

OHIO’S SEX OFFENDER RESIDENCY RESTRICTION LAW:
 DOES IT PROTECT THE HEALTH AND SAFETY OF THE
 STATE’S CHILDREN OR FALSELY MAKE PEOPLE BELIEVE
 SO?

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I. INTRODUCTION

“We express a desire for rehabilitation of the individual, while simultaneously we do everything to prevent it . . . We tell him to return to the norm of behavior, yet we brand him as virtually unemployable; he is required to live with his normal activities severely restricted and we react with sickened wonder and disgust when he returns to a life of crime.”¹

In recent years, society has become enraged by a small number of horrible crimes committed against children by convicted sex offenders.² Victims’ advocacy groups and the media have perpetuated a negative image and fear of sex offenders through news reports and fictionalized entertainment.³ Residency restriction laws that limit where sex offenders may reside are just one method used to deal with the growing problem of sexual violence committed against children. Many state legislatures have passed these laws in an attempt to satisfy “a public demand to be stricter on sex offenders.”⁴

In response to fear and public outcry, well-intentioned legislators in eighteen states have enacted residency restrictions prohibiting sex offenders from residing within a certain distance from schools, bus-stops, child-care facilities, and in some instances, places where children are “likely to congregate.”⁵ Most citizens do not seem to be overly concerned with protecting the rights of sex offenders and feel that these laws are necessary to protect children. As one resident taking the “not in my

¹Michael J. Duster, Note, *Criminal Justice System Symposium: Out of Sight, Out of Mind: State Attempts to Banish Sex Offenders*, 53 *DRAKE L. REV.* 711 (2005) (quoting *Morrisey v. Brewer*, 443 F.2d 942, 953 (8th Cir. 1971) (en banc) (Lay, J., dissenting) (footnote omitted)).

²John Q. LaFond, *Special Theme: Sex Offenders: Scientific, Legal, and Policy Perspective: Sexually Violent Predator Laws and Registration and Community Notification Laws: Policy Analysis: The Costs of Enacting a Sexual Predator Law*, 4 *PSYCHOL. PUB. POL’Y & L.* 468 (1998).

³Duster, *supra* note 1, at 716 (citing Nora V. Demleitner, *First Peoples, First Principles: The Sentencing Commission’s Obligation to Reject False Images of Criminal Offenders*, 87 *IOWA L. REV.* 563 (2002)).

⁴Duster, *supra* note 1, at 716.

⁵Duster, *supra* note 1, at 712; *see also* ALA. CODE § 15-20-26 (2005); ARK. CODE ANN. § 5-14-128 (2005); CAL. PENAL CODE § 3003 (Deering 2005); FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2005); GA. CODE ANN. § 42-1-13(b) (2005); 720 ILL. COMP. STAT. ANN. 5/11-9.3(b-5) (West 2005); IND. CODE ANN. § 35-38-2-2.2 (West 2005); IOWA CODE ANN. § 692A.2A (West 2004); KY. REV. STAT. ANN. § 17.495 (Michie 2005); LA. REV. STAT. ANN. § 14:91.1(A) (2005); MICH. COMP. LAWS ANN. § 28.735 (West 2005); MO. ANN. STAT. § 566.147 (West 2005); OHIO REV. CODE ANN. § 2950.031 (West 2005); OKLA. STAT. ANN. tit. 57, § 590 (West 2005); OR. REV. STAT. ANN. § 144.642(1)(a) (West 2005); TENN. CODE ANN. § 40-39-211 (2005); TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon 2005); H.B. 1147 59th Gen. Assem., Reg. Sess. (Wash. 2005).

backyard approach” stated, “I don’t really care where they live. At this point I don’t care if they live out of civilization.”⁶ Others also believe that sex offenders surrender their rights when they commit their first attack.⁷ The fact of the matter is that residency laws often force all registered sex offenders to pay the price for a few high-profile cases⁸ and the public’s fear and beliefs regarding sex offenders is often misguided and not well-founded.⁹

Sex offender residency laws may actually increase recidivism rates while placing unjustified burdens on sex offenders and their family members.¹⁰ Furthermore, because these laws target stranger perpetrators, they do not prevent the majority of sex crimes committed by acquaintances or family members of the victim.¹¹ This results in parents being lulled into a false sense of security that their children are protected from these laws, when in fact they are not.¹² Yet supporters of these laws maintain that prohibiting known child sex offenders from living near schools or similar facilities bears a reasonable relationship to protecting children since the amount of incidental contact and opportunity to commit crimes is reduced.¹³ However, no research shows any link between where sex offenders live and recidivism rates.¹⁴ Still, courts have unanimously upheld sex offender residency restriction against a variety of constitutional attacks.¹⁵ Despite criticisms and concerns, states continue to enforce and defend laws restricting where sex offenders may live even though these laws do not protect children effectively.

Ohio is one state that restricts where sex offenders may live by prohibiting registered sex offenders from residing within 1000 feet of any school premises.¹⁶

⁶Brady Dennis & Matthew Waite, *Where is a Sex Offender to Live?*, ST. PETERSBURG TIMES (St. Petersburg, FL), May 15, 2005, at 1A.

⁷Duster, *supra* note 1, at 719.

⁸Robert Perez, *Offender Rules May Backfire, Some Say Laws Restricting Freed Sex Offenders Could Increase the Risk that They Will Reoffend, Experts Warn*, ORLANDO SENTINEL, Aug. 14, 2005, at B1.

⁹JOHN Q. LAFOND, PREVENTING SEXUAL VIOLENCE: HOW SOCIETY SHOULD COPE WITH SEX OFFENDERS 16 (Ed Meidenbauer ed., American Psychological Association 2005).

¹⁰Leo P. Cotter & Jill S. Levenson, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step From Absurd*, 49(2) INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168 (2005).

¹¹BRUCE J. WINICK & JOHN Q. LAFOND, PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS LAW, JUSTICE, AND THERAPY 156 (Bruce J. Winick & John Q. LaFond eds., American Psychological Association 2003).

¹²*Id.* at 154.

¹³People v. Leroy, 828 N.E.2d 769 (Ill. App. Ct. 2005).

¹⁴*Homeowner Associations Ban Sexual Predators, About 100 Associations Will Not Let Predators Move In*, Dec. 29, 2005, <http://www.newsnet5.com/print/5706798/detail.html>.

¹⁵See generally, Doe v. Miller, 405 F.3d 700, 726 (8th Cir. 2005), *cert. denied*, 126 S.Ct. 757 (2005); Mann v. State, 603 S.E.2d 283 (Ga. 2004); Thompson v. State, 603 S.E.2d 233 (Ga. 2004); Denson v. State, 600 S.E.2d 645 (Ga. Ct. App. 2004); People v. Leroy, 828 N.E.2d 769; State v. Seering, 701 N.W.2d 655 (Iowa 2005).

¹⁶OHIO REV. CODE ANN. § 2950.031 (West 2005).

Ohio's law applies to all registered sex offenders regardless of the crime's severity, whether or not the victim was a minor, or if the offender presents a future risk of danger.¹⁷ The statute applies even if the offender is not on parole or probation and often applies for the sex offender's entire life.¹⁸

Ohio's residency law applies blanket residency restrictions on all registered sex offenders without considering the circumstances surrounding the crime or whether that individual offender presents a future risk to the community. For example, "Jim" was convicted of sexual abuse for having consensual sex with his fifteen-year-old girlfriend when he was twenty years old.¹⁹ "Bob" was convicted on misdemeanor charges for exposing himself at a party where a thirteen-year-old girl was present.²⁰ "John" was convicted for having sex with a fourteen-year-old girl who claimed to be eighteen when he was twenty-one years old.²¹ "Frank" was convicted of a misdemeanor for having improper pictures from the internet.²² "Joe" was a convicted sex offender that mutilated a six-year old boy, raped him, and left him to die following his release from prison after telling inmates of these plans.²³ Most people would agree that these offenders do not pose equal risks of harm to the community by living near schools. However, each of the individuals described above are treated equally under Ohio's sex offender residency law.

This Note argues that the Ohio legislature should amend its sex offender residency law in two key ways: 1) it should replace blanket residency requirements with a tailored law that only restricts an offender's residence if an individual assessment shows that he or she poses a risk to children by residing near schools, and 2) it should include broader, more effective grandfather clauses to exempt certain offenders from the law's provisions. These changes will ensure that limited government resources are spent on dangerous offenders that actually pose a risk to children by living near a school while reducing the number of sex offenders unduly burdened by the law. If the state only has to monitor the residences of offenders that actually create a danger by living near schools, the health, safety, and welfare of Ohio's children will be better protected.

Part II of this Note discusses the different types of sex offender residency restriction laws enacted by states across the country. This section also explains the negative consequences that sex crimes have on victims, media coverage, and how the

¹⁷Jim Nichols, *Tossing the book at Sex Offenders; Officials target hundreds living too close to schools*, THE PLAIN DEALER (Cleveland, Ohio), July 31, 2005, at B1.

¹⁸Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 1, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Feb. 25, 2005) (on file with author and with the United States District Court for the Southern District of Ohio).

¹⁹See Miller, at 726. Most of these examples describe sex offenders that were involved in this lawsuit. The names used in this Note are pseudonyms for the parties' real names.

²⁰*Id.*

²¹Nichols, *supra* note 17.

²²See *Doe v. Miller*, 298 F. Supp. 2d at 844, 853 (S.D. Iowa 2004), *rev'd and remanded by Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), *cert. denied*, 126 S.Ct. 757 (2005).

²³LAFOND, *supra* note 9, at 5. (Describing convicted sex offender Earl Shrine who cut off the penis of a six-year-old boy in Washington, raped him, and left him to die).

public's fear of sex offenders influenced legislators to enact various laws. Part III shows that sex offender residency laws do not protect children and are not supported by research. Rather, they place unjustified burdens on sex offenders and their families, increase recidivism rates, draw criticism from those one would expect to support the laws, incorrectly target stranger sex offenders, and are driven by inaccurate public fear. These shortcomings of sex offender residency laws cause sex offenders to challenge the legality of the restrictions. Part IV describes the State of Ohio's approach to residency restrictions and flaws in Ohio's statute. Part V sets out recommendations for Ohio legislators to follow in solving the problems caused by the sex offender residency restriction law to better protect the health, safety, and welfare of its children.

