex-offender registry and notification laws were implemented, legislators hoped to deter potential offenders from committing sex crimes and to discourage previously convicted sex offenders from recidivating.<sup>49</sup> Supporters of the Adam Walsh Act and SORNA maintained that implementing methods of tracking sex offenders would result in fewer aggregate sex crimes.<sup>50</sup> One goal of sex-offender registries was to discourage would-be first-time sex offenders by creating an additional sanction (placement of the offenders’ names on the registry) that would have a strong deterrent effect.<sup>51</sup> A second goal was to allow for the tracking of sex offenders following release into the community in order to assist law enforcement with detection and apprehension following future sex crimes.<sup>52</sup> Authors of the sex-offender legislation also hoped that registered sex offenders would avoid reoffending for fear that law enforcement’s knowledge of their identities and past offenses would make detection and apprehension particularly likely.<sup>53</sup> Finally, proponents of the legislation argued that providing community members with information about the identity and location of sex offenders would make it easier for members of the public to take steps to protect their children.<sup>54</sup>

The registration and notification requirements are two methods designed to achieve particular goals. The purpose of registration is to help law enforcement track sex offenders following release into the community.<sup>55</sup> Notification, on the other hand, is designed to assist members of the public in protecting themselves and their children.<sup>56</sup>

SORNA imposes minimum requirements for registration, including a variety of identifiers, residence information, and

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47. Levenson et al., *supra* note 1, at 4.

48. *Id.*

49. SORNA Guidelines, *supra* note 32, at 38,044.

50. *Id.* at 38,044–45.

51. *What Are Sex Offender Programs/Strategies?*, BUREAU OF JUSTICE ASSISTANCE, <https://www.bja.gov/evaluation/program-corrections/sops1.htm> (last visited Jan. 14, 2013).

52. SORNA Guidelines, *supra* note 32, at 38,044–45.

53. *Id.*

54. *Id.*

55. *What Are Sex Offender Programs/Strategies?*, *supra* note 51 (“Following their release from prison, sex offenders provide police with information such as their residence and employment for tracking/monitoring purposes.”).

56. SORNA Guidelines, *supra* note 32, at 38,044–45.

personal and criminal history.<sup>57</sup> Depending upon the level of offender, the frequency with which this information must be verified ranges from once a year to every three months, and offenders are required to be registered for a period ranging from 15 years to life.<sup>58</sup> Because SORNA sets out *minimum* registration requirements,<sup>59</sup> individual jurisdictions may require a broader class of offenders to register or may require more frequent verification or longer registry periods.<sup>60</sup>

Notification laws require that certain registration information be readily available through the Internet and be searchable by zip code or geographic radius.<sup>61</sup> The guidelines detail the manner in which organizations, such as schools, involved with vulnerable populations must be notified upon the release of a convicted sex offender.<sup>62</sup>

In spite of the laudable goals of legislation establishing registries and requiring public notification, evidence establishing the effectiveness of these measures in reducing sex crimes is notably lacking. As a majority of mental health professionals predicted from the outset,<sup>63</sup> registries have not been effective in reducing the number of sex offenses committed. Evidence for this is borne out in empirical investigations and scholarly articles on the topic of sex-offender registration laws.<sup>64</sup> The balance of the scholarship concludes that registration and notification laws are not effective at decreasing recidivism and instead may be increasing recidivism among the targeted population of offenders.

### *B. Offenders and Recidivism: Myth and Reality*

Although one stated rationale for sex-offender registries is the deterrence of would-be offenders, the primary basis for registry

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57. This information includes the following: name and aliases, Internet identifiers and addresses, telephone numbers, social security number, residence address, other residence information, temporary lodging information, travel and immigration documents, employer name and address, other employment information, professional licenses, school information, vehicle information, date of birth, physical description, text of registration offense, criminal history and other criminal justice information, current photograph, fingerprints and palm prints, DNA sample, and copy of driver's license or identification card. *Id.* at 38,055–58.

58. *Id.* at 38,067.

59. *Id.* at 38,046.

60. *Id.* at 38,050.

61. *Id.* at 38,058.

62. *Id.* at 38,060.

63. Levenson et al., *supra* note 1, at 4.

64. See Prescott & Rockoff, *supra* note 26; Vásquez et al., *supra* note 5; Levenson et al., *supra* note 1; LETOURNEAU ET AL., *supra* note 25.

laws is the notion that tracking convicted sex offenders is important because this group is particularly likely to reoffend. Indeed, the belief that sex offenders are incapable of rehabilitation is a common one. In a poll conducted by the U.S. Department of Justice, 72% of those Americans polled believed that more than half of sex offenders reoffend after release from prison.<sup>65</sup> One-third of those polled believed that 75% of sex offenders commit sex offenses after conviction, and the same percentage of those polled believe that when sex offenders do reoffend, their subsequent offenses are more serious.<sup>66</sup> A 2005 Gallup Poll revealed that 94% of adults polled supported monitoring individuals who had been convicted of child molestation.<sup>67</sup> The Poll further found that 77% of adults thought that child sexual molesters were less likely to be rehabilitated—and therefore more likely to commit future crimes—than other serious offenders.<sup>68</sup> Other polls have been consistent with this finding. According to a survey conducted by Jill Levenson, residents of Brevard County, Florida, estimated the recidivism rates of sex offenders to be around 75%, almost 15 times higher than the Bureau of Justice Statistics poll.<sup>69</sup>

Although the public's concerns about recidivism rates of sex offenders are genuine, they are also exaggerated.<sup>70</sup> Studies show that sex offenders are *not* more likely to recidivate than other criminals; in fact, they have a very low rate of recidivating compared to other offenders.<sup>71</sup> The National Institute of Justice has reported that sex offenders are *less* likely to recidivate than other types of offenders.<sup>72</sup> In comparison to the rearrest rate for drug offenders (41.2%), larceny–theft offenders (33.9%), and those who commit nonsexual assault (22%), sex offenders are relatively *unlikely* to be rearrested for another sex crime.<sup>73</sup> In fact, the

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65. CTR. FOR SEX OFFENDER MGMT., U.S. DEP'T OF JUSTICE, EXPLORING PUBLIC AWARENESS AND ATTITUDES ABOUT SEX OFFENDER MANAGEMENT: FINDINGS FROM A NATIONAL PUBLIC OPINION POLL 2 (2000), *available at* <http://www.esom.org/pubs/CSOM-Exploring%20Public%20Awareness.pdf>.

66. *Id.*

67. *Most Americans Support Sex Offender's Registry*, ANGUS REID PUB. OP. (June 12, 2005), <http://www.angus-reid.com/polls/17785/mostamericanssupportsexoffendersregistry/>.

68. *Id.*

69. Levenson et al., *supra* note 1, at 17.

70. Vásquez et al., *supra* note 5, at 176.

71. In 1998, “the average recidivism rate for sex offenses was only 13.4%, while the average recidivism rate of any offense was 36.3%.” Vásquez et al., *supra* note 5, at 175.

72. LETOURNEAU ET AL., *supra* note 25, at 7.

73. PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN

Bureau of Justice Statistics found sex offenders had a three-year rearrest rate of just 5.3% for another sex crime.<sup>74</sup> Moreover, it appears that an individual is more likely to be the victim of a sex crime at the hands of a convict whose original crime was not a sex crime. A Bureau of Justice study revealed that although nonsex offenders recidivate by committing sex crimes only 1.3% of the time, they committed a total of 3,328 sex crimes after their release as compared to 517 new sex crimes committed by released sex offenders.<sup>75</sup> The smaller population represented by sex offenders, in conjunction with a relatively low rate of recidivism, means that this population actually poses less of a threat to the public with respect to sex offenses than do other released offenders.

Claims made by some advocacy groups that sex offenders recidivate at rates of 40% are misleading, as they are recidivism rates for *any* crime, and not recidivism rates for new sex crimes—the crimes that registration and notification laws seek to prevent.<sup>76</sup> Moreover, when sex offenders do commit another sex crime, almost half (40%) occur within 12 months of release, typically when parole already mandates that the offender be closely supervised.<sup>77</sup> The Bureau of Justice statistics reported that compared to nonsex offenders released from state prison, sex offenders had a lower overall rearrest rate for all crimes (43%) compared to nonsex offenders' rearrest rate for all crimes (68%).<sup>78</sup>

Although the most recent nationwide Bureau of Justice Statistics (BJS) study was conducted in 1994, a study conducted in 2001 using data from Delaware produced very similar results.<sup>79</sup>

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1994 9 (2002) [hereinafter *RECIDIVISM OF PRISONERS*], available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

74. PATRICK A. LANGAN, ERICA L. SCHMITT & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994 1* (2003) [hereinafter *RECIDIVISM OF SEX OFFENDERS*], available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf>.

75. *Id.* This percentage is lower than the 5.3% reoffense rate for sex offenders, but because sex offenders constitute a relatively small population, the absolute number of sex crimes perpetrated by convicted sex offenders is substantially smaller.

76. *See id.*; *Statistics—Offenders*, PARENTS FOR MEGAN'S LAW & THE CRIME VICTIMS CTR., [http://www.parentsformeganslaw.org/public/statistics\\_offenders.html](http://www.parentsformeganslaw.org/public/statistics_offenders.html) (last visited Aug. 22, 2011).

77. *RECIDIVISM OF SEX OFFENDERS*, *supra* note 74, at 1.

78. *Id.* at 2.

79. STATISTICAL ANALYSIS CTR., STATE OF DEL., *RECIDIVISM OF DELAWARE ADULT SEX OFFENDERS RELEASED FROM PRISON IN 2001 2* (2007), available at <http://cjc.delaware.gov/sac/publications/documents/recidivismadult2007.pdf>.

The authors of the Delaware study modeled their investigation after the one conducted by BJS, with some modifications due to Delaware's Unified Corrections System.<sup>80</sup> Delaware's study showed that released sex offenders had a recidivism rate for a new sex crime of 3.8%, a rate lower than the national average that BJS had found seven years prior.<sup>81</sup> The Delaware study supports the BJS's statistical conclusions that sex offenders are very unlikely to recidivate with a new sex crime and that sex-offender recidivism is not rising.<sup>82</sup>

*C. The Inefficacy of Registration and Notification Laws*

Although the rate at which sex offenders recidivate is low, notification and registration would arguably be worthwhile if these mechanisms further reduced the rate of reoffending. Similarly, registration and notification laws would be valuable if they deterred would-be sex offenders. However, even the lawmakers who drafted or voted for the laws had reservations about whether these goals would be served by notification laws. Many of the lawmakers who supported new legislation seem to have been motivated more by a desire to appear proactive to their constituents than out of a belief that the legislation would reduce crime. In a sample of 35 Illinois legislators, only four were confident that sex-offender registration and notification laws were effective, yet nearly all of them agreed that the current sex-offender acts addressed the public's demand for action.<sup>83</sup> Sex offenders themselves have expressed skepticism that the registry laws are effective crime-prevention tools. An anonymous poll of sex offenders revealed that the majority of them do not believe that registration and notification helped prevent offending, nor do they agree with the statement that that they "have less access to children due to public scrutiny" or that "citizens are safer because they know where the sex offenders live."<sup>84</sup> A majority of the polled offenders disagreed with the following statement: "[T]he information listed on the Internet registry helps the public know how to protect themselves from me."<sup>85</sup>

Moreover, careful studies of the impact of registry and notification laws reveal that they have not had the positive impact

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80. *Id.*

81. *Id.* at 17.

82. *Id.*

83. Vásquez et al., *supra* note 5, at 76.

84. Levenson et al., *supra* note 8, at 594–95.

85. *Id.*

they were designed to have.<sup>86</sup> A 1995 study of the effectiveness of sex-offender registration and notification laws in Washington compared recidivism rates for sex offenders who were required to register with recidivism rates of those who were not required to register.<sup>87</sup> The study found no significant difference between the groups, indicating that notification had little effect on sex-offender recidivism.<sup>88</sup> Jeffrey Walker's study on the influence of sex-offender registration and notification laws in the United States revealed that these laws had no systematic effect on incidences of rapes across ten states—Arkansas, California, Connecticut, Hawaii, Idaho, Nebraska, Nevada, Ohio, Oklahoma, and West Virginia.<sup>89</sup> Six of these states (Arkansas, Connecticut, Nebraska, Nevada, Oklahoma, and West Virginia) showed no significant change in the average number of rapes. Three of the states (Hawaii, Idaho, and Ohio) showed a decrease in rapes, but California, a particularly large state, experienced an increase of on average 41 rapes per month after the laws were put in place.<sup>90</sup>

Another study involving three distinct datasets revealed a pattern of noneffectiveness common to all three sets. The study's author, Amanda Agan, concluded that sex-offender registries are not successful in increasing public safety and lowering recidivism rates.<sup>91</sup> Practical difficulties associated with implementing registration and notification laws have further reduced effectiveness. In Massachusetts, Kentucky, and Florida, for example, current addresses for up to 50% of registered sex offenders were unknown or incorrect.<sup>92</sup> Empirical studies repeatedly arrive at the same conclusion: Sex-offender registry and notification laws are ineffective deterrence tools.<sup>93</sup> The marginal

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86. See Vásquez et al., *supra* note 5; Prescott & Rockoff, *supra* note 26; LETOURNEAU, *supra* note 25; Levenson et al., *supra* note 8.

87. See DONNA D. SCHRAM & CHERYL DARLING MILLOY, WASH. STATE INST. FOR PUB. POL'Y, COMMUNITY NOTIFICATION: A STUDY OF OFFENDER CHARACTERISTICS AND RECIDIVISM (1995), *available at* <http://www.wsipp.wa.gov/rptfiles/chrrec.pdf>.

88. Vásquez et al., *supra* note 5, at 179 (referencing SCHRAM & MILLOY, *supra* note 87).

89. *Id.* at 188.

90. *Id.*

91. Agan, *supra* note 37, at 235.

92. Levenson et al., *supra* note 8, at 589.

93. See GENEVA ADKINS ET AL., IOWA DEP'T OF HUMAN RIGHTS, THE IOWA SEX OFFENDER REGISTRY AND RECIDIVISM 10 (2000), *available at* [http://www.humanrights.iowa.gov/cjpp/images/pdf/01\\_pub/SexOffenderReport.pdf](http://www.humanrights.iowa.gov/cjpp/images/pdf/01_pub/SexOffenderReport.pdf) (comparison of Iowa sex-offender recidivism rates for those subject to registration and those not). The study found the registry sample had a 3% recidivism rate and the nonregistry sample had a 3.5% recidivism rate, which is not statistically significant. See also KRISTEN ZGOBA ET AL., RESEARCH &



deterrent effect of registration for would-be sex offenders is counteracted by the notification laws' deleterious effects. In sum, registry and notification laws are simply not achieving their stated goals.

*D. Ironic Effects of Registration and Residency Requirements*

Particularly troubling, some studies have suggested that notification laws may actually *increase* recidivism rates.<sup>94</sup> For example, one empirical investigation conducted by University of Michigan researchers J.J. Prescott and Jonah Rockoff found no evidence that registries deter would-be sex offenders.<sup>95</sup> With respect to the impact on reoffending, Prescott and Rockoff found that a positive effect for registration (a reduction in recidivism) was counteracted by notification requirements.<sup>96</sup> The authors concluded that "whereas some nonregistered or potential offenders may be deterred by the threat of notification and its associated costs, the ex post imposition of those sanctions on convicted offenders may make them more likely to recidivate."<sup>97</sup> Researchers who have found a correlation between registry and notification laws and recidivism have hypothesized that these measures serve to marginalize the targeted offender population.<sup>98</sup> When an individual is recognized in his or her community as a sex offender, he or she experiences diminished social standing and social sanctions, such as loss of jobs, spouses, and friends.<sup>99</sup> Some sex offenders have reported receiving threats and experiencing property damage, being physically assaulted and harassed, and witnessing harm to family members.<sup>100</sup> These collateral consequences are thought to exacerbate existing "risk factors leading to recidivism such as lifestyle instability, negative moods, and lack of positive social support."<sup>101</sup>

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EVALUATION UNIT, N.J. DEP'T OF CORR., MEGAN'S LAW: ASSESSING THE PRACTICAL AND MONETARY EFFICACY 34 (2008), available at <https://www.njrs.gov/pdffiles1/nij/grants/225370.pdf> (No significant between-group differences were found for sex-crime recidivism rates—10% for preregistration–prenotification groups and 7.6% for postregistration–postnotification groups.).

94. Prescott & Rockoff, *supra* note 26, at 185.

95. *Id.* at 181.

96. *Id.*

97. *Id.*

98. *Id.* at 186.

99. LETOURNEAU ET AL., *supra* note 25, at 9.

100. Levenson et al., *supra* note 8, at 590.

101. *Id.*

As a result of being the subject of registration and notification laws, offenders often experience difficulty reintegrating into society.<sup>102</sup> While other types of offenders may be able to start fresh after release, sex offenders are branded in a fashion that eliminates the potential for a clean slate. Registry and notification laws create an additional stigma beyond that of parole requirements because of the particular shame associated with the crimes that trigger the requirements.<sup>103</sup> Because these offenders feel marginalized, they are less likely to adopt mainstream social values.<sup>104</sup> An offender who is initially motivated to effect real and permanent personal change may eventually become resentful and discouraged.<sup>105</sup> Thus, ironically, experts have suggested that these laws can result in higher rates of recidivism.<sup>106</sup>

Further compounding the problem, some jurisdictions impose residency restrictions on convicted offenders, prohibiting them from living near schools, parks, day care centers, and school bus stops.<sup>107</sup> Residency restriction laws have garnered widespread public support as a means of preventing sex crimes and protecting children, but no evidence shows that these laws are achieving this goal.<sup>108</sup> Experts note that residency restrictions are unlikely to deter a sex offender who is determined to recidivate.<sup>109</sup> When polled, sex offenders concur with this conclusion. Offenders have commented that “[l]iving 1,000 [feet] away compared to 900 [feet] doesn’t prevent anything . . . [t]he [1,000-foot rule] is just a longer leash.”<sup>110</sup>

Researchers Jill Levenson and Andrea Hern reviewed research to examine the question of whether residency was related to recidivism. They concluded that there was no relationship between the location of an offender’s home and rates of reoffending.<sup>111</sup> A study of sex offenders in Minnesota revealed that distance between

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102. Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531, 531, 534 (2007).

103. *Id.* at 534.

104. *Id.*

105. Levenson et al., *supra* note 8, at 598.

106. Tewksbury, *supra* note 102, at 532.

107. Levenson et al., *supra* note 1, at 4.

108. *Id.*

109. Caleb Durling, Comment, *Never Going Home: Does It Make Us Safer? Does It Make Sense? Sex Offenders, Residency Restrictions, and Reforming Risk Management Law*, 97 J. CRIM. L. & CRIMINOLOGY 317, 330 (2006).

110. Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step from Absurd?*, 49 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168, 174 (2005).

111. Levenson & Hern, *supra* note 7, at 61.

offender residence and schools or parks was not associated with recidivism.<sup>112</sup> In Florida, Indiana, and Kentucky, research revealed that housing restrictions led to increased isolation, financial and emotional stress, and decreased stability.<sup>113</sup> Offenders have reported that the burden and stigma associated with residency restrictions increase psychosocial stressors, making rehabilitation more difficult and reoffense more likely.<sup>114</sup>

Increasingly, sex offenders may be barred from living in entire towns and communities due to overlapping restrictions; some real estate developers have even gone as far as marketing subdivisions as “sex offender free.”<sup>115</sup> Restricted subdivisions are popular and entirely legal because sex offenders are not protected under the Federal Fair Housing Act.<sup>116</sup> The creation of residency restriction laws in one community causes a ripple effect when surrounding communities enact subsequent laws to prevent an influx of sex offenders.

Residency restrictions in some states are so broad that offenders have difficulty finding places to live. One study that employed a Geographic Information System analysis to determine the effects of Florida residency restrictions revealed that only 64% of available residences fell outside the 1,000-foot zone around schools and daycares.<sup>117</sup> When bus stops were also included in the restrictions, a mere 4% of property was available for registered sex offenders.<sup>118</sup> Changing the buffer zone from 1,000 feet to 2,500 feet and including bus stops in the restrictions resulting in less than 1% of Orange County, Florida, being available to offenders.<sup>119</sup> Moreover, although sex offenders are found in all types of

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112. MINN. DEP'T OF CORR., LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES: 2003 REPORT TO THE LEGISLATURE 8–9 (2003), available at <http://www.leg.state.mn.us/docs/2003/mandated/030175.pdf>; Jeffery T. Walker, James W. Golden & Amy C. VanHouten, *The Geographic Link Between Sex Offenders and Potential Victims: A Routine Activities Approach*, 3 JUSTICE RESEARCH & POL'Y 15 (2001).

113. Levenson & Hern, *supra* note 7, at 62.

114. *Id.*

115. Catherine Wagner, *The Good Left Undone: How to Stop Sex Offender Laws from Causing Unnecessary Harm at the Expense of Effectiveness*, 38 AM. J. CRIM. L. 263, 268–69 (2011).

116. *Id.* at 269. Similarly, constitutional protections do not include the right to live anywhere that one desires. As a result, constitutional challenges are not successful avenues for offenders to pursue. See Sandra Norman-Eady, *Sex Offenders' Residency Restrictions*, OLR RESEARCH REPORT (2007), <http://www.cga.ct.gov/2007/rpt/2007-R-0380.htm>.

117. Jill S. Levenson, *Collateral Consequences of Sex Offender Residence Restrictions*, 21 CRIM. JUST. STUD. 153, 155–57 (2008).

118. *Id.*

119. *Id.*

neighborhoods, census data indicates that these offenders are likely to reside in neighborhoods characterized by economic disadvantage, social disorganization, and limited physical resources and social capital. Importantly, the residency restrictions mean that sex offenders often end up in these neighborhoods not by their own choice.<sup>120</sup>

Eventually, expanding geographic “sex offender free” spheres can push offenders into rural communities.<sup>121</sup> When residency restrictions force offenders out of metropolitan areas, they lose access to positive social influences (such as family and support groups), as well as employment opportunities and mental health treatment. Loss of access to these resources makes it more likely that they will commit new offenses.<sup>122</sup> Further, without access to jobs and permanent housing, offenders are more likely to be homeless or to live a transient lifestyle, making tracking, monitoring, and close probationary supervision difficult or impossible.<sup>123</sup> One revealing report by Levenson and Cotter suggests that offenders themselves are aware of the importance of social support in the rehabilitation process and believe that isolation increases the risk of recidivating.<sup>124</sup> One offender said, “I believe [I] have a better chance of recovery by living with supportive family members . . . . [I]solating me is not helpful.”<sup>125</sup>

The evidence suggesting that registry and notification can be counterproductive is particularly troubling in light of the resources required to institute and to maintain these databases. The cost for states to implement, maintain, and in some cases restrict these databases in order to comply with federal mandates is staggering. In 2011, the Texas Legislature resisted changing the criteria for registering from a risk-assessment model to an offense-based system, citing the \$38.8 million price tag.<sup>126</sup> Other states have seen similarly high costs associated with implementing SORNA. In California, the cost was \$59,287,816; in New York, \$31,300,125;

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120. *Id.*

121. Wagner, *supra* note 115, at 269; Tewksbury, *supra* note 102, at 538.

122. See generally Michelle L. Meloy, Susan L. Miller & Kristin M. Curtis, *Making Sense Out of Nonsense: The Deconstruction of State-Level Sex Offender Residence Restrictions*, 33 AM. J. CRIM. JUSTICE 209 (2008).

123. Levenson & Hern, *supra* note 7, at 68.

124. Levenson & Cotter, *supra* note 110.

125. *Id.* at 173.

126. Heather Caygle, *Texas Officials Balk at Costs for Sex Offender List*, HOUS. CHRONICLE, March 7, 2011, <http://www.chron.com/news/houston-texas/article/Texas-officials-balk-at-costs-for-sex-offender-1691680.php>.

in Florida, \$29,602,768; and in Pennsylvania, \$20,165,479.<sup>127</sup> Some state legislators have complained that federal registry requirements<sup>128</sup> mandate that precious resources are devoted to the administrative maintenance of the registry and notification, rather than targeting known serious offenders.<sup>129</sup> As a Justice Policy Institute report states, “[r]egistries and notification have not been proven to protect communities from sexual offenses, and may even distract from more effective approaches.”<sup>130</sup>

## II. A CONTINUING TREND: NEW AND PROPOSED CRIME REGISTRIES

The foregoing discussion casts serious doubt over the effectiveness of sex-offender registries, particularly in light of the considerable associated costs and the resources diverted from other forms of detection, apprehension, rehabilitation, and education. So it may seem surprising that the registry experiment is being extended to other types of crimes. Several types of registries have emerged since the enactment of sex-offender registry laws, and the popularity of nonsex-offense registries continues to grow. Three categories of registries have emerged. The first is “violent offender” registries, which are often paired with sex offense initiatives and largely designed to address violence against minors. The second is drug offense registries, which to date have targeted methamphetamine producers. A third and less prevalent category is the domestic violence registry. While proposals for new registries tend to be state-initiated, national registries for domestic violence and methamphetamine production have been created. In addition to existing registries that have been created through legislation, a host of other registries have been proposed in various states.