II. THE ORIGINS AND PARAMETERS OF SEX OFFENDER RESIDENCY LAWS

Eighteen states restrict where sex offenders may reside in some way.²⁴ These laws vary by distance, facilities included, offenders covered by the law, and the length of time offenders are so restricted. The serious effects that sex crimes have on victims, media hype, and public fear have influenced legislatures to enact many types of laws in addition to residency restrictions to deal with sex offenders.

A. Residency Restrictions

The distance that states put between where an offender may reside and schools varies from 500 feet²⁵ to 2000 feet.²⁶ Eight states add to the list of facilities sex offenders may not reside near in addition to schools.²⁷ Instead of only prohibiting offenders from residing near schools, these states chose to include places such as daycare or child-care facilities, parks, playgrounds, bus-stops, preschools, youth centers, public swimming pools, video arcade facilities, and places where children are "likely to congregate."²⁸ Additionally, two states require sex offenders to reside a certain distance away from their victim's residence.²⁹ The housing options

²⁴See ALA. CODE § 15-20-26 (LexisNexis 2005); ARK. CODE ANN. § 5-14-128 (2005); CAL. PENAL CODE § 3003 (Deering 2005); FLA. STAT. ANN. § 947.1405(7)(a)(2) (LexisNexis 2005); GA. CODE ANN. § 42-1-13(b) (2005); 720 ILL. COMP. STAT. ANN. 5/11-9.3(b-5) (LexisNexis 2005); IND. CODE ANN. § 35-38-2-2.2 (LexisNexis 2005); IOWA CODE ANN. § 692A.2A (West 2004); KY. REV. STAT. ANN. § 17.495 (Michie 2005); LA. REV. STAT. ANN. § 14:91.1(A) (2005); MICH. COMP. LAWS ANN. § 28.735 (West 2005); ; MO. ANN. STAT. § 566.147 (West 2005); OHIO REV. CODE ANN. § 2950.031 (West 2005); OKLA. STAT. ANN. tit. 57, § 590 (West 2005); OR. REV. STAT. ANN. § 144.642(1)(a) (West 2005); TENN. CODE ANN. § 40-39-211 (2005); TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon 2005); H.B. 1147 59th Gen. Assem., Reg. Sess. (Wash. 2005).

²⁵IND. CODE ANN. § 35-38-2-2.2 (West 2005).

²⁶ALA. CODE § 15-20-26 (2005); ARK. CODE ANN. § 5-14-128 (2005); IOWA CODE ANN. § 692A.2A (West 2004).

²⁷ARK. CODE ANN. § 5-14-128 (2005); FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2005); IOWA CODE ANN. § 692A.2A (West 2004); GA. CODE ANN. § 42-1-13(b) (2005); OR. REV. STAT. ANN. § 144.642(1)(a) (West 2005); TENN. CODE ANN. § 40-39-211 (2005); TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon 2005).

²⁸*Id.*

²⁹See ALA. CODE § 15-20-26 (2005); CAL. PENAL CODE § 3003 (Deering 2005).

available to sex offenders decline even more drastically when states include more facilities that offenders may not reside near. In some states, entire towns are virtually off limits to sex offenders because there are no homes built, only undeveloped lots, in areas where sex offenders are permitted to reside.³⁰

The categories of offenders subject to residency restriction laws also vary from state to state. Ten states subject all registered sex offenders to the law regardless of the victim's age or the offender's level of dangerousness.³¹ These blanket residency restrictions do not take into account the individual offender or the specific circumstances of each case. Six states only regulate offenders' residences if their crime was committed against a minor.³² Lastly, two states only restrict offenders if the sentencing court determines that the individual offender is sexually violent or likely to offend again after examining relevant information and reports completed by sex offender assessment committees.³³

Six of the eighteen states that regulate sex offenders only enforce the prohibition of residing near schools or similar facilities while the offender is on parole, probation, or community supervision.³⁴ These states use the residency restriction as an additional term of probation, similar to not allowing defendants to use drugs or alcohol while on probation. The remaining states' laws limit sex offenders as long as they are registered, often for the offender's entire life. States appear to have different views on how these laws should be designed to best protect children.

³⁰See Karen Sloan, *Towns Fear an Influx of Offenders*, OMAHA-WORLD-HERALD, Oct. 4, 2005, at 1A; see also *Des Moines Zones out Molesters*, OMAHA-WORLD HERALD, Oct. 13, 2005, at 2B.

³¹ALA. CODE § 15-20-26 (2005); GA. CODE ANN. § 42-1-13(b) (2005); IND. CODE ANN. § 35-38-2-2.2 (West 2005); KY. REV. STAT. ANN. § 17.495 (Michie 2005); 4:91.1(A) (2005); MICH. COMP. LAWS ANN. § 28.735 (West 2005); MO. ANN. STAT. § 566.147 (West 2005); OHIO REV. CODE ANN. § 2950.031 (West 2005); OKLA. STAT. ANN. tit. 57, § 590 (West 2005); OR. REV. STAT. ANN. § 144.642(1)(a) (West 2005); TENN. CODE ANN. § 40-39-211 (2005).

³²FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2005); ILL. COMP. STAT. ANN. 5/11-9.3(b-5) (West 2005); IOWA CODE ANN. § 692A.2A (West 2004); CAL. PENAL CODE § 3003 (Deering 2005); TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon 2005); H.B. 1147 59th Gen. Assem., Reg. Sess. (Wash. 2005).

³³ARK. CODE ANN. § 5-14-128 (2005); LA. REV. STAT. ANN. § 14:91.1(A) (2005). In Arkansas a Sex Offender Assessment Committee determines an offender's level by conducting a thorough evaluation process on a case by case basis. The committee examines information such as police reports, criminal history, psychological evaluations, and victim impact statements to make a recommendation to the sentencing court. See ARK. CODE ANN. § 12-12-917. Louisiana defines a "sexually violent predator" by statute, LA. REV. STAT. ANN. § 15:541(16), as "a person who has been convicted of a sex offense as defined in Paragraph 14.1 of this Section and who has a mental abnormality or anti-social personality disorder that makes the person likely to engage in predatory sexually violent offenses as determined by the sentencing court upon receipt and review of relevant information including the recommendation of the sexual predator commission"

³⁴CAL. PENAL CODE § 3003 (Deering 2005);); IND. CODE ANN. § 35-38-2-2.2 (West 2005); KY. REV. STAT. ANN. § 17.495 (Michie 2005); OR. REV. STAT. ANN. § 144.642(1)(a) (West 2005); TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon 2005); H.B. 1147 59th Gen. Assem., Reg. Sess. (Wash. 2005).

B. Serious Consequences for Victims, Media Hype, and Public Fear Influence Legislatures to Enact Laws to Deal with Sex Offenders

Prison sentences, parole, and probation terms are an integral part of the United State's criminal justice system. Due to the harmful effects sex crimes may have on children, the increased coverage of children's murders in the media, and the public's fear of sex offenders and the crimes they commit, the criminal justice system now treats sex offenses differently from other crimes. The serious effects that sex offenses have on victims and increased media coverage of sex crimes swayed legislatures to enact laws that target sex offenders.

The serious consequences of sex crimes is one factor that pressured legislators to take action to protect the victims of sex crimes and make it less likely that these crimes would occur. Victims of sex crimes are likely to suffer more potent and long-lasting psychological effects than victims of nonsexual crimes.³⁵ Sex crimes have an element of personal invasiveness and can compromise a victim's reproductive capabilities, unlike nonsexual crimes.³⁶ Research has shown a multitude of side-effects that victims of sexual violence must deal with. If the offender is a family or friend of the victim severe psychological effects are more likely to result than if the offender is a stranger.³⁷ There are a high number of cases of post-traumatic stress disorder with symptoms of over-arousal, feelings of terror and helplessness, and intrusive memories.³⁸ Victims are also prone to depression, sexual dysfunction, loss of pleasure, low self-esteem, and sleep disturbance.³⁹ There can also be even longer lasting effects for victims such as contracting sexually transmitted diseases, pregnancy, or negative impact on their marriage or intimate relationship.⁴⁰

Children may suffer even more from sex crimes than adults.⁴¹ Victims of child abuse may suffer from fear, anxiety, depression, anger, hostility, poor self-esteem, an inability to trust others, and impaired development of a healthy sexuality.⁴² Additionally, child victims are more likely to engage in unusual sexual behaviors such as exhibitionism and fetishism and are prone to mental disorders.⁴³ Short term

³⁵James Billings & Crystal L. Bulges, Comment, *Maine's Sex Offender Registration and Notification Act: Wife or Wicked?*, 52 ME. L. REV. 175 (2000). Many victims may suffer these harmful effects. In 2003, there were 455,000 registered sex offenders in the United States. Colorado Bureau of Investigation, Colorado Department of Public Safety Convicted Sex Offender Site, available at, <http://sor.state.co.us/you.should.know.htm> (last visited Oct. 16, 2005).

³⁶*Id.* at 178.

³⁷*Id.*

³⁸*Id.* at 179.

³⁹*Id.* at 178.

⁴⁰*Id.* at 179.

⁴¹LAFOND, *supra* note 9, at 27.

⁴²*Id.* at 27. Young girls coerced into sex are three times more likely to develop psychiatric disorders, eating disorders, or alcohol and drug problems as adults than girls not sexually abused. Boys who have been sexually abused have suicide rates one and a half to fourteen times higher than boys who have not been sexually abused. *Id.* at 27.