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127. JUSTICE POL’Y INST., WHAT WILL IT COST STATES TO COMPLY WITH THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT? 2 (2008), available at [http://www.justicepolicy.org/images/upload/08-08\\_FAC\\_SORNACosts\\_JJ.pdf](http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf).

128. The Sex Offender Registration and Notification Act (SORNA), which created a national registry of people convicted sex offenses, requires that states comply with certain reporting requirements or risk losing 10% of the state’s allocated Byrne Grant money, which states generally use to support law enforcement. SORNA Guidelines, *supra* note 32.

129. Donna Lyons, *As the Deadline Approaches to Comply with Federal Rules on Sex Offenders, Some States Are Saying “No Thanks”*, NAT’L CONFERENCE OF STATE LEGISLATURES (June 2011), <http://www.ncsl.org/issues-research/justice/sex-offender-law-down-to-the-wire.aspx>.

130. JUSTICE POL’Y INST., *supra* note 127, at 1.

*A. Violent Offender Registries*

The first category of nonsex-offense registries can be described as violent offender registries. Each of the profiled states has a version of a violent offender registry with public access to the information.

*1. Illinois*

The Illinois Legislature has created a law requiring violent offenders and child murderers to register with the state.<sup>131</sup> The statute, known as the Child Murderer and Violent Offender Against Youth Registration Act, also creates a provision for a public database to be maintained on the Internet.<sup>132</sup> The Act defines a *violent offender against youth* as someone who is charged with and either convicted or adjudicated for any of the following: kidnapping, unlawful restraint, battery, murder, and abduction by luring, all of a child under age 18.<sup>133</sup> Originally, the registry combined sex offenders with nonsex offenders.<sup>134</sup> In the mid-1990s, Illinois lawmakers simply added several crimes against minors to the list of offenses to be included in the sex-offender registry.<sup>135</sup> According to Laura Ahearn, executive director of the national advocacy group “Parents for Megan’s Law,” the decision by lawmakers to separate sex offenses from other types of offenses was designed to sharpen the “public safety tool.”<sup>136</sup> Senator John Fritchey, a major advocate of the violent offender registry in Illinois, described the registry as similar to the sex-offender version but without the residency restrictions required by the sex-offender registry.<sup>137</sup>

Illinois also recently passed legislation creating a registry for offenders convicted for murdering an adult.<sup>138</sup> The public law

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131. 730 ILL. COMP. STAT. 154/1–9999 (2007 & Supp. 2012).

132. 730 ILL. COMP. STAT. 154/85 (Supp. 2012). The website is maintained by the Illinois State Police at <http://www.isp.stat.il.us/cmvo> and is updated daily with offender information.

133. *Frequently Asked Questions*, ILL. ST. POLICE, CHILD MURDERER & VIOLENT OFFENDER AGAINST YOUTH REGISTRY, <http://isp.state.il.us/cmvo/cmvofaq.cfm?CFID=54410377&CFTOKEN=68470566&jsessionid=ec30a9bce2ff4c8b51ce157336616a355258#offenses> (last visited Aug. 17, 2011).

134. *Illinois May Create Violent Offender Registry*, CMTY. WATCH (Jun. 24, 2006, 4:58 PM), <http://www.communitywatch.org/2006/06/illinoismaycr.html>.

135. *Id.*

136. *Id.*

137. *Id.*

138. Cynthia Dizikes, *Registry of Freed Killers Proposed for Illinois*, CHI. TRIB., Jun. 30, 2011, <http://articles.chicagotribune.com/2011-06-30/news/ct->

requires anyone convicted of first-degree murder against someone age 18 or over<sup>139</sup> to register for the rest of “his or her natural life.”<sup>140</sup> Representative Dennis Reboletti (R-Illinois) believes that the initiative will increase citizens’ awareness of offenders living nearby.<sup>141</sup> Violators who fail to register face fines or jail time.<sup>142</sup> Representative Monique Davis (D-Illinois), an opponent of the legislation,<sup>143</sup> cites low recidivism rates for convicted murderers as well as the high cost of maintaining a registry.<sup>144</sup>

## 2. Indiana

Indiana is another state that has broadened existing registries to include more than sex offenses. In 2007, Indiana amended its sex-offender registry legislation to include violent offenders.<sup>145</sup> The enacted statute includes the term *violent offender* and combines sex offenses with violent crimes such as kidnapping and criminal confinement of a victim less than 18 years of age.<sup>146</sup> The act also includes crimes like rape, murder, and voluntary manslaughter, for which no victim age requirement exists.<sup>147</sup>

Indiana, like Illinois, makes information available to the public through a website.<sup>148</sup> The website breaks down the state by county

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met-murder-registry-20110630\_1\_andrea-s-law-murder-victim-registry. For the text of the legislation as passed, see H.R. 0263, 97th Gen. Assemb., Reg. Sess. (Ill. 2011), *available* at <http://www.ilga.gov/legislation/publicacts/97/PDF/097-0154.pdf>.

139. This Act does not include perpetrators of murder against minors because the Child Murderer and Violent Offender Against Youth Registration Act covers offenders whose victims are under the age of 18. *See supra* note 133 and accompanying text.

140. 730 ILL. COMP. STAT. 150/2(C-6) (Supp. 2012).

141. Dizikes, *supra* note 138.

142. *Id.*; H.R. 0263, 97th Gen. Assemb., Reg. Sess. (Ill. 2011). “Andrea’s Law” was signed into law by Governor Quinn in July 2011 and took effect on January 1, 2012.

143. Erica Goode, *States Seeking New Registries for Criminals*, N.Y. TIMES, May 20, 2011, <http://www.nytimes.com/2011/05/21/us/21registry.html?pagewanted=all>.

144. *Id.*

145. *See* IND. CODE § 11-8-8-5 (Westlaw 2012).

146. *Id.*

147. *Id.* Some of the crimes have a victim age definition of under 18, while others such as murder and manslaughter have no age designation in the statute.

148. IND. CODE § 36-2-13-5.5 (Westlaw 2012). This provision of the Indiana Code requires that local sheriffs jointly maintain the violent offender website.

and includes a link to each county sheriff's department.<sup>149</sup> The central website consists of large, colorful tabs that allow a user to search by using an address, clicking on a county on a map, or by linking directly to the individual county sheriff's departments.<sup>150</sup> In addition, the Indiana Sheriff's Association's website includes a link to the registry and explains its purpose, providing contact information for those who may have questions or suggestions for improvements.<sup>151</sup>

### 3. Oklahoma

The inspiration for the Mary Rippy Violent Crime Offenders Registration Act<sup>152</sup> in Oklahoma was 89-year-old Mary Rippy's murder in 2003 by her neighbor, Tommy Standerfer.<sup>153</sup> Standerfer was a repeat offender who had served time for homicides prior to living in Ms. Rippy's neighborhood.<sup>154</sup> Between 2004, when the Act was passed, and 2011, 586 offenders were registered.<sup>155</sup> Oklahoma, like Indiana, combines its sex and nonsex offense violent crimes in a single registry.<sup>156</sup> The Mary Rippy Violent Crime Offenders Registration Act also requires public access to information in the database.<sup>157</sup> The Act allows for public access to the information by contacting the Oklahoma State Bureau of Investigation or Department of Corrections or local law enforcement directly, completing a form and paying a fee, or conducting a free search conducted online at a website to be linked to a "state-agency-controlled database."<sup>158</sup> Local police departments maintain the registry websites.<sup>159</sup> For example, the website created by the Miami, Oklahoma Police Department includes the appropriate sections of the Act as well as a disclaimer that states: "The Miami Police

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149. IND. SEX AND VIOLENT OFFENDER REGISTRY, <http://www.icrimewatch.net/indiana.php> (last visited Dec. 15, 2012).

150. *See id.*

151. IND. SHERIFFS' ASS'N, <http://www.indianasheriffs.org/> (last visited Aug. 18, 2011).

152. OKLA. STAT. tit. 57 § 599.1 (Westlaw 2012).

153. Nicole Marshall, *Oklahoma's Violent Offenders Registry Growing Quickly*, TULSA WORLD, May 16, 2011, [http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20110516\\_11\\_A1\\_Itmayn791163](http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20110516_11_A1_Itmayn791163).

154. *Id.*

155. *Id.*

156. *See* OKLA. STAT. tit. 57 § 599.1 (Westlaw 2012).

157. *Id.*

158. *Id.*

159. *Id.* For an example of a locally maintained website, see CITY OF MIAMI, OKLAHOMA, <http://www.miamiokla.net/Police/sexoffenders.html> (last visited Jan. 15, 2013).



Department only provides registration information for offenders living within the city limits of Miami, OK.”<sup>160</sup> Offenders required to register must remain on the list for ten years, unless they are considered “habitual violent offenders,” in which case they must remain registered for life.<sup>161</sup>

#### 4. Virginia

The Virginia General Assembly also passed legislation combining sex offenses with violent offenses against minors. The Sex Offender and Crimes Against Minors Registry Act includes a list of crimes that require registration. These crimes include criminal homicide, murder, sexually violent offenses, and several other sexual offenses.<sup>162</sup> The Virginia State Police maintain the publicly accessible website, which includes links to the statute creating the registry, as well as a link for comments about the website.<sup>163</sup> The website includes a disclaimer stating that the Virginia State Police “ha[ve] not considered or assessed the specific risk of re-offense with regard to any individual . . . and ha[ve] made no determination that any individual included in the registry is currently dangerous.”<sup>164</sup> Furthermore, the website states that its main purpose is to make the information “more easily available and accessible, not to warn citizens about any specific individual.”<sup>165</sup>

Violent offender registries are the next most common type of offender registry after sex-offender registries. Indiana, Oklahoma, and Virginia are examples of states that combine sex and violent offenses into a single registry. The Illinois model separates the two crime types into distinct registries. Every state in this survey has created an Internet component making the registry easily accessible to the public.

The proliferation of violent offender registries is arguably the best evidence of the appeal of registries for nonsex crimes. This type of registry is the most common, after sex-offender registries, and may function as a kind of gateway to new, more experimental registries developed in a number of states.

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160. *Id.*

161. Marshall, *supra* note 153.

162. VA. CODE ANN. § 9.1-902 (Westlaw 2012).

163. *Sex Offender and Crimes Against Minors Registry*, VA. STATE POLICE, <http://sex-offender.vsp.virginia.gov/sor/> (last visited Dec. 15, 2012).

164. *Id.*

165. *Id.*

*B. Methamphetamine Offender Registries*

Several states and the Department of Justice have created publicly accessible registries to notify the public about offenders who have been convicted in connection with methamphetamine production. These registries have been born out of a sense that methamphetamine abuse is a serious, widespread, and growing problem. According to a 2006 survey conducted by the National Association of Counties, methamphetamine abuse was the “primary drug problem.”<sup>166</sup> In 2006, President George W. Bush signed the Combat Methamphetamine Epidemic Act, a federal law designed to address methamphetamine use, production, and trafficking.<sup>167</sup>

The extent of the methamphetamine problem is somewhat controversial. While the media and many politicians have characterized methamphetamine as one of the most dangerous drugs available due to its addictiveness and widespread availability, some believe the danger has been exaggerated.<sup>168</sup> According to the Sentencing Project, a nonprofit research group, the media has used “anecdotal” and “misleading” information to report the drug’s effects.<sup>169</sup> Some evidence suggests that methamphetamine use has stabilized, that use by high-school students has declined, and that treatment programs have been largely successful in helping addicts to get clean.<sup>170</sup>

Despite the controversy regarding the prevalence of methamphetamine use and effects, several states and a national agency have created databases meant to warn the general public about methamphetamine production. One primary rationale for creating and maintaining methamphetamine databases is the inherent dangerousness of the chemicals used in production. Proponents of such registries argue that the risk that laboratory operators will mishandle the chemicals and endanger surrounding community members justifies efforts to make the information publicly available.<sup>171</sup>

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166. Brian Loendorf, *Methamphetamine Offender Registries: Are the Rights of Non-Dangerous Offenders Cooked?*, 17 KAN. J.L. & PUB. POL’Y 542, 545 (2007).