⁴³BILLINGS & BULGES, *supra* note 35, at 178.

effects in children include sexual acting out and post-traumatic stress disorder, but children may face more serious long term effects such as borderline personality disorder, somatization disorder, dissociative symptoms, chronic pelvic pain, dissociative identity disorder, sexual withdrawal, and extreme sexual promiscuity.⁴⁴

The number of victims these sex crimes affect and the severe consequences they may cause led legislators to insist that something be done to reduce the number of sex crimes committed. Another factor that contributes to an increased amount of legislation targeting sex offenders is heavy media coverage of a small number of children's murders. Unfortunately, the public is all too familiar with tragic stories portrayed of convicted sex offenders molesting and murdering children after being released from prison. The reports of Megan Kanka,⁴⁵ Polly Klass,⁴⁶ and Jessica Lunsford⁴⁷ likely exacerbated the general public's fear of sex offenders. These stories lead the public to believe that every single person convicted of a sex crime is a potential kidnapper and murderer.⁴⁸ As a result of this increased fear the public demanded legislators to take action and protect children from similar future crimes.⁴⁹

C. Legislative Responses

Numerous laws and programs have been implemented across the country to protect children from sex crimes and sex offenders. In 1994, Congress first passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act to require states to implement a sex-offender registration program or forfeit ten percent of federal funding for state and local law enforcement.⁵⁰ Following the murder of seven-year-old Megan Kanka by a released sex offender living on her street the government decided that this registration requirement was not enough.⁵¹ Congress decided that the public must be provided with the addresses of released sex offenders

⁴⁴*Id.*

⁴⁵LAFOND, *supra* note 9, at 6. In 1994 convicted sex offender Jesse Timmendequas sexually assaulted and murdered seven-year-old Megan Kanka while living in a halfway house on parole in a New Jersey residential community. Timmendequas and Kanka lived on the same street. *Id.* at 6.

⁴⁶*Id.* Sex offender Richard Allen Davis murdered Polly Klass after abducting her from a slumber party. *Id.*

⁴⁷Eddy Ramirez, *Bills Aim to Clarify Lunsford Act*, ST. PETERSBURG TIMES (St. Petersburg, FL), January 29, 2006, at 1. John Couey, a registered sex offender is accused of kidnapping, raping, and murdering 9-year-old Jessica Lunsford. Couey had briefly worked as a mason at Lunsford's school. *Id.*

⁴⁸Dennis & Waite, *supra* note 6. According to Jill S. Levenson, author of a study on sex offender housing cited in this article.

⁴⁹It will be discussed later in this Note that these fears and beliefs held by the public that contributed to the enactment of sex offender laws are not well-founded. Note, *infra*, at 24, 33.

⁵⁰The National Center for Missing and Exploited Children Sex Offender Laws, <http://www.missingkids.com> (last visited Dec. 30, 2005); *see also* The Jacob Wetterling Foundation, www.jwf.org/ (last visited Feb. 6, 2006). Jacob Wetterling was abducted in 1989 by a masked gunman while riding his bike with his two siblings to rent a movie. To this day, the whereabouts of Jacob and his abductor are unknown.

⁵¹The National Center for Missing and Exploited Children, *supra* note 50.

so residents would be aware if a convicted sex offender moved into their neighborhood.⁵² Congress amended the Wetterling Act to add "Megan's Law," requiring all states to conduct community notification.⁵³ Congress did not state the specific forms or methods of notification other than requiring states to create an internet site with state sex-offender information such as names, addresses, and offense committed.⁵⁴ As a result, most states only make information available on websites but some states provide active notification through mailings, posted flyers, newspaper alerts, and community meetings.⁵⁵

Over the last five to ten years the trend has been for legislators to pass more laws adding more restrictions and requirements to deal with sex offenders once they are released from prison. In the last few years states not only made offenders register with local law enforcement agencies but have added even more severe restrictions including forcing certain offenders to wear electronic tracking devices for life, confining sexually violent predators to mental institutions after they have serve prison terms, and requiring chemical castration.⁵⁶ Certain cities even prohibit sex offenders from entering parks, libraries, and recreation facilities.⁵⁷ Residency restrictions are another method used against sex offenders.

This section demonstrates the many laws that place continued limitations on convicted sex offenders post-release. These laws grew out of recognition of the serious and long lasting effects of sex crimes on victims. Public fear and media frenzy over certain cases influenced the decisions of legislators when devising ways to protect children from sex offenders. However, as the next section shows, these laws, especially residency restrictions, may not have the intended effect.

III. WHY SEX OFFENDER LAWS DO NOT WORK

Eighteen states have enacted sex offender residency laws.⁵⁸ While these laws may appear effective to the public, the laws actually: 1) unduly burden sex offenders

⁵²*Id.*

⁵³*Id.*

⁵⁴Alexis Jetter, *The Sex Offender is Still Next Door*, GOOD HOUSEKEEPING, Jan. 2006, at 153. Because Megan's Law does not list in great detail what information states are required to provide some states simply list the offense an offender was convicted of on their website while other states go into more detail of circumstances surrounding the crime such as the victim's age or relationship to the offender.

⁵⁵ *Id.*

⁵⁶*Id.* Alabama passed a bill requiring surgical castration of some offenders but then repealed the bill for fear that it may be held unconstitutional.

⁵⁷Mark Rollenhagen, *Suburb bans sex offenders in parks*, THE PLAIN DEALER (Cleveland, OH), Sept. 28, 2005, at B4; *see also Will Offender Law Actually Mean Safety?*, LINCOLN JOURNAL STAR (Lincoln, Nebraska), October 28, 2005, at B7.

⁵⁸ALA. CODE § 15-20-26 (2005); ARK. CODE ANN. § 5-14-128 (2005); CAL. PENAL CODE § 3003 (Deering 2005); FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2005); GA. CODE ANN. § 42-1-13(b) (2005); 720 ILL. COMP. STAT. ANN. 5/11-9.3(b-5) (West 2005); IND. CODE ANN. § 35-38-2-2.2 (West 2005); IOWA CODE ANN. § 692A.2A (West 2004); KY. REV. STAT. ANN. § 17.495 (Michie 2005); LA. REV. STAT. ANN. § 14:91.1(A) (2005); MICH. COMP. LAWS ANN. § 28.735 (West 2005); MO. ANN. STAT. § 566.147 (West 2005); OHIO REV. CODE ANN. § 2950.031 (West 2005); OKLA. STAT. ANN. tit. 57, § 590 (West 2005); OR. REV. STAT. NN. §

and their families while inadvertently increasing recidivism rates; 2) are not proven by studies to have a positive affect on community safety; 3) draw criticism from judges, prosecutors, and law enforcement officials; 4) perpetuate harmful myths; and 5) are based on inaccurate fears and beliefs towards sex offenders. As a result of these flaws, individuals across the country have filed legal challenges to state residency restrictions. Criticizing residency laws is not meant to demean the seriousness of sex crimes or the punishment of sex offenders. The goal of critically examining these laws is to ensure that the most effective and efficient methods are used to protect the health and safety of children from truly dangerous people.⁵⁹

A. Sex Offender Residency Laws Place Unjustified Burdens on Offenders and Their Families

Severely limited housing options is just one negative effect of sex offender residency restriction laws. The dispersal of parks and schools lead to overlapping restriction zones that make it virtually impossible for sex offenders in some cities to find suitable housing.⁶⁰ One study of 135 sex offenders living in Florida, where offenders are prohibited from living within 1000 feet of schools, bus-stops, and places where children congregate, reported that fifty-seven percent of offenders had difficulty finding affordable housing and twenty-five percent were unable to return home when released from prison.⁶¹ Almost fifty percent of offenders in this study had to move out of the home they owned or the apartment they rented due to the residency law.⁶² The places sex offenders are permitted to live are often very expensive, located in remote rural areas, or on commercial and industrial land with no other residential homes.⁶³ As a result, sex offenders report increased isolation, financial and emotional stress, and decreased stability.⁶⁴ Housing restrictions may also inadvertently increase the likelihood that sex offenders will offend again by increasing the types of stressors that may trigger reoffense such as depressed mood, anger, and hostility.⁶⁵

144.642(1)(a) (West 2005); TENN. CODE ANN. § 40-39-211 (2005); TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon 2005); H.B. 1147 59th Gen. Assem., Reg. Sess. (Wash. 2005).

⁵⁹Karen Sloan, *Managing Predators Among Us Fears and Misconceptions Clash with Statistics as Midlands Communities Decide How to Deal with Registered Sex Offenders*, OMAHA-WORLD HERALD, Nov. 20, 2005, at 2B. As sex offender researcher Jill Levenson explains, "No one is advocating for sex offenders. We are advocating for policies that will be more effective in protecting kids. Let's put our resources into monitoring predatory pedophiles and people who are truly dangerous."

⁶⁰The Association for the Treatment of Sexual Abuse, "*Facts About Adult Sex Offenders*" available at <http://www.atsa.com/ppOffenderFacts.html> (last visited Oct. 16, 2005).

⁶¹Cotter & Severson, *supra* note 10, at 173.

⁶²*Id.*

⁶³Inga Beyer, *Residency Statute in Iowa for Sexual Offenders Draws Fire*, THE DAILY IOWAN, July 22, 2003.

⁶⁴Cotter & Severson, *supra* note 10, at 175.

⁶⁵*Id.* at 168.

Residency laws also often result in sex offenders living clustered together in poor neighborhoods, staying in motels, apartments, mobile homes, or homeless shelters.⁶⁶ If none of these options are available, homelessness and transience often occur and may interfere with effective tracking, monitoring, and close probation supervision.⁶⁷ Many sex offenders are forced to stay in prison or halfway homes after being cleared for release from prison because they cannot find an acceptable place to live.⁶⁸ It does not seem safe to have sex offenders clustered in one small area or roaming the streets away from treatment options and monitoring systems, but this is often the result.

Some individuals are unable to live with immediate family members such as spouses, parents, minor children, and adult children, even when probation officers approve of the residence and find no safety reason to keep the offender out of the home.⁶⁹ Residency restriction laws therefore force offenders to live in areas removed from family members and friends that are often able to provide safe support systems.⁷⁰ Sex offenders with positive informed support systems commit significantly fewer criminal and technical probation violations than offenders with negative or no support systems.⁷¹ It is recommended that probation officers have offenders interact with and attach to others that provide positive informed support and strengthen family bonds.⁷² This is nearly impossible to accomplish if offenders are forced to live in remote isolated locations away from family and friends.

Sex offenders are also often forced to give up benefits and privileges that could help them remain law-abiding citizens. The remote unpopulated rural areas where offenders are forced to live have few treatment options and force offenders to travel further to treatment facilities.⁷³ If a residency law results in an offender not having any place to live he is much less likely to attend rehabilitation programs such as group meetings since his life is not stable.⁷⁴ Sex offenders who do not complete treatment programs are at an increased risk for both sexual and general recidivism.⁷⁵

⁶⁶Dennis & Waite, *supra* note 6.