167. *Id.* at 545–46.

168. *Id.* at 546.

169. *Id.*

170. *Id.*

171. *Id.* at 544–45.

### 1. Illinois

In 2006, the Illinois Legislature created the Methamphetamine Manufacturer Registry Act to notify the public of offenders convicted of methamphetamine manufacturing.<sup>172</sup> The database provides information about those convicted since 2006, and it is available on a publicly accessible website. The website is maintained by the Illinois State Police, and it provides each offender's name, date of birth, offense requiring registration, and county of conviction.<sup>173</sup> The online database includes a disclaimer stating that information originates with the Illinois Department of Corrections and is not independently verified by the Illinois State Police.<sup>174</sup> States that have methamphetamine databases intend to make the public aware of the "dangers of meth use and production."<sup>175</sup>

### 2. Tennessee

Like Illinois, Tennessee has attempted to combat the methamphetamine epidemic by enacting legislation targeting the drug's producers and distributors.<sup>176</sup> The Meth-Free Tennessee Act of 2005 requires offenders convicted of manufacturing and selling methamphetamine to register on the Tennessee Meth Offender Database.<sup>177</sup> The public website is maintained by the Tennessee Bureau of Investigation, and it includes name, date of birth, offense, county of offense, and date of conviction.<sup>178</sup>

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172. S. 2915, 94th Gen. Assemb., Reg. Sess. (Ill. 2006), available at <http://www.ilga.gov/legislation/publicacts/94/PDF/094-0831.pdf>; 720 ILL. COMP. STAT. 646/15 (2011). The database is called "Methamphetamine Manufacturer Database," located online at <http://www.isp.state.il.us/meth/>. The Database only identifies those named by 720 Illinois Compiled Statutes Section 646/15.

173. *Convicted Methamphetamine Manufacturer Registry*, ILL. STATE POLICE, <http://www.isp.state.il.us/meth/> (last visited Oct. 28, 2012).

174. *Id.*

175. Loendorf, *supra* note 166, at 547.

176. *Id.* at 547.

177. TENN. CODE ANN. § 39-17-436 (Westlaw 2012). The Act requires registry for conviction of manufacture of methamphetamine and initiation of manufacture of methamphetamine. *Id.* § 39-17-417. See *Meth Offender Registry Database*, TENN. BUREAU OF INVESTIGATION, <https://apps.tn.gov/methor/> (last visited Dec. 15, 2012).

178. *Id.*; Loendorf *supra* note 166, at 547.

### 3. Minnesota

Minnesota created a public registry for methamphetamine offenders by executive order in 2006.<sup>179</sup> The Minnesota Methamphetamine Offender Registry is maintained by the Minnesota Bureau of Criminal Apprehension.<sup>180</sup> The database includes the offender's name, conviction, arresting agency, county of conviction, and sentence received and is public for 15 years after the sentence.<sup>181</sup> According to the website, its purpose is to "enhance public safety by identifying individuals who have been convicted under state law of felony level manufacture of methamphetamine."<sup>182</sup>

### 4. National Initiative

On a federal level, the Department of Justice, through the Drug Enforcement Agency (DEA), created a public website called the National Clandestine Laboratory.<sup>183</sup> This website, created in 2006, allows the public to search by state for locations that law enforcement has identified as methamphetamine manufacturing sites.<sup>184</sup> The website includes a disclaimer stating that the information has been provided by local law enforcement and that the DEA has not independently verified the information.<sup>185</sup> Speaking to the necessity of the website, DEA Administrator Karen Tandy noted that "[i]n a cruel twist of fate, people who have never used or manufactured meth have become some of its hardest-hit victims after unknowingly buying property contaminated by chemicals and waste generated from a meth lab."<sup>186</sup>

Tandy and other federal authorities maintain that the registry is an important tool for the protection of public health and cite its value to prospective buyers and renters who can determine whether

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179. Minn. Exec. Order No. 06-09 (2006), available at <http://www.leg.mn/archive/execorders/06-09.pdf>.

180. *Minnesota Methamphetamine Offender Registry*, MINN. BUREAU OF CRIMINAL APPREHENSION, <https://mor.state.mn.us/MorLanding.aspx> (last visited Aug. 22, 2011).

181. *Id.*

182. *Id.*

183. *National Clandestine Laboratory Register*, U.S. DRUG ENFORCEMENT ADMIN., <http://www.justice.gov/dea/clan-lab/clan-lab.shtml> (last visited Aug. 22, 2011).

184. *Id.*

185. *Id.*

186. Jeff Reintz, *Registry Lists Former Meth Lab Homes*, WCF COURIER (Jan. 21, 2007, 12:00 AM), [http://wfcourier.com/news/top\\_story/article\\_ae6f360f-fe67-5c0f-af8a-5cfd75fe69d0.html](http://wfcourier.com/news/top_story/article_ae6f360f-fe67-5c0f-af8a-5cfd75fe69d0.html).

a property of interest has been connected with the manufacture of methamphetamine.<sup>187</sup> The website is not without its detractors, however. One such skeptic is Dale Woolery, who works in the Iowa Governor's Office of Drug Control Policy. Woolery worries that lack of good data about the aftereffects of methamphetamine production mean that the federal database may end up dooming properties that are actually habitable.<sup>188</sup> Woolery maintains that a general lack of knowledge about the long-term dangers of chemicals used for meth production diminish the website's usefulness.<sup>189</sup>

Methamphetamine use and manufacture has been identified as a major public health and safety problem over the past several years. In response, states like Illinois, Tennessee, and Minnesota, as well as the Department of Justice, have created public databases to raise awareness of methamphetamine production and use. Other states, including Montana, Idaho, Oregon, and Missouri have created legislation to address the potential for long-term property contamination from methamphetamine production.<sup>190</sup> The states surveyed have attempted to limit their liability on their websites by stating the purpose and the limitations of the websites on the front pages. Although perhaps off to a tentative start, the methamphetamine registry trend appears to be picking up steam as several additional states consider implementing such registries, including Arkansas, Georgia, Hawaii, Kentucky, Missouri, Oklahoma, Oregon, and Washington.<sup>191</sup>

### *C. Domestic Violence Offender Registries*

A third category of registry that states have considered would capture information on offenders convicted of a domestic violence crime.

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187. *Id.*

188. *Id.*

189. *Id.*

190. See *Special Projects (Methamphetamine)*, MO. DEP'T OF NATURAL RES., <http://www.dnr.mo.gov/env/esp/meth-special-projects.htm> (last visited Jan. 22, 2013) (detailing programs focused on methamphetamine cleanup); see also MONT. CODE ANN. § 75-10-1301-06 (Westlaw 2013) (Montana Methamphetamine Contamination-Indoor Property Decontamination Standards); IDAHO CODE ANN. § 6-2601-08 (Westlaw 2013) (Idaho Clandestine Drug Laboratory Cleanup Act); OR. REV. STAT. ANN. § 453.855-.912 (Westlaw 2013) (Oregon Cleanup of Toxic Contamination from Illegal Drug Manufacturing).

191. Loendorf, *supra* note 166, at 548.

*1. States Considering Domestic Violence Registries*

Pennsylvania, New York, Nevada, and Texas are states where proposals for the creation of domestic violence registries have been offered. The Pennsylvania Legislature has periodically considered a bill that would require domestic violence “predators” to register on a publicly accessible database.<sup>192</sup> In 2011, New York Senator Eric Adams, Assemblywoman Vanessa Gibson, and Assemblyman Hakeem Jefferies proposed implementing a domestic violence offender registry.<sup>193</sup> The lawmakers were responding to the brutal attack of a woman by a man with whom she was romantically involved. Following the murder, investigators learned that the perpetrator had a history of domestic violence.<sup>194</sup> In Nevada, Assemblyman James Ohrenschall has called for an Internet-based registry, arguing that fewer women would be victimized if information was available at the beginning of a potentially violent relationship.<sup>195</sup> “I haven’t spoken to one woman who doesn’t like the idea, and I haven’t spoken to one man who has a sister or a daughter who doesn’t like the idea,” Ohrenschall has asserted.<sup>196</sup> In Texas, State Representative Trey Martinez Fisher of San Antonio, proposed the creation of a domestic violence offender registry in January 2011.<sup>197</sup> He too believes that the registry would potentially serve as a free background check on a possibly dangerous “potential suitor.”<sup>198</sup>

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192. “This bill, also known as ‘Robin’s Law,’ would honor the memory of Robin Shaffer, a Quakertown woman who was brutally murdered by her estranged husband on June 15, 2004.” Memorandum from Sen. Lisa Boscola (Dec. 7, 2012), *available at* <http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20130&cosponId=9861>. State Senator Lisa Boscola (Democrat) announced in December, 2012, that she plans to reintroduce the legislation. In her memorandum, posted on the Pennsylvania state website, she notes that the bill would be “a reintroduction of Senate Bill 756 from the previous legislative session.” *Id.*

193. *NY Legislators Propose Domestic Violence Registry*, CBS N.Y. (Apr. 11, 2011, 9:00 PM), <http://newyork.cbslocal.com/2011/04/17/ny-legislators-propose-domestic-violence-registry/>.

194. *Id.*

195. Henry Brean, *Domestic Violence Registry Proposed*, LAS VEGAS REV. J. (July 27, 2008, 10:00 PM), <http://www.lvrj.com/news/25958094.html>. Assemblyman Ohrenschall at the time of the article’s publication planned to propose the legislation in the following session, provided that voters reelected him. *Id.*

196. *Id.*

197. Jay Gormley, *Proposed Bill Would Create Domestic Violence Registry*, CBS DFW (Jan. 21, 2011, 7:02 AM), <http://dfw.cbslocal.com/2011/01/21/proposed-bill-would-create-domestic-violence-registry/>.

198. *Id.*

## 2. Private Organization Domestic Violence Registry

Tax-funded databases initiated by legislators are not the only potential source of information about domestic violence offenders. A private advocacy group created the National Domestic Violence Registry, devoted to “provid[ing] . . . conviction records of offenders . . . who have been found guilty of domestic violence.”<sup>199</sup> The information on the site is provided “free of charge and to the general public with records continuously being added daily.”<sup>200</sup> Information is searchable by name, and the information provided includes date of birth, state and county of conviction, race, gender, and criminal conviction. In addition to the searchable database, the website has links to various state initiatives to institute mandatory state-based domestic violence registries.<sup>201</sup>

Domestic violence offender registries, though not as prominent as violent offender and methamphetamine offender registries, are gaining popularity. Proposals such as those offered by legislators in Nevada in 2008 and New York in 2011 demonstrate the viability of this type of legislation and suggest that as awareness of domestic violence increases, so may the prevalence of related offender databases.

### D. Other Registries

Several additional efforts on the part of interest groups illustrate the offender registry trend. For example, animal rights groups in Oregon and California are advocating a number of animal abuse registries.<sup>202</sup> In 2010, Suffolk County, New York, created an animal abuse registry designed to track those convicted

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199. NAT'L DOMESTIC VIOLENCE REGISTRY, <http://www.domesticviolencedatabase.org/> (last visited Aug. 22, 2011).

200. *Id.* The registry includes men and women convicted of domestic violence, which includes “battering, stalking, criminal confinement, intimidation, strangulation, and domestic violence based sex offenses, etc.” *Id.*

201. For example, the website links to information about the Danielle DiMedici & Jessica Tush Law Bill. See *Jessica Tush Act*, NAT'L DOMESTIC VIOLENCE REGISTRY, <http://www.domesticviolencedatabase.org/jessicatushact.asp> (last visited Feb. 20, 2012).