⁶⁷The Association for the Treatment of Sexual Abuse, *supra* note 60.

⁶⁸Petition for Writ of Certiorari, Doe v. Miller, 405 F.3d 700 (8th Cir. 2005) (No. 05-428).

⁶⁹*Id.* at 28. For example, the law prevented one offender from living in the home owned by his fiancé after they were married.

⁷⁰Colorado Department of Public Safety, *Report on Safety Issues Raised by Living Arrangements For and Location of Sex Offenders in the Community*. Division of Criminal Justice, March 15, 2004, available at <http://dcj.state.co.us/odvsom>.

⁷¹Colorado Department of Public Safety, *Living Arrangements Guidelines for Sex Offenders in the Community*. Division of Criminal Justice, Sex Offender Management Board, July 1, 2004, <http://dcj.state.co.us/odvsom>. Negative support systems include friends, family, or roommates who negatively influence the sex offender or refuse to cooperate with probation teams.

⁷²*Id.*

⁷³The Association for the Treatment of Sexual Abuse, *Facts About Adult Sex Offenders*, *supra* note 60.

⁷⁴Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *supra* note 18.

⁷⁵The Association for the Treatment of Sexual Abuse, *supra* note 60.

Offenders forced to move to remote locations also have difficulty finding and maintaining employment because many do not have transportation after release from prison to travel far to a job.⁷⁶ Additionally, offenders may also have trouble receiving disability services necessary for survival when living in remote rural areas.⁷⁷

Offenders may even be forced to give up chances for further education. For example, "Dave" was convicted of a misdemeanor, completed his probation, and was judged to be at a low risk to offend again.⁷⁸ Before the state's residency law was enacted "Dave" lived in a dormitory in college, received good grades, and earned a grant to cover the cost of his room and board.⁷⁹ However, when the state passed a law to prohibit offenders from living within 2000 feet of any school or child-care facility, this offender was no longer able to live in the dormitory since there was a daycare nearby.⁸⁰ As a result, "Dave" lost his grant and was forced to make a two-hour commute from his parent's house to college each day.⁸¹

Residency laws also often have a negative impact on the family members an offender lives with and is responsible for supporting. At the age of nineteen, "Bill" exposed himself at a party when a thirteen-year-old girl was present.⁸² After completing his sentence, Bill presented a low risk of offending again and moved into a new home with his wife and two children.⁸³ However, this home was off limits to "Bill" under the state's residency restriction law and the only other homes available in his small town were in exclusive high-priced neighborhoods.⁸⁴ He was forced to buy a home forty-five miles from his hometown, leave many family and friends behind, and commute an hour each day to work.⁸⁵ Additionally, "Bill's" wife had to quit her job and now must work two jobs making less money than she earned at her job in the city where they originally lived.⁸⁶ "Bill's" family also must drive sixteen miles each day to their children's daycare center.⁸⁷

⁷⁶ Duster, *supra* note 1, at 715.

⁷⁷ Petition for Writ of Certiorari, *Doe v. Miller*, 405 F.3d 700, 11 (8th Cir. 2005) (No. 05-428), available at http://www.aclu-ia.org/pdf/Doe_v_Miller_USSC.pdf (last visited May 9, 2006).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Petition for Writ of Certiorari, *supra* note at 68.

⁸³ *Id.* at 10.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

Another sexual offender, "Charlie," legally resided in his home for twenty-nine years with his wife.⁸⁸ After remodeling their entire home, "Charlie" was informed he would have to move since his home was within one block of a school.⁸⁹ However, "Charlie's" wife is ninety-one years old and is unable to move due to health problems.⁹⁰ "Charlie's" wife does not know what options she would have if her husband is forced to move since he provides constant help by preparing her medication, shopping, cleaning, and maintaining the home.⁹¹ These accounts show that even though an offender's family members did not commit any crime they are often forced to pay the price and suffer the consequences of an offender's choice.

It is also important to note that residency requirement laws may also have a negative impact on other laws designed to protect children from sex crimes. Take for example, a registered offender who is planning on moving into a new home. If this offender knows his proposed residence is unlawful because it is too close to a school, the individual may choose not to register his new address since this would put him at risk for prosecution or eviction.⁹² Therefore, the laws will likely lead to a higher number of unregistered sex offenders and less accurate information about sex offenders already registered.⁹³ States will not only be dealing with sex offenders living in close proximity to schools, but also with unregistered sex offenders.

Residency laws may appear good on the books because they lead the public to believe that children are adequately protected. However, when the law's real life effects are examined the unfair impact on convicted sex offenders and their innocent friends and family is obvious.

B. Studies Show that Sex Offender Residency Laws Do Not Have a Positive Impact on Community Safety or Recidivism Rates

The negative effects sex offender residency laws cause may be easier to accept if these laws were proven to protect children from sex offenders and the offenses they commit. Courts and legislators often find it reasonable to believe that a law prohibiting offenders from living near schools will reduce the amount of contact offenders have with children and lower the opportunities to commit crimes.⁹⁴ This is an unsupported conclusion. As Professor John Q. LaFond, a well known scholar and author in the sex-offender field, cautions, "[w]e're not being smart. We're just flailing about. We need to enact laws based on solid research rather than the latest headline case. Politicians under pressure pass symbolic [residency] laws . . . that are

⁸⁸Plaintiffs' Post-Trial Brief with Proposed Findings of Fact and Conclusions of Law at 9, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Oct. 14, 2005) (on file with author and with the United States District Court for the Southern District of Ohio).

⁸⁹*Id.* at 9. When asked what she would do if her husband was forced to move, she responded "Probably drop dead."

⁹⁰*Id.* at 9.

⁹¹*Id.* at 9.

⁹²Petition for Writ of Certiorari, *supra* note 77; available at http://www.aclu-ia.org/pdf/Doe_v_Miller_USSC.pdf (last visited May 9, 2006); see also Duster, *supra* note 1, at 773.

⁹³Duster, *supra* note 1, at 777.

⁹⁴See, e.g., *People v. Leroy*, 828 N.E.2d 769 (Ill. App. Ct. 2005).

not based on any solid research.”⁹⁵ Currently no studies show a relationship between residence, distance from a school or child-care facility, and an increased likelihood of recidivism.⁹⁶ In fact, the studies that have been done suggest that prohibiting sex offenders from residing near schools does not affect community safety and should not be used to control recidivism.⁹⁷

The majority of 135 sex offenders surveyed in one Florida study stated that the residency rule had no effect on their risk of reoffense.⁹⁸ The majority of respondents stated that an offender must have internal motivation to not offend and that residence rules would not stop a sex offender intent on offending again.⁹⁹ Furthermore, most offenders surveyed stated that a rule prohibiting where they may reside is “inconsequential” if an offender is not committed to treatment and recovery.¹⁰⁰ Interestingly, many sex offenders also stated that they are careful not to offend again in close proximity to their homes, so residency restrictions do not deter many crimes.¹⁰¹ Offenders are more likely to re-offend in locations away from their home since there is less risk of getting caught and of being recognized by children in their neighborhood.¹⁰²

Another study conducted by the Minnesota Department of Corrections addressed issues with the 239 sex offenders living in the state considered to have a high risk for re-offending.¹⁰³ This study reviewed the facts of each case when an offender was re-arrested for a new sex offense to determine if the new offense was related to the offender’s proximity to a school or park.¹⁰⁴ The study found that a sex offender

⁹⁵Ian Demsky, *Sex Offenders live near many schools, day cares*, THE TENNESSEAN, July 18, 2005, at 1A.

⁹⁶The Association for the Treatment of Sexual Abuse, *Facts About Adult Sex Offenders*, *supra* note 60.

⁹⁷*Id.* See also Report of Safety Issues Raised by Living Arrangements For and Location of Sex Offenders in the Community, *supra* note 70.

⁹⁸Cotter & Levenson, *supra* note 10, at 174-175. This study surveyed 135 sex offenders living in Florida. FL law prohibits individuals convicted of sex crimes involving minors from living within 1000 feet of a school, daycare center, park, playground, or other place where children regularly congregate. After this data was collected, Florida’s law was amended to add school bus stops to the list of prohibited locations. Data was collected by asking offenders to complete a voluntary survey during a group therapy session.

⁹⁹*Id.*

¹⁰⁰*Id.*

¹⁰¹*Id.*

¹⁰²*Id.*

¹⁰³Minnesota Department of Corrections, *Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature* at 1, available at [www.nacdl.org/sl_docs.nsf/issues/SexOffender_attachments/\\$FILE/MN%20residence%20restrictions](http://www.nacdl.org/sl_docs.nsf/issues/SexOffender_attachments/$FILE/MN%20residence%20restrictions) (last visited Feb. 4, 2006). A level three offender is an individual whose risk assessment score indicates a high risk of reoffense. Pursuant to MINN. STAT. § 244.052 (2005), an “end of confinement review committee” at each state correctional facility makes this determination after reviewing data on a case by case basis.

¹⁰⁴*Id.* at 6.

living in close proximity to schools or parks was not a factor in recidivism and did not impact community safety.¹⁰⁵ In fact, no offenders in the study re-offended near a school.¹⁰⁶ Instead, the study found that offenders are more likely to travel from the areas they reside in to other neighborhoods where their faces are not recognized.¹⁰⁷ This research concluded that enhanced safety due to residency restrictions may be comforting to the general public, but do not have any basis in fact.¹⁰⁸

Yet another study conducted by the Colorado Department of Public Safety recommended that placing restrictions on the location of correctionally supervised offenders' residences may not deter sex offenders from offending again and should not be considered a method to control sex offender recidivism.¹⁰⁹ Sex offenders observed in this study that committed a subsequent criminal offense, sexual or non-sexual, while under supervision of the criminal justice system were randomly scattered throughout the study area. There were not a greater number of sex offenders living in close proximity to schools and childcare facilities compared to other types of offenders.¹¹⁰ In fact, these offenders were not usually living within 1000 feet of a school or child-care center.¹¹¹ This study concluded that a tight web of supervision, treatment, and surveillance may be more important to maintain community safety than where a sex offender resides.¹¹²

All of these studies show that residency laws do not affect recidivism and where an offender lives does not impact children's safety. Because there is no connection between living near a school and the likelihood of committing a sex offense, residency restrictions should not be relied on to protect children.