202. Kerry Tomlinson, *Groups Push for Animal Abuse Registry*, KATU.COM (April 14, 2010, 8:50PM), <http://www.katu.com/news/local/90903919.html>; Mat Thomas, *California Lawmakers Consider Creating Animal Abuse Registry*, ANIMALRIGHTER (March 29, 2010, 4:51 PM), <http://animalrighter.blogspot.com/2010/03/california-lawmakers-consider-creating.html>.

of animal abuse and neglect.<sup>203</sup> As recently as 2011, Maine considered a proposal for an animal abuse registry. Maine lawmakers eventually rejected the proposal, citing the prohibitive cost of maintaining this type of database.<sup>204</sup> In 2011, the New Hampshire legislative assembly considered an animal abuse registry. The law was defeated for reasons articulated by the organization Dog Owners of the Granite State (DOGS), namely the lack of proven efficacy, the prohibitive cost, and the “potential for invasion of personal privacy.”<sup>205</sup>

On the opposite end of the spectrum, Virginia has created a website known as the Dangerous Dog Registry.<sup>206</sup> According to the website, the registry “provides a mechanism for consumers to determine if dangerous dogs reside in their neighborhoods.”<sup>207</sup> Maryland is considering a similar registry in Bill HB 169.<sup>208</sup> Opponents of HB 169 complain that the bill lacks due process for pet owners, citing the lack of notice, a hearing, or an appeal process before an animal may be placed on the registry.<sup>209</sup>

In addition to the domestic violent offender, methamphetamine manufacturer, and animal-related registries under consideration, several additional registries have already been introduced in a number of states. In 2005, Illinois created the Arsonist Registration Act which requires individuals convicted of arson to be required to register for ten years.<sup>210</sup> The offender must register with the Department of State Police.<sup>211</sup> The Act does not allow all

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203. Barry Leibowitz, *Animal Abuse Registry: First-in-Nation Law in NY County Sick of Cruelty*, CBS NEWS (Oct. 18, 2010, 08:25 AM), [http://www.cbsnews.com/8301-504083\\_162-20019761-504083.html](http://www.cbsnews.com/8301-504083_162-20019761-504083.html).

204. A.J. Higgins, *Maine House Rejects Animal Abuse Registry Proposal*, ME. PUB. BROAD. NETWORK (June 3, 2011), <http://www.mpbn.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/16640/Default.aspx>.

205. *Legislative Alert—Animal Abuse Registry*, DOG OWNERS OF THE GRANITE STATE (Feb. 8, 2011), <http://nhdogs.org/2011/02/08/legislative-alert-animal-abuse-registry/>; *New Hampshire HB 526: Animal Abuser Registry*, AM. DOG OWNERS ASS'N (Feb. 3, 2011), [http://www.adoa.org/index.php?option=com\\_content&view=article&id=3368:new-hampshire-hb-526-animal-abuser-registry&catid=28&Itemid=200086](http://www.adoa.org/index.php?option=com_content&view=article&id=3368:new-hampshire-hb-526-animal-abuser-registry&catid=28&Itemid=200086).

206. *Animal Health and Welfare, Dangerous Dog Registry*, VA. DEP'T AGRIC. & CONSUMER SERVS., <http://www.vdacs.virginia.gov/animals/dogs.shtml> (last visited Aug. 23, 2011).

207. *Id.*

208. H.R. 169, 428th Gen. Assemb., Reg. Sess. (Md. 2011).

209. Ledy VanKavage, *Oppose Maryland HB 169—Lacks Due Process for Dog Owners/Guardians*, CHANGE.ORG, <http://www.change.org/petitions/oppose-maryland-hb-169-lacks-due-process-for-dog-ownersguardians> (last visited Aug. 23, 2011).

210. 730 ILL. COMP. STAT. 148/1–999 (2007).

211. *Id.* at 148/10.



statements required to be reported under the Act to be made public; however, the Department of State Police must provide the Office of the State Fire Marshal with the information of those required to register under the act.<sup>212</sup> The Office is required to maintain a Statewide Arsonist Database “for the purpose of making that information available to the public on the Internet.”<sup>213</sup>

Other efforts include those of Texas Senator Rodney Ellis, who has been working to garner support for a hate-crime registry. Motivated in part by the brutal attack in 2005 of a Hispanic youth, Senator Ellis is calling for a registry that would require known offenders of hate crimes to register with local law enforcement.<sup>214</sup> In support of the initiative, Ellis remarked that “[i]f registration is good enough for sex offenders, it’s good enough for skinheads.”<sup>215</sup>

Public support for crime registries has grown exponentially over the past decade.<sup>216</sup> The state of Illinois has been particularly fertile ground for new registry initiatives. Illinois is an example of a state in which the legislature has been particularly active in creating new crime registries. Lawmakers in Illinois have created databases to warn the public of methamphetamine laboratories, arsonists, perpetrators of crimes against minors, and, recently, perpetrators of violent crimes against adults. Although Illinois has been most active in this area, a variety of other states have also been active in creating registries. Importantly, the trend seems to be growing. Those who oppose the proliferation of registries cite

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212. *Id.* at 148/60.

213. *Id.* at 148/10.

214. Bill Murphy, *Pipe Assault Prompts Call for Hate Crime Registry*, HOUS. CHRONICLE, May 8, 2006, <http://www.chron.com/default/article/Pipe-assault-prompts-call-for-hate-crime-registry-1581016.php>.

215. *Id.*

216. Public support for sex-offender registries remains strong. *See generally* Amy L. Anderson & Lisa L. Sample, *Public Awareness and Action Resulting from Sex Offender Notification Laws*, 19 CRIM. JUST. POL’Y. REV. 371 (2008); Poco D. Kernsmith, Sarah W. Craun & Jonathan Foster, *Public Attitudes Toward Sexual Offenders and Sex Offender Registration*, 18 J. CHILD SEXUAL ABUSE 290 (2009); Levenson et al., *supra* note 1; ROXANNE LIEB & COREY NUNLIST, WASH. STATE INST. FOR PUB. POL’Y, COMMUNITY NOTIFICATION AS VIEWED BY WASHINGTON’S CITIZENS: A 10-YEAR FOLLOW-UP (2008), available at <http://www.wsipp.wa.gov/rptfiles/08-03-1101.pdf>; Daniel Mears, Christina Mancini, March Gertz & Jason Bratton, *Sex Crimes, Children, and Pornography: Public Views and Public Policy*, 54 CRIME AND DELINQ. 532 (2008); DRETHA M. PHILLIPS, WASH. STATE INST. FOR PUB. POL’Y, COMMUNITY NOTIFICATION AS VIEWED BY WASHINGTON’S CITIZENS (1998), available at <http://www.wsipp.wa.gov/rptfiles/CnSurvey.pdf>; Jon L. Proctor, Diane M. Badzinski & Michelle Johnson, *The Impact of Media on Knowledge and Perceptions of Megan’s Law*, 13 CRIM. JUST. POL’Y. REV. 356 (2002).

evidence of inefficacy, high cost of implementation and maintenance, and privacy concerns.

### III. THE PSYCHOLOGICAL NEED FOR CONTROL

Crime registries represent a step toward “privatization” of criminal response and tracking.<sup>217</sup> An important aspect of the public notification component of such registries is the community policing function, in which members of the community pair up with law enforcement to prevent crime and to apprehend criminals. This type of crime prevention tool is psychologically appealing because it allows members of society to assume partial control over protecting their neighborhoods. The popularity of community policing and other public policing strategies is evidence of the appeal of community involvement.<sup>218</sup> Turning over information to the public has been seen not only as a way of maximizing the effectiveness of the existing law enforcement resources but also as a healthy mechanism for encouraging involvement and investment in the community.<sup>219</sup> A robust body of research, primarily from the clinical side, documents the benefits of “taking control.”<sup>220</sup> People who are able to assist in their own protection report experiencing

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217. HENRY S. RUTH & KEVIN R. REITZ, *THE CHALLENGE OF CRIME: RETHINKING OUR RESPONSE* 12 (2003).

218. Sam Berger & Jonathan D. Moreno, *Public Trust, Public Health, and Public Safety: A Progressive Response to Bioterrorism*, 4 HARV. L. & POL’Y REV. 295, 314 (2010) (“Community policing, which has been widely adopted over the past fifteen years, engages community members in discussions about the nature of local crime problems and the means to control them. In addition, it draws on the resources of the community itself, involving community members in the process of policing their own neighborhoods and reporting potential crimes. In some instances, it even involves participatory budgetary decisions that allow communities to pay for additional policing services and coverage.” (footnotes omitted)).

219. Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1120 (2000) (“Empowering citizens through access to government information and by giving them a voice in the decisionmaking process is not only more democratic, but has the potential to establish a basis for trust in otherwise distrusting communities.”).

220. See, e.g., Neal Krause & Benjamin Shaw, *Role-Specific Feelings of Control and Mortality*, 15 PSYCH. & AGING 617 (2000). “A vast literature indicates that feelings of personal control are related to physical as well as mental health across the life course.” *Id.* at 617. See also Daphne C. Watkins et al., *Discrimination, Mastery, and Depressive Symptoms Among African American Men*, 21 RES. ON SOC. WORK PRAC. 269 (2011) (finding lower rates of depression for people who felt personal control over life events); Daniel Goleman, *Feelings of Control Viewed as Central in Mental Health*, N.Y. TIMES, Oct. 7, 1986, <http://www.nytimes.com/1986/10/07/science/feeling-of-control-viewed-as-central-in-mental-health.html?pagewanted=all>.

empowerment.<sup>221</sup> Shelley Taylor discusses an effort to gain mastery over one's circumstances, noting that "[e]fforts at mastery center on the questions, 'How can I keep this or a similar event from happening again?' and 'What can I do to manage it now?'"<sup>222</sup>

A personal sense of control is particularly appealing when combatting crime. Public opinion polls have demonstrated that Americans maintain a relatively high level of anxiety about being victims of crime.<sup>223</sup> The belief that crime rates are rising—along with concern over the potential for personally experiencing a crime—has led members of society to voice concern and to desire action. In response, lawmakers have introduced new forms of legislation aimed at restoring a sense of security to the public.<sup>224</sup> These efforts have come in the face of what Jonathan Simon has called "the growing influence of the fear of crime over basic life decisions."<sup>225</sup> In an effort to be responsive to public concern, legislators have increasingly supported nontraditional methods, including criminal registries.<sup>226</sup> The fact that criminal registries continue to appeal to lawmakers and their constituents—in spite of doubts about the wisdom of such databases—is unsurprising when viewed in light of basic findings from empirical psychological studies.

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221. One of the more prevalent thoughts about community policing centers on "the notion . . . that people in these areas would be motivated to get involved and help 'take back' their neighborhoods." LUIS GARCIA ET AL., FINAL REPORT ON DETERMINANTS OF CITIZEN AND POLICE INVOLVEMENT IN COMMUNITY POLICING 5 (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/199367.pdf>.

222. Shelly E. Taylor, *Adjustment to Threatening Events: A Theory of Cognitive Adaption*, 38 AM. PSYCHOLOGIST 1161, 1161 (1983).

223. Lydia Saad, *Nearly 4 in 10 Americans Still Fear Walking Alone at Night*, GALLUP (November 5, 2010), <http://www.gallup.com/poll/144272/nearly-americans-fear-walking-alone-night.aspx> (citing poll numbers that reveal Americans' concerns about walking at night in areas one mile or closer to their homes).

224. *Public Opinion & the Criminal Justice System: Building Support for Sex Offender Management Programs*, CTR. FOR SEX OFFENDER MGMT., 2 (Apr. 2000), <http://www.csom.org/pubs/pubpinion.pdf>. "Public disenchantment with the criminal justice system in general, and its fear of sex offenders in particular, has led to the passage of an array of statutes, including sex offender registration, community notification, and involuntary civil commitment and lifetime supervision for some sex offender groups." *Id.*

225. Jonathan Simon, *Introduction: Crime, Community and Criminal Justice*, 90 CAL. L. REV. 1415, 1415 (2002).

226. *Id.* "[C]rime is having unprecedented influence over how we govern American institutions . . ." *Id.*

*A. Empirical Evidence and the Need for Control*

In 1954, Julian Rotter included the concept of “locus of control” in his social learning theory. Rotter was interested in the degree to which individuals perceive events and outcomes to be influenced by personal attributes or, alternatively, by external factors.<sup>227</sup> Herbert Lefcourt, a colleague of Rotter’s, described the loci of control in these terms:

[I]nternal control refers to the perception of positive and/or negative events as being a consequence of one’s own actions and thereby under personal control; external control refers to the perception of positive and/or negative events as being unrelated to one’s own behaviors in certain situations and therefore beyond personal control.<sup>228</sup>

Rotter discovered that individuals with an external locus of control tend to be more stressed and prone to clinical depression than do those with an internal locus of control.<sup>229</sup> Rotter’s work is evidence that more than 40 years ago social scientists were already familiar with the protective qualities associated with the sense of personal involvement in outcomes.

Crime victimization is famously associated with a loss of feeling of control.<sup>230</sup> Mastery over one’s environment is a central part of self-realization and is an important concept in a number of theoretical approaches in law and social sciences. One advocate of such a view of humanity is Martha Nussbaum, who includes in her ten “central human functional capabilities” the ability to exert “control over one’s environment.”<sup>231</sup> A perceived loss of control

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227. See Julian B. Rotter, *Generalized Expectancies for Internal Versus External Control of Reinforcement*, 80 PSYCHOL. MONOGRAPHS 1 (1966).

228. Herbert M. Lefcourt, *Internal Versus External Control of Reinforcement: A Review*, 65 PSYCHOL. BULL. 206, 207 (1966).

229. Victor A. Benassi, Paul D. Sweeney & Charles L. Dufour, *Is There a Relation Between Locus of Control Orientation and Depression?*, 97 J. OF ABNORMAL PSYCHOL. 357, 359–60 (1988).

230. MORNA MURRAY ET AL., OFFICE FOR VICTIMS OF CRIME, U.S. DEP’T OF JUSTICE, LISTEN TO MY STORY: COMMUNICATING WITH VICTIMS OF CRIME VIDEO DISCUSSION GUIDE 5 (2005), available at [http://www.ojp.usdoj.gov/ovc/pdftxt/listen\\_to\\_my\\_story\\_vdguide.pdf](http://www.ojp.usdoj.gov/ovc/pdftxt/listen_to_my_story_vdguide.pdf) (“One of the most common feelings reported by victims in the aftermath of a crime is feeling a loss of control.”).

231. MARTHA C. NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP 76–78 (2006). Nussbaum contends that the “idea of equal worth is connected to an idea of liberty: to respect the equal worth of persons is, among other things, to promote their ability to fashion a life in accordance with their own view of what is deepest and most important.” Martha C. Nussbaum, SEX & SOC. JUSTICE 5 (1999). See also Martha C. Nussbaum,

motivates individuals to take steps to regain a sense of mastery over their circumstances. To the extent that an individual is able to influence her environment, she will experience a general sense of power and will enjoy associated mental health benefits.<sup>232</sup>

In her book, *Imagining the Victim of Crime*, Sandra Walklate writes that high crime rates, along with avoiding being a victim of crime have become a normal feature of everyday life.<sup>233</sup> She calls crime a “highly emotive political reference point” and points to increasing individual involvement in crime management.<sup>234</sup> Indeed, research supports the notion that Americans are increasingly fearful of crime. According to a Gallup Poll from November, 2010, two-thirds of Americans say there is more crime in the United States than there was one year previous. This number is higher than the levels from the late 1990s and early 2000s.<sup>235</sup>

This perception has important implications for attitudes and behavior. Social scientists who study the effects of human beings’ fear of crime talk about “constrained behavior.” There are two broad categories of constrained behavior: *avoidance* and *defensive* behavior.<sup>236</sup> Crime registries can be properly characterized as facilitating both. The implementation of registries and the dissemination of information about offenders’ identities and locations is a defensive mechanism, while subsequent action taken (keeping one’s child away from the home of a registered offender or declining to buy a home on a street where an offender resides) is an avoidance behavior. Regardless of whether an action is avoidant or defensive, constrained behaviors are measures taken by individuals to gain control over circumstances in which they otherwise would be vulnerable to criminal victimization.

The ability of individuals to exercise control over adverse circumstances is paramount when it comes to productivity and

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*Human Dignity and Political Entitlements*, in HUMAN DIGNITY AND BIOETHICS: ESSAYS COMMISSIONED BY THE PRESIDENT’S COUNCIL ON BIOETHICS 351–80 (2008); Daniel P. Sulmasy, *Dignity and Bioethics: History, Theory, and Selected Applications*, in HUMAN DIGNITY AND BIOETHICS: ESSAYS COMMISSIONED BY THE PRESIDENT’S COUNCIL ON BIOETHICS 469–501 (2008).

232. Nehemia Friedland et al., *Controlling the Uncontrollable: Effects of Stress on Illusory Perceptions of Controllability*, 63 J. PERSONALITY & SOC. PSYCHOL. 923, 924 (1992).

233. SANDRA WALKLATE, *IMAGINING THE VICTIM OF CRIME* 7 (2007).

234. *Id.*

235. Jeffrey M. Jones, *Americans Still Perceive Crime As on the Rise*, GALLUP (Nov. 18, 2010), <http://www.gallup.com/poll/144827/americans-perceive-crime-rise.aspx>.

236. KENNETH F. FERRARO, *FEAR OF CRIME: INTERPRETING VICTIMIZATION RISK* 55–56 (1995).

mental health. Several studies have illustrated this idea. In one study, subjects heard loud, randomly occurring noises while completing tasks, solving puzzles, and proofreading.<sup>237</sup> Half of the subjects were provided with a button that would enable them to terminate the noise.<sup>238</sup> These subjects were encouraged to use the button only if the noise became too much for them to bear. Subjects with access to the off switch tried almost five times the number of insoluble puzzles and performed significantly better on the proofreading task than did their counterparts, in spite of the fact that the subjects who had access to a control button did not choose to terminate the noise. Similar results were obtained when the adverse stimulus was electric shock.<sup>239</sup> Researcher Ellen Langer explains, "People are motivated to control their environment. The importance of control . . . has been widely discussed by both therapists and social science researchers . . . [and] includes the ability to 'beat the odds,' that is, to control chance events."<sup>240</sup>

Behavioral scientist Shelley Taylor maintains that the effort to gain control over potential threats involves the ability to form and maintain a set of illusions.<sup>241</sup> Specifically, according to Taylor, individuals interpret known facts to yield a positive picture, regardless of whether the evidence actually supports this interpretation.<sup>242</sup> Cancer patients, for example, demonstrate a need to establish a sense of control over their illness.<sup>243</sup> "The theme of mastery centers around gaining control over the event and one's life. It is exemplified by, but not exclusively served by, beliefs about personal control."<sup>244</sup> Patients develop the sincere belief that they can prevent the cancer from reoccurring. Taylor, Lichtman, and Wood interviewed cancer patients and found that two-thirds of the patients believed that they had at least some control over the

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237. See, e.g., David C. Glass et al., *Psychic Cost of Adaptation to an Environmental Stressor*, 12 J. PERSONALITY & SOC. PSYCHOL. 200, 206 (1969). See also David C. Glass et al., *Behavioral Consequences of Adaptation to Controllable and Uncontrollable Noise*, 7 J. EXPERIMENTAL SOC. PSYCHOL. 244 (1971).

238. Glass et al., *Psychic Cost*, *supra* note 237, at 206.

239. Ervin Staub et al., *Self-Control and Predictability: Their Effects on Reactions to Aversive Stimulation*, 18 J. PERSONALITY & SOC. PSYCHOL. 157, 158 (1971).

240. Ellen J. Langer, *The Illusion of Control*, 32 J. PERSONALITY & SOC. PSYCHOL. 311, 323 (1975).

241. Taylor, *supra* note 222, at 1161.

242. *Id.*

243. See generally *id.*

244. *Id.* at 1161.

course or recurrence of their cancer.<sup>245</sup> More than a third (37%) believed that they had a great deal of control.<sup>246</sup> In spite of evidence to the contrary, individuals overwhelmingly choose courses of action that allow them to feel like they could influence the outcome. Even when the actual impact of these efforts is minimal, “[b]elief in control over [the threat] persists despite little evidence that such faith is well placed.”<sup>247</sup> Actual control may be less relevant than one might think, however, because manipulating the environment is only one of two important goals.<sup>248</sup> The second goal is the affirmation of an effective *self-image*. Ultimately, human beings are motivated to see themselves as able to control important outcomes independent of any motive to assert genuine control.<sup>249</sup>

### *B. The Role of Information Gathering in Efforts to Control*

Central to the issue of control is the task of information gathering. Seeking out sources of knowledge and forming causal inferences are vital initial steps to influencing one’s environment. Having information is critical to forming appropriate responses.<sup>250</sup> Kelley has noted:

The purpose of causal analysis—the function it serves for the species and the individual—is effective control. The attributor is not simply an attributor, a seeker after knowledge. His latent goal in gaining knowledge is that of effective management of himself and his environment. He is not a pure “scientist” then, but an applied one.<sup>251</sup>

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245. Shelley E. Taylor et al., *Attributions, Beliefs About Control, and Adjustment to Breast Cancer*, 46 J. PERSONALITY & SOC. PSYCHOL. 489, 496 (1984).

246. *Id.*

247. Taylor, *supra* note 222, at 1167.

248. John H. Harvey et al., *Unsolicited Interpretation and Recall of Interpersonal Events*, 38 J. PERSONALITY & SOC. PSYCHOL. 551 (1980) (listing the factors that motivate attributions, including deprivation of control and personal involvement with an issue).

249. Thomas J. Liu & Claude M. Steele, *Attributional Analysis As Self-Affirmation*, 51 J. PERSONALITY & SOC. PSYCHOL. 531, 532 (1986).

250. RUTH & REITZ, *supra* note 217, at 39.

251. H.H. Kelley, *Attribution Theory in Social Interaction*, in EDWARD E. JONES, *ATTRIBUTION: PERCEIVING THE CAUSES OF BEHAVIOR* 1–26, 22 (D.E. Kanouse et al. eds., 1972).

Because individuals are particularly motivated to seek control when personally involved with the issue under consideration,<sup>252</sup> any risk that seems personally threatening will motivate a search for more information. In Taylor and colleagues' cancer patient subjects, for example, arming themselves with information and emerging from ignorance about the source of the threat was an important part of fighting against the disease.<sup>253</sup> One subject explained, "I felt that I had lost control of my body somehow, and the way for me to get back some control was to find out as much as I could. It really became almost an obsession."<sup>254</sup> Taylor and colleagues have suggested that information seeking is motivated by efforts to regain control over one's environment.<sup>255</sup>

Given the concern citizens have about crime and the concomitant desire to manage associated risk, it makes sense that individuals seek out information regarding criminal activity. Consistent with the theory of avoidant and defensive behaviors, human beings gather data as part of a larger strategy to minimize the chance of personal victimization.<sup>256</sup> Purdue researcher Kenneth Ferraro suggests that just as would-be offenders rely upon information on crime rates, police protection, and neighborhood surveillance, so do ordinary citizens in an attempt to behave strategically to minimize risk.<sup>257</sup> Individuals seek information about those criminals that they deem most threatening, and sex offenders have long been viewed as one of the most frightening offender populations.<sup>258</sup>

The opinions of members of the public are a central force driving the treatment of sex offenders and other criminals. In fact, how crime is managed is an area in which the public arguably exerts more than ordinary control. In addition to voicing their opinion to elected officials and voting into office those lawmakers with whom they agree on crime management issues, members of the public are often solicited for their opinion when it comes to crime measures. For example, in 1998, the Vermont Department of

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252. Thane S. Pittman et al., *The Effect of Commitment on Information Utilization in the Attribution Process*, 3 PERSONALITY & SOC. PSYCHOL. BULL. 276 (1977).

253. Taylor, *supra* note 222, at 1164.

254. *Id.* at 1161.

255. *Id.*

256. FERRARO, *supra* note 236, at 57 (for the proposition that people modify behaviors to minimize risk of victimization).

257. *Id.*

258. Levenson et al., *supra* note 1. See also L.C. Hirning, *Indecent Exposure and Other Sex Offenses*, 7 J. CLINICAL PSYCHOPATHOLOGY & PSYCHOTHERAPY 105, 105 (1945).



Corrections was tasked with developing a sex-offender community notification law to be introduced in the state legislature.<sup>259</sup> The study explored Vermonters' preferences regarding treatment for sex offenders and community notification.<sup>260</sup> Results from this and other similar studies were used to inform policymakers as they drafted legislation. In Delaware, the Sentencing and Accountability Commission (SENTAC) commissioned a study to determine attitudes on a variety of issues related to crime prevention and sanctions.<sup>261</sup> Results of the study were released to the public, and state legislators were briefed on the data gathered. In 1995, the North Carolina State-Centered Project commissioned a study of public opinion on a variety of recently enacted legislation, including truth-in-sentencing measures.<sup>262</sup> Following the enactment of legislation establishing a community notification database, as part of the Community Protection Act, the Washington State Institute for Public Policy (WSIPP) conducted a telephone survey soliciting roughly 400 residents from all areas of the state.<sup>263</sup>

In each case, legislators actively sought out the opinions and preferences of the public in order to design informational resources to fit the desires of community members. In the area of crime control, legislators are overwhelmingly open to public involvement in decision making and often welcome opportunities for citizens to become directly involved, arming them with information in a variety of easy-to-use formats.<sup>264</sup> Scholars who write about the evolution of criminal policies in the western world have noted that these cultures have moved in the direction of actively involving the public in a partnership with law enforcement.<sup>265</sup>

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259. *Public Opinion & the Criminal Justice System*, *supra* note 224.