C. Sex Offender Residency Laws Draw Criticism from Judges, Prosecutors, and Law Enforcement Officials

Scholars in the field are not the only people critical of residency law's effects on recidivism rates. Law enforcement officials, prosecutors, and judges are some of the harshest critics of residency laws.¹¹³ These three groups must enforce residency laws on a daily basis and are able to observe the effects that these laws have on offenders.

¹⁰⁵*Id.* at 9. See also, the Association for the Treatment of Sexual Abuse, Facts About Adult Sex Offender, *supra* note 60.

¹⁰⁶Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature, *supra* note 103, at 9.

¹⁰⁷*Id.*

¹⁰⁸*Id.* The study did state that if residence restrictions are used they should be based on circumstances of each individual offender.

¹⁰⁹Report on Safety Issues Raised by Living Arrangements For and Location of Sex Offenders in the Community, *supra* note 70, at 4. Approximately 148 sex offenders were included in the study. Data was compiled by reviewing the probation files of sex offenders living in the Denver metropolitan area. *Id.* at 15-16.

¹¹⁰See *id.* at 30.

¹¹¹*Id.* at 30.

¹¹²*Id.* at 30-31.

¹¹³Duster, *supra* note 1, at 772.

Prosecutors and law enforcement officials believe that distance requirements are arbitrary and do not protect children from child molesters as legislators had hoped.¹¹⁴ One county sheriff that oversees a sex-offender unit states that evicting offenders only relocates the threat and creates a false sense of security.¹¹⁵ This sheriff believes that if an offender is intent on preying on an individual he or she will find an opportunity to do so one way or another.¹¹⁶ Law enforcement officials also question whether residency laws that categorize all sex offenders into the same category and prohibit all offenders from living near schools are fair.¹¹⁷ These officials suggest that each offender should be accessed on a case-by-case basis.¹¹⁸

In cases challenging residency laws judges state that even though offenders are not able to reside in restricted areas they are still free to travel, work, and generally move about in areas near schools or child-care facilities.¹¹⁹ Therefore, the laws do not prevent offenders from seeing or communicating with children and do not remove opportunity or temptation.¹²⁰ Judges state that the restrictions still allow offenders living just outside of restricted areas to “gaze out their kitchen window and covet the children that they see playing on a school playground . . .” or “sit on his front porch with a cheap pair of binoculars and closely eye the features of any child that he chooses.”¹²¹ Under these laws, offenders are still able to live next door to minors or on a block full of children, but not a school.¹²² For example, one offender could not live in an adult mobile home because it was 880 feet from a church that held a children’s class once a week but could comply with the rule by living in a motel next door to a family with three children.¹²³

When deciding sex offender residency law challenges judges further note that the laws do not make children going to school any safer than they were before the legislation was passed.¹²⁴ On a daily basis an offender can visit the home he was removed from in the mornings when children go to school and in the afternoons

¹¹⁴*Id.*

¹¹⁵Nichols, *supra* note 17. (describing statements of Inspector Robert Havranek, who oversees the Cuyahoga County Sheriff’s sex-offender unit).

¹¹⁶*Id.* According to Havranek, “[p]rohibition on living near a school may impede some opportunists. But on the other hand you still have recreation centers, parks, playgrounds, bus stops. Are these kids safer?” *Id.*

¹¹⁷*Id.*

¹¹⁸*Id.*

¹¹⁹Duster, *supra* note 1, at 722 (referring to *Doe v. Miller*, 298 F. Supp. 2d 844, 849 (S.D.Iowa 2004), *rev’d and remanded by Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), *cert. denied*, 126 S.Ct. 757 (2005). This case states that the laws do not prevent an individual’s presence within a restricted area.

¹²⁰*People v. Leroy*, 828 N.E.2d 769, 792 (Ill. App. Ct. 2005) (Kuehn, dissenting).

¹²¹*Id.* at 792 (emphasis omitted).

¹²²Cotter & Levenson, *supra* note 10, at 175.

¹²³*Id.*

¹²⁴*Leroy*, 828 N.E.2d at 793 (Kuehn, dissenting).

when those children leave.¹²⁵ Offenders have essentially the same access to children under the laws as they did before these laws were passed.¹²⁶ As Judge Kuehn of the Appellate Court of Illinois, Fifth District, stated,

Innocent children . . . frolicking upon playgrounds, within eyeshot of some child sex offender, remain every bit the temptation that they present to child sex offenders at large, regardless of where those offenders live. Simply put, the statutory restriction is pointless. It is a mindless effort that does nothing to prevent any child sex offender intent on reoffending from doing so.¹²⁷

D. Sex Offender Residency Laws Inaccurately Target the “Stranger Danger Myth”

Yet another harmful effect of residency restriction laws is that they promote the “stranger danger myth,” that most sexual assaults are committed by strangers.¹²⁸ In fact, most sexual assaults against adults and children (eighty to ninety-five percent) are committed by someone the victim knows.¹²⁹ Fewer than ten percent of child molestations are committed by strangers.¹³⁰ Specifically, relatives, friends, babysitters, authority figures, and supervisors of children are more likely than strangers to commit sexual assaults on children.¹³¹ Yet, most of the public’s focus is on the stranger sex criminal¹³² and most of the legislation is made with this myth in mind. Parents and children see sex offenders as “big bad m[e]n”¹³³ and as “rapists lurking behind bushes”¹³⁴ even though victims usually know their attackers. Parents worrying about stranger child molesters are not in the position to protect their children from non-strangers.¹³⁵ As long as the focus remains on stranger perpetrators, the majority of sex crimes are not prevented.¹³⁶

By focusing on offenders the victim does not know, residency legislation promotes a false sense of security.¹³⁷ Parents may feel that laws preventing offenders from residing near schools or child-care facilities keep their children safe from

¹²⁵*Id.* at 792.

¹²⁶*Id.* at 793.

¹²⁷*Id.* at 792.

¹²⁸Center for Sex Offender Management, *Myths and Facts about Sex Offenders*, August 2000, <http://www.csom.org/pubs/mythsfacts.html> (last visited Oct. 16, 2005).

¹²⁹*Id.*

¹³⁰Winick & LaFond, *supra* note 11.

¹³¹Center for Sex Offender Management, *Myths and Facts about Sex Offenders*, *supra* note 128; *see also* Winick & LaFond, *supra* note 11, at 150 (reporting that most sex crimes against children were committed by fathers (twenty percent), stepfathers (twenty-nine percent), other relatives (eleven percent), and acquaintances (thirty percent)).

¹³²Winick & LaFond, *supra* note 11, at 156.

¹³³*Id.* at 149.

¹³⁴Dennis & Waite, *supra* note 6.

¹³⁵WINICK & LAFOND, *supra* note 11, at 156.

¹³⁶*Id.* at 156.

¹³⁷*Id.* at 149.

offenders and therefore do not focus on protecting their children from people in the child's life. "The trouble is that feeling safe is not the same as actually being safe. The threat will still be present. Ironically, it may be even more insidious."¹³⁸ As Carolyn Atwell-Davis, the legislative director for the National Center for Missing and Exploited Children, stated, "For these new laws to create a false sense of security and have parents let their guard down would be the worst outcome."¹³⁹

Additionally, legislators may feel that enacting residency legislation protects victims from sex offenders. When focusing on stranger offenders legislators and law enforcement officials do not develop strategies to protect children from the sex crimes they are likely to encounter in their daily lives. Instead, they may actually increase the number of sex crimes by using scarce criminal justice resources to inaccurately target stranger offenders.¹⁴⁰

E. Residency Laws Are Based on the Public's Inaccurate Views and Fears

Another flaw in sex offender residency restrictions is that they are based on the public's inaccurate beliefs regarding sex offenders. Unfortunately, the public is all too familiar with the tragic stories portrayed in the media of convicted sex offenders molesting and murdering children after being released from prison.¹⁴¹ These stories lead the public to believe that sexually motivated murders against children are at an all time high and that every person convicted of a sex offense is a potential kidnapper and murderer.¹⁴²

While these cases involving children are horrific, they are also very rare.¹⁴³ Contrary to how it may appear in the media, child abductions actually rarely occur and less than one percent of sex crimes involve murder.¹⁴⁴ David Finkelhor, director of Crimes Against Children Research Center at the University of New Hampshire, reports that of the 60,000 to 70,000 arrests each year for sex crimes against children, only about forty to fifty involve homicide.¹⁴⁵ Of course, any death of a child is tragic. But these statistics show that not all sex offenses are the same and most crimes against children do not result in death.

Law enforcement records show that sex offenders as a group are not especially dangerous and commit fewer subsequent crimes than many other types of

¹³⁸Jonathan Roos, *Predator Law is Faulty, Legislators are Told; Residency Limits Could Make Offenders More Dangerous, One Official Tells Legislators*, DES MOINES REGISTER, Oct. 27, 2005, at 4B.

¹³⁹Perez, *supra* note 8.

¹⁴⁰WINICK & LAFOND, *supra* note 11, at 154.

¹⁴¹See text discussing stories of children's murders heavily broadcast by the media, *supra* at pages 4-5.

¹⁴²Dennis & Waite, *supra* note 6.

¹⁴³*Id.*

¹⁴⁴The Association for the Treatment of Sexual Abuse, *Facts About Adult Sex Offenders*, *supra* note 60.