260. *See id.*

261. *See generally* THE DEL. STATISTICAL ANALYSIS CTR., SENTENCING TRENDS AND CORRECTIONAL TREATMENT IN DELAWARE (2002), *available at* [http://www.jrsa.org/awards/hoke-winners/02\\_Sentencing\\_Trends\\_and\\_Corrections.pdf](http://www.jrsa.org/awards/hoke-winners/02_Sentencing_Trends_and_Corrections.pdf). *See also* Francis T. Cullen, Bonnie S. Fisher & Brandon K. Applegate, *Public Opinion About Punishment and Corrections*, 27 CRIME & JUST. 1, 46 (2000), *available at* [http://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1011&context=crim\\_facpub](http://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1011&context=crim_facpub).

262. *See* JOHN DOBLE RESEARCH ASSOC., INC., CRIME AND CORRECTIONS: THE VIEWS OF THE PEOPLE OF NORTH CAROLINA (1995), *available at* <http://www.doc.state.nc.us/news/1996/96news/doblerep.htm>.

263. PHILLIPS, *supra* note 216, at 1.

264. For more information on how members of the public are able to access information about offenders via registries, see *supra* Part I.

265. DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 140 (2002) (discussing the "preventative partnership" model).

*C. Psychometric Study of Risk and Control*

The psychometric study of risk was a response to the predominant method employed by traditional risk analysis, known as *risk–benefit* analysis. Risk–benefit analysis is based upon cost–benefit analysis but is specific to risk management. Risk–benefit is a method of analysis that asks: “Is this whatever-it-is acceptably safe? Alternatively, how safe is safe enough?”<sup>266</sup> Fischhoff and colleagues asked people questions<sup>267</sup> in order to derive a “cognitive map”<sup>268</sup> or a taxonomy for hazards that could serve as a tool for understanding and predicting risk responses.<sup>269</sup> Psychometric researchers hoped to explain “people’s extreme aversion to some hazards, their indifference to others, and the discrepancies between these reactions and experts’ opinions.”<sup>270</sup> The initial method and the results were presented in a 1978 empirical paper.<sup>271</sup> Although the methodology was not without drawbacks,<sup>272</sup> the work represented a breakthrough in risk analysis, turning focus toward the perceptions and priorities of members of the public rather than focusing exclusively on formulas or experts to determine acceptable risks and risk levels.

Two characteristics of risks are particularly relevant in the crime context. The first is controllability, and the second is voluntariness.<sup>273</sup> The feeling of control is an important influence on human behavior.<sup>274</sup> When individuals perceive that they have control over events, they experience less fear.<sup>275</sup> Conversely, risks

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266. See Paul Slovic, Baruch Fischhoff & Sarah Lichtenstein, *Facts and Fears: Societal Perception of Risk*, in 8 ADVANCES IN CONSUMER RESEARCH 497–502 (Kent B. Monroe ed., 1981).

267. See *id.*

268. See Paul Slovic, *Perception of Risk*, 236 SCI. 280, 281 (1987).

269. See *id.* at 284–85.

270. Paul Slovic & Elke U. Weber, *Perception of Risk Posed by Extreme Events*, 7 (2002), [http://www.ldeo.columbia.edu/chrr/documents/meetings/roundtable/white\\_papers/slovic\\_wp.pdf](http://www.ldeo.columbia.edu/chrr/documents/meetings/roundtable/white_papers/slovic_wp.pdf).

271. See Baruch Fischhoff, Paul Slovic, Sarah Lichtenstein, Stephen Read & Barbara Combs, *How Safe Is Safe Enough? A Psychometric Study of Attitudes Towards Technological Risks and Benefits*, 9 POL’Y SCI. 127 (1978).

272. For example, the respondents were all women and were all members of the League of Women voters. For a variety of reasons, this group is not likely to be representative of society as a whole.

273. See Molly J. Walker Wilson, *Cultural Understandings of Risk and the Tyranny of the Experts*, 90 OR. L. REV. 113, 166–68 (2011).

274. George Loewenstein, *Out of Control: Visceral Influences on Behavior*, 65 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 272, 274 (1996); Wilson, *supra* note 273, at 166.

275. Slovic, *supra* note 268, at 283 (“[E]xpressed preference studies have shown that other (perceived) characteristics such as familiarity, control . . . and

over which people perceive that they have little influence are likely to be viewed as more dangerous and less acceptable.<sup>276</sup> Examples of uncontrollable hazards include airplane crashes, dangers from electric power, and harms from transport of hazardous materials.<sup>277</sup> As Slovic notes, “motor vehicle accidents are much less dreaded because people think they can control their vulnerability (‘It won’t happen to me because I drive more safely than most people’).”<sup>278</sup> In sum, “perceived lack of control is a key factor behind high risk perception.”<sup>279</sup> The control issue becomes important in particular contexts.<sup>280</sup> Hazards that are viewed as primarily the responsibility of the government are those over which individuals tend to view as beyond personal control.<sup>281</sup> Lifestyle risks, in contrast, are judged to be a matter of personal responsibility.<sup>282</sup>

Just as people are more afraid of risks over which they perceive that they have little control, they are also particularly frightened by risks that are involuntary.<sup>283</sup> The voluntariness quality is related to the issue of control, and it reinforces the notion that when members of the public perceive that they have mastery over their vulnerability to potential harms, they are less fearful.<sup>284</sup> Because victimization at the hands of lawbreakers is almost always nonvoluntary, and because there is no positive trade-off as there is when some other risks are assumed (such as participation in athletics or the stock market, or eschewing insurance), the risk posed by criminals is an example of one that is at the extreme end of the nonvoluntary spectrum.

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level of knowledge also seem to influence the relation between perceived risk, perceived benefit, and risk acceptance.”)

276. Slovic, *supra* note 268, at 282 (providing an example of psychometric data).

277. Wilson, *supra* note 273, at 166.

278. Paul Slovic et al., *Behavioral Decision Theory Perspectives on Protective Behavior*, in *TAKING CARE: UNDERSTANDING AND ENCOURAGING SELF-PROTECTIVE BEHAVIOR* 14 (Neil D. Weinstein ed., 1987).

279. Paul Slovic, *What’s Fear Got to Do with It? It’s Affect We Need to Worry About*, 69 *MO. L. REV.* 971, 988 (2004).

280. Lennart Sjöberg, *The Different Dynamics of Personal and General Risk*, 5 *RISK MGMT.* 19, 27 (2003).

281. *Id.* at 19–34.

282. *Id.* at 31.

283. See Roger E. Kasperson et al., *The Social Amplification of Risk: A Conceptual Framework*, 8 *RISK ANALYSIS* 177, 178 (1988); Paul Slovic, *Trust, Emotion, Sex, Politics, and Science: Surveying the Risk-Assessment Battlefield*, 19 *RISK ANALYSIS* 689, 691 (1999).

284. Slovic, *supra* note 268, at 283 (noting that “hazards judged to be ‘voluntary’ tend also to be judged as ‘controllable’”).

## IV. THE NEED FOR CONTROL AND CRIME REGISTRIES

Registries are one way of satisfying the public's desire to exert some measure of personal control over exposure to risk of victimizations for themselves and their loved ones. Research has found a connection between fear of a class of crime or criminal and desire for registration and notification laws.<sup>285</sup> The most well documented and robust example of this is support for sex-offender registries. A 2010 Rasmussen poll found that almost three quarters (72%) of adults favored sex-offender registries.<sup>286</sup> This finding is consistent with other polls, including a 2005 Gallup Poll (94% of Americans in favor of registering child molesters);<sup>287</sup> a 2010 study by the Justice Department (79% polled believed that registration and notification were effective in reducing recidivism),<sup>288</sup> and a 2006 survey of Florida citizens (94% percent agreed that sex offenders' names and addresses should be published, and 82% agreed that sex offenders should be limited in where they live),<sup>289</sup> to name a few.

When it comes to registries for other types of crimes, poll data has indicated that more than half of a majority of respondents (53.2%) support the establishment of additional public crime registries.<sup>290</sup> Precisely *which* crimes the public is most likely to want to see the subject of registries is another question that social science research can address. In particular, social science research on behavioral "biases" can shed light on surges in public anxiety for particular crimes. Psychological research has exposed predictable antecedents to public panics—the type of widespread alarm that we would expect to precede a major legislative initiative. The issues that tend to receive the most attention from the public are those that are *salient*, or those that capture public attention. In determining how attention becomes focused on particular issues, social scientists have focused on how information

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285. Kernsmith, Craun & Foster, *supra* note 216.

286. *National Survey of 1,000 Adults Conducted September 13–14, 2010*, RASMUSSEN REPORTS, [http://www.rasmussenreports.com/public\\_content/business/econ\\_survey\\_questions/september\\_2010/topline\\_sex\\_offender\\_september\\_13\\_14\\_2010](http://www.rasmussenreports.com/public_content/business/econ_survey_questions/september_2010/topline_sex_offender_september_13_14_2010) (last visited Aug. 25, 2011).

287. Saad, *supra* note 1.

288. *Public Opinion & the Criminal Justice System*, *supra* note 224.

289. DANIEL P. MEARS & CHRISTINA MANCINI, THE 2006 PUBLIC OPINION SURVEY OF FLORIDA CITIZENS: CONCERNING THE FLORIDA DEPARTMENT OF CORRECTIONS i, iii (2006), *available at* [http://www.criminologycenter.fsu.edu/p/pdf/2006\\_DOC\\_Survey\\_Rpt.pdf](http://www.criminologycenter.fsu.edu/p/pdf/2006_DOC_Survey_Rpt.pdf).

290. Sarah W. Craun, Poco D. Kernsmith & N. K. Butler, "Anything That Can Be a Danger to the Public": *Desire to Extend Registries Beyond Sex Offenses*, 22 CRIM. JUST. POL'Y REV. 375, 382 (2011).

is received, encoded, prioritized, and subsequently used.<sup>291</sup> Because human beings process a vast amount of information on a daily basis, they subconsciously develop cognitive shortcuts, or *heuristics*, which allow for decisions in a complex world with limited information and imperfect memories.<sup>292</sup>

One heuristic, the *availability heuristic*, plays a central role in public risk perception. When events, connections, concepts, and risks are easily brought to mind, they are said to be “available.” Tversky and Kahneman,<sup>293</sup> Sutherland,<sup>294</sup> and others<sup>295</sup> have described the pervasive effect of the availability heuristic on ways in which individuals generate estimates about risk. Empirical investigations of this effect have repeatedly demonstrated that exposure to information about a particular event increases estimates of the risk associated with the event.<sup>296</sup>

Research demonstrates that recent or frequent events, and events or depictions that are vivid or emotionally loaded, are particularly likely to become cognitively available.<sup>297</sup> Empirical investigations of the availability heuristic suggest that judgments

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291. See Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1127 (1974) (introducing “availability” along with other heuristics and biases).

292. See generally Herbert A. Simon, *A Behavioral Model of Rational Choice*, 69 Q.J. ECON. 99 (1955); HERBERT A. SIMON, 2 MODELS OF BOUNDED RATIONALITY (1982). See also HERBERT A. SIMON, MODELS OF MAN, SOCIAL AND RATIONAL: MATHEMATICAL ESSAYS ON RATIONAL HUMAN BEHAVIOR IN A SOCIAL SETTING 198–99 (1957); Herbert A. Simon, *Human Nature in Politics: The Dialogue of Psychology with Political Science*, 79 AM. POL. SCI. REV. 293 (1985).

293. Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCHOL. 207 (1973).

294. STUART SUTHERLAND, IRRATIONALITY: THE ENEMY WITHIN 157 (1994).

295. See, e.g., REID HASTIE & ROBYN M. DAWES, RATIONAL CHOICE IN AN UNCERTAIN WORLD: THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING 78–84 (2d ed. 2010); Norbert Schwarz & Leigh Ann Vaughn, *The Availability Heuristic Revisited: Ease of Recall and Content of Recall As Distinct Source of Information*, in HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 103 (Thomas Gilovich et al. eds., 2003); John S. Carroll, *The Effect of Imagining an Event on Expectations for the Event: An Interpretation in Terms of the Availability Heuristic*, 14 J. EXPERIMENTAL SOC. PSYCHOL. 88 (1978); Cass R. Sunstein, *Precautions & Nature*, DAEDALUS, Spring 2008, at 49, 89; see also Molly J. Walker Wilson & Megan P. Fuchs, *Publicity, Pressure, and Environmental Legislation: The Untold Story of Availability Campaigns*, 30 CARDOZO L. REV. 2147, 2149 (2009).