¹⁴⁵Wendy Koch, *Despite High-Profile Cases, Sex Crimes against Kids Fall*, USA TODAY, Aug. 25, 2005 at 1A.

criminals.¹⁴⁶ The overall recidivism rate for sex offenders on average is less than the rate for nonsexual criminals.¹⁴⁷ Most sexual offenders are not dangerous and are never reconvicted for a new sexual offense.¹⁴⁸ But those that do recidivate often receive attention especially if their act involves a child.¹⁴⁹ Based on a review of sixty-one recidivism studies surveying close to 24,000 sex offenders, only 13.4% committed a new sexual offense within four to five years after release from prison for a sexual offense.¹⁵⁰ Even though these rates increase with time, studies rarely find sex offender recidivism rates greater than forty percent.¹⁵¹ While any recidivism rate is troubling, evidence does not support the popular belief that all sex offenders will offend again.¹⁵² Many can be safely released after serving prison sentences without any realistic fear that they will offend again.¹⁵³

Admittedly, a small number of extremely dangerous sex offenders are highly likely to offend again and pose a serious threat to the community.¹⁵⁴ However, society's overwhelming fear that all sex offenders pose a continuous threat of committing serious sex crimes is incorrect and self-defeating.¹⁵⁵

Beliefs regarding sex crimes committed in this country are also inaccurate. Sexual violence has declined in recent years and though understandable, the public's fear of sex crimes and sex offenders is not well-founded.¹⁵⁶ The number of serious sex crimes committed skyrocketed from 1972 to 1992 but has decreased dramatically since 1992.¹⁵⁷ So while the public had good reason to be alarmed by increasing sexual violence during the 1980's and early 1990's, this is no longer the case.¹⁵⁸ Furthermore, government figures show that the rate of sexual assaults against

¹⁴⁶LAFOND, *supra* note 9, at 46. According to a major study from the Bureau of Justice Statistics, when measured by rearrest for the same type of crime, rapists had a relatively low rate of arrest for another rape (7.7%) compared to larcenists (33.5%), burglars (31.9%), and drug offenders rearrested for drug offenses (24.8%). *Id.* Only murderers had a lower recidivism rate for the same crime than rapists. *Id.* (citing Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1983, at 5 (1989)).

¹⁴⁷*Id.*

¹⁴⁸*Id.* at 57.

¹⁴⁹See R. Karl Hanson, *Special Theme: Sex Offenders: Scientific, Legal and Policy Perspective: The Science of Sex Offenders: Risk Assessment, Treatment, and Prevention: What Do We Know About Sex Offender Risk Assessment?*, 4 PSYCHOL. PUB. POL'Y. & L. 50 (1998).

¹⁵⁰*Id.* at 501.

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³LAFOND, *supra* note 9, at 49.

¹⁵⁴*Id.*

¹⁵⁵*Id.* at 57.

¹⁵⁶*Id.* at 16.

¹⁵⁷*Id.*

¹⁵⁸*Id.*

adolescents age twelve to seventeen plunged seventy-nine percent from 1993 through 2003.¹⁵⁹ However, the public is not presented with these statistics, but rather with continuous coverage of the rare sex crimes that result in children's murders. This leads people to mistakenly believe that sex crimes are at an all time high and demand that legislators and law enforcement officials take swift action to protect the nation's children.

F. Residency Laws Generate Legal Challenges

Courts in four different states at both the state and federal levels have upheld state laws that prohibit persons convicted of certain sex offenses from residing near schools or child-care facilities against various constitutional challenges.¹⁶⁰ One federal court has recognized that offenders were likely to succeed on the merits when arguing that a sex offender residency law violated the Ex Post Facto Clause.¹⁶¹ This court issued a preliminary injunction enjoining the state of Tennessee from enforcing a sex offender residency law; however the case was dismissed before the court addressed the merits of the case.¹⁶²

Courts have upheld state laws that prohibit persons convicted of certain sex offenses involving minors from residing near schools or child-care facilities against various constitutional challenges.¹⁶³ Most courts find that the statutes do not violate ex post facto when applied to people that committed offenses prior to the law's enactment because the punitive effects of the statute do not override the legitimate legislative intent to enact a non-punitive, civil, non-excessive regulatory measure to promote child safety.¹⁶⁴ Courts have also struck down substantive due process

¹⁵⁹Koch, *supra* note 145.

¹⁶⁰Doe v. Miller, 405 F.3d 700 (8th Cir. 2005), *cert. denied*, 126 S.Ct. 757 (2005); Mann v. State, 603 S.E.2d 283 (Ga. 2004); Thompson v. State, 603 S.E.2d 233 (Ga. 2004); Denson v. State, 600 S.E.2d 645 (Ga. Ct. App. 2004); People v. Leroy, 828 N.E.2d 769 (Ill. App. Ct. 2005); State v. Seering, 701 N.W.2d 655 (Iowa 2005). The United States Supreme Court declined to review the decision in *Miller* that upheld the Iowa law that prevents offenders convicted of sex crimes against minors from residing within 2000 feet of schools or child-care facilities.

¹⁶¹Doe v. Bredesen, No. 3:04-0670, 2005 WL 2045779, at *1 (M.D. Tenn. Aug. 25, 2005).

¹⁶²*Id.*

¹⁶³*Miller*, 405 F.3d 700; *Mann*, 603 S.E.2d at 283; *Thompson*, 603 S.E.2d at 233; *Denson*, 600 S.E.2d at 645; *Leroy*, 828 N.E.2d at 769; *Seering*, 701 N.W.2d at 655.

¹⁶⁴Doe v. Miller, 405 F.3d 700 (8th Cir. 2005), *cert. denied*, 126 S.Ct. 757 (2005); People v. Leroy, 828 N.E.2d 769 (Ill. App. Ct. 2005); State v. Seering, 701 N.W.2d 655 (Iowa 2005). Courts state that living where a person chooses or with family members is not a fundamental right and therefore do not apply a strict scrutiny test. Instead, the courts analyze whether these statutes rationally advance a legitimate government purpose. Some courts use a more straightforward analysis to conclude that sex offender residency laws do not violate the Ex Post Facto clause of the Constitution if applied to an offender convicted before the law's enactment. See *Thompson v. State*, 603 S.E.2d 233 (Ga. 2004); *Denson v. State*, 600 S.E.2d 645 (Ga. Ct. App. 2004). These cases reason that sex offender laws do not apply retrospectively because the consequences for crimes committed prior to the law's enactment are not altered. *Id.* Rather, an offender is only punished if he chooses to violate the law by residing at a prohibited location creating a new crime based in part on the offender's status as

challenges by finding that the laws rationally advance a legitimate government purpose to protect children by reducing the opportunity and temptation convicted offenders with high recidivism rates face near schools.¹⁶⁵ Procedural due process and overbreadth claims have also failed, even though the laws restrict all offenders convicted of certain crimes without providing an exemption for offenders that do not pose a risk to children.¹⁶⁶ In addition, courts have decided that regulating where a sexual offender may reside does not constitute cruel and unusual punishment.¹⁶⁷ Courts have also denied claims that the statutes are unconstitutionally vague, interfere with a right to intrastate travel, violate an offender's right against self-incrimination,¹⁶⁸ and constitute a taking of property without just and adequate compensation in violation of the fifth and fourteenth Amendments of the United States Constitution.¹⁶⁹

In most sex offender residency law cases there are dissenting opinions stating that the laws are punitive and excessive and therefore violate the ex post facto clause of the United States Constitution when applied to those offenders that committed offenses prior to the law's enactment.¹⁷⁰ This reasoning focuses on the severity of the restrictions, that the laws apply equally to all offenders regardless of the type of crime, victim, or risk of offending again, and are enforced for the rest of the offenders' lives.¹⁷¹ Dissenters also state that the restrictions do not bear a rational relationship to a legitimate state interest because they do not make children safer since offenders still have just as much contact with children and the laws do not stop child sex offenders who are intent on offending again.¹⁷²

Doe v. Miller, decided by the Eighth District United States Court of Appeals, is the case that has received the most attention in the area of sex offender residency laws because it is the only sex offender case that has reached the appellate level in

a sex offender. *Id.* Because these courts conclude that the laws do not apply retrospectively, they do not examine the remaining factors in the ex post facto law analysis such as the law's effects or whether the statute is punitive. *Id.*

¹⁶⁵*See Miller*, 405 F.3d at 715-716; *Leroy*, 828 N.E.2d at 777; *Seering*, 701 N.W.2d at 665. Courts reach this conclusion even though there are no statistics or research connecting residency distance with sex offenses, but say it is reasonable to believe that a law prohibiting offenders from living near schools will reduce the amount of contact and opportunities to commit crimes. *See Leroy*, 828 N.E.2d at 777.

¹⁶⁶*See, e.g., Miller*, 405 F.3d at 708-709. *See also Leroy* at 784.

¹⁶⁷*See, e.g., Leroy*, 828 N.E.2d at 784. In reaching this decision courts have found that the laws are not barbaric or grossly disproportionate to the offenses committed by sexual offenders.

¹⁶⁸*Id.*

¹⁶⁹*See Mann v. State*, 603 S.E.2d 283, 286 (Ga. 2004) (stating any minimal property interest this sexual offender had in residing in his parents' home was substantially outweighed by the state's interest to lessen encounters between minors and convicted sex offenders).

¹⁷⁰*See Miller*, 405 F.3d at 723; *Leroy*, 828 N.E.2d at 784; *Seering*, 701 N.W.2d at 655.

¹⁷¹*See Leroy*, 828 N.E.2d at 785.

¹⁷²*Id.*

the federal court system.¹⁷³ This case was a sex offender class action suit challenging Iowa's law that prohibits persons convicted of certain sex offenses involving minors from residing within 2000 feet of schools or child-care facilities.¹⁷⁴ The court held that this statute was not unconstitutional on its face and that the state of Iowa could regulate residences of sex offenders to protect the health and safety of Iowa citizens.¹⁷⁵

Sex offenders first argued that the statute violated procedural due process because notice of prohibited conduct was not provided and the statute did not require a determination that an individual was dangerous.¹⁷⁶ The Court found that the statute was not impermissibly vague even though some cities could not provide sex offenders with information on the location of all of the schools and registered child-care facilities because notions of due process were not violated every time the law was applied.¹⁷⁷ The statute's application only caused offenders in certain communities under certain circumstances to not receive notice; all offenders were not deprived of notice. Therefore, instead of invalidating the entire statute, the court noted that an offender prosecuted for violating a residency law after he did not receive adequate notice could show a violation of his individual due process by challenging the law as applied to him in that specific case.¹⁷⁸ The Court also held that principles of due process did not require the state to provide a process for sex offenders to prove they were not dangerous and therefore should not be restricted by the law.¹⁷⁹ All offenders convicted of crimes against minors regardless of the individual's danger could be restricted because states "are not barred by principles of 'procedural due process' from drawing classifications among sex offenders and other individuals".¹⁸⁰ Additional procedures such as a hearing for offenders to prove

¹⁷³*Miller*, 405 F.3d 700. It also seems that this case is mentioned more often when discussing residency laws because the case was appealed to the United States Supreme Court. *Id.*

¹⁷⁴*Id.* at 704. Iowa's law does not apply to persons who established a residence before the law was passed or to schools or child facilities newly located after the law was passed. *Id.* The class represented all individuals that the Iowa law applies to who currently lived in Iowa or wished to move to Iowa. *Id.*

¹⁷⁵*Id.* at 705.

¹⁷⁶*Id.* at 708.

¹⁷⁷*Id.* at 708 ("the possibility that an offender may be prosecuted despite his best efforts to comply was not sufficient to invalidate the entire statute. The chance for varied enforcement was also not a sufficient reason to invalidate the entire statute. The potential for varied enforcement also did not justify invalidating the entire statute because due process does not require that district attorneys enforce each criminal statute with equal vigor").

¹⁷⁸*Id.* at 708.

¹⁷⁹*Id.* at 709.

¹⁸⁰*Id.* at 709 (citing *Michael H. v. Gerald D.*, 491 U.S. 110, 120 (1989) (plurality opinion) (emphasis in original)). The court in *Miller* explained that when a legislative classification is drawn additional procedures are not necessary if the statute does not provide for any exemptions. States are not required to provide a process to establish an exemption from a legislative classification. Therefore, the state did not have to provide a hearing for offenders

they were not dangerous or a risk to the community were not necessary because the residency law did not provide for any exemptions.¹⁸¹

The court also held that the statute did not violate substantive due process because the law rationally advanced the legitimate government purpose to promote children's safety.¹⁸² To support this finding the court noted that sex offenders have a high rate of recidivism and that opportunity and temptation should be reduced to minimize the risk of offenders re-offending.¹⁸³ The court also pointed out that it is the state legislature's job to judge the best means to protect the health and welfare of its citizens "in an area where precise statistical data is unavailable and human behavior is necessarily unpredictable."¹⁸⁴

The sex offenders' argument that the statute violated their constitutional right to interstate travel also failed. The court found that the offenders were free to enter and leave Iowa as they wished with no barriers to interstate movement.¹⁸⁵ The court also denied the claim that the statute violated a right to intrastate travel because sex offenders were still free to enter and leave any part of the state.¹⁸⁶

The court next quickly dismissed the argument that the residency restriction violated a sex offender's Fifth and Fourteenth Amendment right against self-incrimination.¹⁸⁷ The court stated that the residency restriction did not require an offender to be a witness against himself.¹⁸⁸ Furthermore, the law did not require an offender to provide any information that could be used against him in a criminal case.¹⁸⁹

to show they should be exempt from the law because they were not dangerous or not likely to offend again.

¹⁸¹*Id.*

¹⁸²*Id.* at 714. The court found that the law did not implicate any fundamental right and therefore did not use the strict scrutiny test because marriage or family relationships were not impacted directly since the law does not limit who may live with sex offenders in their residences. The court stated that the law did not prevent an offender's family from residing with the offender. The court also stated that the right to live where you want is not fundamental. *See also* *People v. Leroy*, 828 N.E.2d 769 (Ill. App. Ct. 2005) (finding a similar statute did not violate substantive due process even though no statistics or research connected residency distance with sex offenses. Judges found that it was reasonable to believe that prohibiting sex offenders from living near schools would reduce the amount of incidental contact with children therefore reduce the opportunity to commit crimes).

¹⁸³*Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005), *cert. denied*, 126 S.Ct. 757 (2005).

¹⁸⁴*Id.* at 714. The court also stated that deciding how much distance to keep between sex offenders and schools was best left to state legislatures, not federal courts.

¹⁸⁵*Id.* at 712.

¹⁸⁶*Id.* at 713.

¹⁸⁷*Id.* at 716. Offenders argued that a sex offender who establishes a residence in a prohibited area must either register his current address and admit the facts necessary to prove that criminal act or refuse to register and also be prosecuted for failure to register with authorities.

¹⁸⁸*Id.*

¹⁸⁹*Id.*

Lastly, the court held that the statute was not ex post facto punishment of offenders that committed offenses prior to the law's enactment because offenders did not establish "by the clearest proof . . . that the punitive effect of the statute overrides the General Assembly's legitimate intent to enact a nonpunitive, civil regulatory measure that protects health and safety."¹⁹⁰ The statute was not punitive even though it restricted all sex offenders without making any individual risk assessment.¹⁹¹ Furthermore, the court found that there was a rational connection between the law and the nonpunitive regulatory purpose of minimizing the risk of repeated sex offenses against minors.¹⁹² The court also found that the legislature's decision to select a 2000 foot restriction was not excessive to accomplish the state's purpose.¹⁹³

United States District Judge Michael Joseph Melloy wrote a dissenting opinion in *Doe v. Miller* finding that the law was punitive and therefore violated the ex post facto clause of the United States Constitution when applied to offenders that committed an offense prior to the law's enactment.¹⁹⁴ He stated that residency restrictions cause results similar to banishment because offenders are prohibited from living in communities and are left with limited housing options.¹⁹⁵ Melloy did find that there was a rational connection between the law and the nonpunitive purpose of protecting the public.¹⁹⁶ However, he found that this law was excessive because it drastically limits housing options and treats all sex offenders identically regardless of the crime committed, victim, or risk of re-offending.¹⁹⁷ Judge Melloy also noted that sex offenders face severe effects such as not being free to live with their families or in hometown communities.¹⁹⁸ Lastly, the dissent pointed out that the law is excessive because an offender is forced to deal with these harsh effects for their entire life since the restriction has no time limit.¹⁹⁹

¹⁹⁰*Id.* at 705. The court found that residency restrictions were unlike banishment, a traditional form of punishment. *Id.* Unlike banishment, the law did not "expel" offenders from communities or prohibit them from entering areas near schools or child-care facilities for employment, commercial transactions, or any purpose other than establishing a residence. The court also stated that although the law had a deterrent effect, it was not retributive. *Id.* at 719. The law's deterrent effect did not establish that the restriction was punishment. *Id.* at 720.

¹⁹¹*Id.* at 721.

¹⁹²*Id.* at 757 (2005) (stating that whether there is a rational connection to a nonpunitive purpose is the "most significant" factor in the ex post facto analysis).

¹⁹³*Id.* at 723.

¹⁹⁴*Id.*

¹⁹⁵*Id.* at 725. Judge Melloy also found that the law promoted a traditional aim of punishment, deterrence. *Id.* at 725. He also stated that the law imposed an affirmative disability or restraint. *Id.* at 725.

¹⁹⁶*Id.* at 724.

¹⁹⁷*Id.*

¹⁹⁸*Id.*

¹⁹⁹*Id.* The dissent found that four of the five factors weighed in favor of finding the law punitive. *Id.* at 726.

Only one federal court has recognized the validity of a sex offender's ex post facto challenge to residency restrictions. In August 2004, the United States District Court for the Middle District of Tennessee issued a preliminary injunction enjoining the state of Tennessee from enforcing a law prohibiting sexual offenders from residing or working within 1000 feet of a school or child-care facility²⁰⁰ against any sexual offender who committed their crime prior to the law's enactment.²⁰¹ In this minor victory, the court stated that the plaintiffs were likely to succeed on the merits that the statute violated the ex post facto clause of the United States Constitution.²⁰² However, the court dismissed the case as moot before the court ruled on the merits because a case or controversy no longer existed after the statute was amended to only restrict sexual offenders that were convicted, subject to parole or probation restrictions, or discharged from incarceration after the date of the law's enactment.²⁰³ This amendment appears to have made the ex post facto argument moot since sexual offenders convicted prior to the law's enactment were no longer punished retroactively.

²⁰⁰ TENN. CODE ANN. § 40-39-211(a) (2004) (amended 2005).

²⁰¹ Doe v. Bredesen, No. 3:04-0670, 2005 WL 2045779, at *1 (M.D. Tenn. Aug. 25, 2005) (finding the statute retroactively imposed punishment).

²⁰² *Id.*

²⁰³ *Id.*; see also TENN. CODE ANN. § 40-39-211(a) (2005). § 40-39-211(a) now reads, "While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202(16), or violent sexual offender, as defined in § 40-39-202(24), whose victim was a minor, shall knowingly establish a primary or secondary residence or any other living accommodation, or knowingly accept employment, within one thousand feet (1000') of the property line on which any public school, private or parochial school, licensed day care center, or any other child care facility is located." The 2005 amendment added "While mandated to comply with the requirements of this chapter," at the beginning, substituted "§ 40-39-202(16)" for "§ 40-39-202(15)", substituted "§ 40-39-202(24)" for "§ 40-39-202(23)", inserted "whose victim was a minor", substituted "establish a primary or secondary residence or any other living accommodation, or knowingly accept employment," for "reside or work", and inserted "line" following "property". See § 40-39-211 (notes on AMENDMENTS following the text of the statute). TENN. CODE ANN. § 40-39-202(16) (2005) now defines a sexual offender as a person who has been convicted in this state of committing a sexual offense . . . ; or has another qualifying conviction . . . ; provided, that" (A) *the conviction occurs on or after January 1, 1995*; or (B) if the conviction occurred prior to January 1, 1995, the person: (i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995; (ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or (iii) Is discharged from incarceration without supervision on or after January 1, 1995;" (emphasis added). TENN. CODE ANN. § 40-39-202(24) (2005) now defines a violent sexual offender as "a person who has a conviction . . . for a violent sexual offense", . . . provided, that: (A) *The conviction occurs on or after January 1, 1995*; or (B) If the conviction occurred prior to January 1, 1995, the person: (i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995; (ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or (iii) Is discharged from incarceration without supervision on or after January 1, 1995;" (emphasis added).

G. Conclusion

Section IV demonstrates that sex offender residency laws place unjustified burdens on sex offenders and their family members while increasing recidivism rates. Research does not prove that these laws will protect children. Instead, these laws perpetuate harmful myths and beliefs towards sex offenders. However, the criticism and litigation challenging these laws have not deterred states from continuing to enact and enforce sex offender residency laws.

IV. OHIO'S SEX OFFENDER LAW

Ohio is one of the eighteen states that restrict where sex offenders may reside in relation to schools.²⁰⁴ This section explains the requirements and purposes of the law. It then analyzes the two primary flaws in Ohio's law: the law applies blanket residency requirements on all sex offenders and it does not include grandfather clauses to allow sex offenders to remain in their home if purchased prior to the law's enactment or if a new school is built in the vicinity.