296. For a review of the empirical literature on the availability heuristic, see Wilson & Fuchs, *supra* note 295, at 2154–58.

297. “The availability heuristic is a widely-used mental shortcut that leads people to assign a higher likelihood to events that are readily ‘available’—events that are particularly likely to come to mind due to their vividness, recency, or frequency.” See Wilson & Fuchs, *supra* note 295, at 2149.

about the relative risk and importance of certain events and issues can be heavily influenced by the availability of representative examples.<sup>298</sup> For example, prior to the terrorist attack on the World Trade Center on September 11, 2001, Americans were relatively unconcerned about terrorism.<sup>299</sup> More than a year after the attack, public polls revealed that a significant percentage of respondents judged terrorism to be the single most important problem, and “fluctuations [in Americans’ concern about terrorism] closely track[ed] the frequency of television news stories concerning terrorism.”<sup>300</sup>

More recently, Kuran and Sunstein<sup>301</sup> have written on “availability cascades,” which sometimes occur when members of society attempt either to obtain information (in the case of an informational cascade) or to earn social approval (the motivation underlying a reputational cascade).<sup>302</sup> Cascades occur when the availability heuristic “interacts with identifiable social mechanisms to generate availability cascades—social cascades, or simply cascades, through which expressed perceptions trigger chains of individual responses that make these perceptions appear increasingly plausible through their rising availability in public discourse.”<sup>303</sup> These cascades may occur spontaneously, but often they are manufactured or helped along by groups or individuals (availability entrepreneurs) who instigate and fuel availability cascades in an effort to create sufficient public pressure to generate change.<sup>304</sup>

Discussion of the availability heuristic has reached a critical mass in the legal literature; it is possible to find discussions of the availability heuristic in the context of securities regulation, racial bias in jury decision making, public influence and judicial opinions, bankruptcy law and prosecutorial decision making, as

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298. See Wilson & Fuchs, *supra* note 295, at 2149.

299. ROBERT E. GOODIN, WHAT’S WRONG WITH TERRORISM? 119 (2006).

300. *Id.*

301. Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683 (1999).

302. See *id.* at 685–86. Kuran and Sunstein point out that there may be overlap between these two types of cascades and that this overlap occurs when individuals affected by these cascades have dual underlying motivations: obtaining information *and* gaining social approval.

303. *Id.* at 685. For more on availability cascades, see David Hirshleifer, *The Blind Leading the Blind: Social Influence, Fads, and Informational Cascades*, in THE NEW ECONOMICS OF HUMAN BEHAVIOR 188 (Mariano Tommasi & Kathryn Ierulli eds., 1995), and Sushil Bikhchandani, David Hirshleifer & Ivo Welch, *Learning from the Behavior of Others: Conformity, Fads, and Informational Cascades*, 12 J. ECON. PERSP. 151 (1998).

304. See Kuran & Sunstein, *supra* note 301, at 713.

well as many other areas.<sup>305</sup> Availability campaigns are less well recognized, although references to closely related social phenomena are sometimes referred to as herd behavior,<sup>306</sup> bandwagon effect,<sup>307</sup> groupthink,<sup>308</sup> or crowd psychology.<sup>309</sup> In-depth analysis of availability campaigns is virtually absent from the legal literature.<sup>310</sup> Moreover, commentary in the popular media sometimes misstates the availability heuristic and its offspring, the availability cascade and campaign.<sup>311</sup>

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305. Susan Block-Lieb & Edward J. Janger, *The Myth of the Rational Borrower: Rationality, Behavioralism, and the Misguided "Reform" of Bankruptcy Law*, 84 TEX. L. REV. 1481 (2006) (bankruptcy law and behavioral biases); Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM. & MARY L. REV. 1587 (2006) (heuristics and biases in the context of prosecutorial discretion); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345 (2007) (implicit consideration of race in jury determinations); Cass R. Sunstein, *If People Would Be Outraged by Their Rulings, Should Judges Care?*, 60 STAN. L. REV. 155 (2007) (the role of public opinion in judicial decision making); Steven Walt, *Underestimation Bias and the Regulation of Secured Consumer Debt*, 40 UCC L.J. 169 (2007) (regulation of consumer debt).

306. See Laurens Rook, *An Economic Psychological Approach to Herd Behavior*, 40 J. ECON. ISSUES 75 (2006).

307. See Richard Nadeau et al., *New Evidence About the Existence of a Bandwagon Effect in the Opinion Formation Process*, 14 INT'L POL. SCI. REV. 203 (1993).

308. IRVING L. JANIS, VICTIMS OF GROUPTHINK: A PSYCHOLOGICAL STUDY OF FOREIGN POLICY DECISIONS AND FIASCOES 9 (2d ed. 1982) (Groupthink is a "mode of thinking that people engage in when they are deeply involved in a cohesive in-group, when the members' strivings for unanimity override their motivation to realistically appraise alternative courses of action.").

309. As one commentator stated:

Under certain given circumstances, and only under those circumstances, an agglomeration of men presents new characteristics very different from those of the individuals composing it. The sentiments and ideas of all the persons in the gathering take one and the same direction, and their conscious personality vanishes. A collective mind is formed, doubtless transitory, but presenting very clearly defined characteristics. The gathering has thus become what, in the absence of a better expression, I will call an organised crowd, or, if the term is considered preferable, a psychological crowd. It forms a single being, and is subjected to the law of the mental unity of crowds.

GUSTAVE LE BON, THE CROWD: A STUDY OF THE POPULAR MIND 1-2 (2002) (emphasis omitted).

310. Only a very small number of articles and essays have even mentioned availability campaigns by that name. At last count (as of January 1, 2013), a Westlaw search of "availability campaign" turned up only six articles discussing the phenomenon.

311. An example of a flawed definition is the following: "The simple definition of availability cascade is when we read and hear in the media about an issue so much that we accept it as reality." Jim Blasingame, *Avoid Dangers of*

A number of scholars have suggested that cognitive bias results in the public's skewed perceptions regarding crime and criminal activity, which in turn can lead to suboptimal legislative initiatives.<sup>312</sup> The availability heuristic leads people to judge those crimes about which they hear most often or in particularly vivid terms or detail to be the most pervasive.<sup>313</sup> The media, a powerful force in modern society, moderates information that reaches members of the public. Rachel Barkow points out:

Because of the availability heuristic, through which people estimate how frequently an event occurs based on how easy it is to recall the event, when people think about the risk of crime and the appropriate sentence, they will think of the examples they get from the media. Thus, the public's fears of crimes will be fueled by the media, and they will perhaps place greater stock in incarceration policies that promise to deal with their fears in the most immediate fashion.<sup>314</sup>

When many members of society hear about the same heinous crime or crimes, a public dialogue begins as communities grapple with the question of how to fight back against what is often perceived as an onslaught or a "wave" of terrifying crime. Misperceptions about crime trends results in part because the media selectively reports on the most heinous crimes.<sup>315</sup> The availability heuristic and availability cascades that ensue assure

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*Availability Cascade*, FORBES (Jan. 28, 2008), <http://smallbusiness.forbes.com/small-business-articles/avoid-the-dangers-of-availability-cascade-1793>. This is neither a definition, in the strict sense of the term, nor is it descriptively accurate. It is not the simple reading and hearing about an issue that creates an availability cascade. It is the reading and hearing about something with such frequency.

312. See Roger G. Noll & James E. Krier, *Some Implications of Cognitive Psychology for Risk Regulation*, 19 J. LEGAL STUD. 747, 771-79 (1990) (discussing the political capital generated by candidates' endorsement of stringent sentences and the public's bias that fuels politicians' get-tough-on-crime stances); see also Rachel E. Barkow, *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276, 1292-97 (2005).

313. Cass R. Sunstein, *Probability Neglect: Emotions, Worst Cases, and Law*, 112 YALE L.J. 61, 86 (2002) ("When the media emphasizes particular incidents, those incidents will become cognitively available, and hence they might seem to be far more probable than they are in fact.").

314. Barkow, *supra* note 312, at 1292.

315. Adriaan Lanni, *Jury Sentencing in Noncapital Cases: An Idea Whose Time Has Come (Again)?*, 108 YALE L.J. 1775, 1781-82 (1999). See also Loretta J. Stalans, *Citizens' Crime Stereotypes, Biased Recall, and Punishment Preferences in Abstract Cases: The Educative Role of Interpersonal Sources*, 17 LAW & HUM. BEHAV. 451, 468 (1993).



that these most disturbing and fear-provoking tragedies will garner the most attention and leave the strongest impression on members of the public.

Ironically, sex offense rates were declining when most of the registration and notification laws were being passed.<sup>316</sup> Rape arrest rates have decreased steadily since 1991 (in a period prior to the enactment of sex crimes legislation), and child sexual abuse rates have declined as well.<sup>317</sup> These statistics belie the notion that legislatures passed sex-offender registry laws because of an increase in the number of sex offenses. Instead, it appears that the laws were passed in response to highly publicized cases and the resulting public concern. While arrests for sex crimes were waning, publicity around sex crimes increased. For example, a 2001 study by Lisa Sample of University of Missouri St. Louis revealed a 128% increase in the number of articles pertaining to sex crimes in three newspapers during the period when legislation was pending and enacted.<sup>318</sup>

Fear sells stories. Because the media selectively features the very crimes that are most likely to cause concern, these crimes are also most cognitively available to members of the public. A very human desire to exert control over sources of harm leads members of the public to demand, and legislators to endorse, crime control methods designed to provide information to those looking for a measure of comfort in the face of fear-provoking news stories. In recent years, crime registries seemingly restore control to members of the American public who are besieged by bad news about threats posed by criminal offenders. However appealing, these crime registries are expensive to implement, and they divert resources from other potentially more effective methods of crime control. Findings from studies of sex-offender registries provide evidence of the problematic nature of satisfying the need for control through registry and notification laws.

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316. Prescott & Rockoff, *supra* note 26, at 167.

317. From 1996 to 2005, the Federal Bureau of Investigation reported a 2.4% decline in reporting of forcible rape to police. See Fed. Bureau of Investigation, U.S. Dep't of Justice, *Forcible Rape—Crime in the United States 2005* (2005), available at [http://www2.fbi.gov/ucr/05cius/offenses/violent\\_crime/forcible\\_rape.html](http://www2.fbi.gov/ucr/05cius/offenses/violent_crime/forcible_rape.html). The National Crime Victimization Survey for this same period reveals a 35% decline in victimization for rape and sexual assault. Lisa L. Sample, *The Social Construction of the Sex Offender* (2000) (unpublished Ph.D. dissertation, University of Missouri—St. Louis) (on file with author).

318. Vásquez et al., *supra* note 5, at 176.

## CONCLUSION

Americans are anxious to avoid being victims of crime. Members of the public tend to view crime as a pervasive problem and seek ways to minimize exposure to sources of crime. Enter criminal registries. Over the past decade, the popularity of criminal registries has grown, primarily on the back of the sex-offender registry model. Problematically, the sex-offender registry is based upon two faulty assumptions. The first is that sex offenders recidivate at a high rate, and the second is that tracking and notification efforts pay dividends in terms of lower crime rates. Both of these assumptions have turned out to be incorrect. In the case of crime registries, data from the experiment with sex-offender registries illustrate the failure of this type of measure to achieve the primary goal of crime prevention.

In spite of this and in spite of the high cost and other potential negative consequences of such registries,<sup>319</sup> the implementation of new crime registries is on the rise. Lawmakers continue to introduce crime registry legislation for crimes ranging from murder, to methamphetamine production, to domestic violence. This Article has attempted to explain this trend in light of the social science data on human beings' need to feel control, particularly when it comes to sources of personal risk. A rich wealth of data from empirical behavioral science has demonstrated that when individuals perceive threats to personal safety, they attempt to minimize these threats by gaining mastery over them. One way to feel control over perceived threats is to become informed. In fact, psychometric studies of risk perception reveal that risks for which people have little information are those risks that are most feared. Understood in this light, the impetus for additional crime registries can be understood as stemming from a psychological drive to control the threat posed by sources of criminal activity. As compelling as this instinct is, evidence of the general failure of sex-offender registries should caution us against the implementation of additional criminal registries. In light of the costs associated with registries, resources should instead be channeled toward proven methods of crime prevention, such as early intervention and education.

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319. *See supra* Part I.