A. The Law in Ohio

In July 2003, Ohio enacted section 2950.031 of the Ohio Revised Code, which states, "No person who has been convicted of . . . either a sexually oriented offense²⁰⁵ that is not a registration-exempt sexually oriented offense or a child-victim oriented offense²⁰⁶ shall establish a residence or occupy residential premises within 1000 feet of any school premises."²⁰⁷ Over 21,700 sex offenders living in Ohio are subject to this law's restrictions.²⁰⁸ The law prohibits registered sex offenders from residing in nursing homes, adult care facilities, residential group homes, homeless shelters, hotels, motels, boarding houses, or facilities operated by independent housing agencies that are within 1000 feet of any school premises.²⁰⁹ This limitation applies for the offender's life, regardless of whether he or she is under community

²⁰⁴See OHIO REV. CODE ANN. § 2950.031 (LexisNexis 2005).

²⁰⁵See § 2950.01(D) (LexisNexis 2005). All crimes falling into the category "sexually oriented offense" are listed in this section and include a long list of offenses committed against both adults and minors.

²⁰⁶See § 2950.01(S) (LexisNexis 2005) (defining "Child-victim oriented offense" as any violation of § 2905.01 (LexisNexis 2005) (kidnapping), § 2905.02 (LexisNexis 2005) (abduction), § 2905.03 (LexisNexis 2005) (unlawful restraint), or § 2905.05 (LexisNexis 2005) (criminal child enticement) by a person over the age of eighteen when the victim of the violation is under the age of eighteen and is not a child of the person who commits the violation).

²⁰⁷§ 2950.031.

²⁰⁸Ohio Attorney General Jim Petro's Office, Total Sex Offender Report, Oct. 21, 2005.

²⁰⁹2005 Ohio Op. Att'y Gen. 1 (2005), 2005 Ohio AG LEXIS 4. This opinion noted that § 2950.031 regulated an offender's residence, not domicile. An offender violates the law by having a bodily presence as an inhabitant in a structure within 1000 feet of school premises. The decision interpreted residence broadly to increase the instances where the restriction was applicable and stated that the legislature wanted residence restrictions to apply in as many instances as possible to reduce the likelihood that children will become victims of sexually abusive behavior, kidnapping, and abduction.

supervision such as parole or probation.²¹⁰ An amendment, effective April 2005, allows an owner or lessee of real property located within 1000 feet of any school and city law officials such as prosecutors and law directors to seek injunctive relief against an offender violating the residency law without proving irreparable harm.²¹¹

The Ohio General Assembly enacted § 2950.031 after finding that children are especially vulnerable to becoming victims of sexually abusive behavior, kidnapping, and abduction, and are likely to be present on or near school premises for significant amounts of time.²¹² The General Assembly found that this prohibition was necessary to protect children from persons who have been convicted of a sexually oriented offense or a child-victim oriented offense.²¹³ Legislative findings also stated that sex offenders pose a risk of committing further sexually abusive behavior after being released from prison and protecting the public from these individuals is a “paramount governmental interest.”²¹⁴ There is no doubt that legislators believed they were acting in the best interest of children by enacting section 2950.031. But as the next sections will show, the law that Ohio legislators enacted has major flaws and does not effectively protect children.

In February 2005, six sex offenders filed a claim under 42 USC § 1983 seeking a permanent injunction against the state of Ohio from enforcing section 2950.031.²¹⁵ Plaintiffs argued that this provision violates the Ex Post Facto Clause of the United States Constitution, the fundamental right of intrastate travel, and the Due Process Clause of the United States Constitution because a sex offender is not given adequate advance notice where he may live in compliance with the law.²¹⁶ After an evidentiary hearing and submittal of proposed findings of fact and conclusions of law, the court concluded that the Plaintiffs did not have standing to challenge the constitutionality of section 2950.031 because the offenders did not establish that

²¹⁰Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *supra* note 18.

²¹¹OHIO REV. CODE ANN. § 2950.031(B) (LexisNexis 2005), “An owner or lessee of real property that is located within one thousand feet of those school premises, or the prosecuting attorney, village solicitor, city or township director of law, . . . that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The plaintiff shall not be required to prove irreparable harm in order to obtain the relief.” *Id.* Residing in a prohibited location is not currently a criminal offense.

²¹²2005 Ohio Op. Att’y Gen., *supra* note 209.

²¹³*Id.*

²¹⁴OHIO REV. CODE ANN. § 2950.02(A)(2) (LexisNexis 2005).

²¹⁵Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 5, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Feb. 25, 2005) (on file with author and with the United States District Court for the Southern District of Ohio).

²¹⁶*Id.* Plaintiffs also alleged in their complaint that section 2950.031 infringes on the fundamental right of privacy in family matters, violates the Due Process Clause because it does not have a process to determine dangerousness of individuals, violates the constitutional right against impairment of contracts, violates the Fifth Amendment privilege against self-incrimination, and violates the Takings Clause of the Fifth Amendment. *Id.* However, these claims were either withdrawn or abandoned, leaving only three claims remaining. *Id.*

they are subject to the law's restrictions.²¹⁷ The Court stated that the Plaintiffs did not present evidence that they either lived within 1000 feet of school premises or that they were registered sexual offenders subject to section 2950.031.²¹⁸

More recently, an Akron sex offender filed a suit to challenge the constitutionality of section 2950.031 in Ohio federal court after the county sheriff ordered him to move because he lived within 1000 feet of an elementary school.²¹⁹ In June 2006, United States District Judge James Gwin conducted a hearing where both the State of Ohio and the Ohio Justice and Policy Center, representing the sex offender, presented arguments.²²⁰ Both sides submitted post-trial briefs and at the date of publication, were still awaiting Judge Gwin's decision on whether to permanently block Ohio from enforcing the residency law. Whether or not these cases go further or if there are future challenges to section 2950.031, Ohio legislators should amend the law to better protect children from sexual offenders.

B. Ohio's Residency Law, One Size Fits All

The most serious flaw to section 2950.031 is that it prohibits all registered sex offenders and child-victim offenders from residing near schools without taking into account circumstances of the offender or the offense. As discussed in this section, Ohio's other sex offender laws, similar laws in other states, and expert studies support the argument that Ohio should not apply blanket residency restrictions to prohibit all convicted sex offenders from residing near school premises.

1. The Offenses and Offenders Covered by Ohio's Residency Law

In most cases, whether or not the victim is a minor, section 2950.031 applies to crimes such as murder, rape, gross sexual imposition, pandering sexually oriented matter involving a minor, and voyeurism.²²¹ Section 2950.031 does not apply to certain "registration exempt offenses" if three qualifications are satisfied: 1) an offender is charged with sexual imposition, voyeurism, or menacing by stalking with a sexual motivation, 2) has no previous convictions or adjudications for a sexually oriented or child-victim oriented offense, and 3) the victim is eighteen years or older. Presumably an offender that commits one of these registration exempt offenses does

²¹⁷*Coston v. Petro*, 398 F. Supp. 2d 878, 883 (S.D. Ohio 2005). Plaintiffs lacked standing to prosecute the intrastate travel claim because there was no evidence to show section 2950.031 caused an injury-in-fact. *Id.* Plaintiffs also lacked standing to assert their adequate notice claim because they did not show that they suffered a concrete actual or imminent injury since they were not forced to move from a new school being built in the area. *Id.* In deciding whether Plaintiffs had standing to present the Ex Post Facto claim, the court found that section 2950.031 was a civil statute with a nonpunitive purpose and effect so Plaintiffs could not challenge section 2950.031 as a criminal statute. *Id.*

²¹⁸*Id.*

²¹⁹Karen Farkas, *Sex Offender Challenges Residential Ban*, PLAIN DEALER, Feb. 11, 2006, at B3.

²²⁰*Id.* See also, *Law Keeping Sex Offenders from Living Near Schools Challenged in Federal Court*, June 20, 2006, http://www.wkyc.com/news/regional/akron_article.aspx?storyid=53739.

²²¹OHIO REV. CODE ANN. § 2950.01 (LexisNexis 2005).

not have to abide by the residency restrictions.²²² However, the sentencing court may overrule this presumption and prohibit these offenders from residing near schools.²²³

Exempting certain offenses is a step in the right direction, but is not enough to solve the problems caused by applying blanket residency restrictions on registered sex offenders and child-victim offenders.

Other sections of Ohio's sex offender law do not treat all sexual offenders equally. Based on a crime's severity, risk of recidivism, and number of prior convictions, offenders are classified as a sexual offender,²²⁴ habitual sex offender,²²⁵ sexual predator,²²⁶ sexually violent predator,²²⁷ habitual child-victim offender,²²⁸ or child-victim predator.²²⁹ The length of time these offenders are required to register with the county sheriff's office varies depending on the classification.²³⁰ For example, sexual predators and child-victim predators must register until death while sexual offenders only register for ten years.²³¹ If a person is classified as a sexual predator, child-victim predator, habitual sex offender, habitual child-victim offender, or is convicted of an aggravated sexually oriented offense, certain residents and school officials within 1000 feet of an offender's home must be notified before these offenders move into the area.²³² However, all of these categories of offenders are treated identically under Ohio law for the ban on living near a school.²³³

Ohio's classification of sex offenders (based on circumstances surrounding the crime and an offender's criminal history) suggests that legislators realize that all sexual offenses are not identical and that all offenders are not equally dangerous.

²²²§ 2950.01(P).

²²³*Id.*

²²⁴§ 2950.01(D) (sexual offenders include anyone convicted of an offense listed in this section).

²²⁵§ 2950.01(B) (LexisNexis 2005) (defining habitual sex offender as an offender who was previously found guilty of or pleaded to a sexually oriented or child-victim oriented offense).

²²⁶§ 2950.01(E) (LexisNexis 2005) (defining sexual predator as an adult or juvenile age fourteen or older who is adjudicated as likely to engage in sexually oriented offenses in the future).

²²⁷§ 2950.01(H) (LexisNexis 2005) (using the same meaning for sexually violent predator as defined in section 2971.01 of the Ohio Revised Code, a person who commits a sexually violent offense and is likely to engage in a sexually violent offense in the future).

²²⁸§ 2950.01(T) (LexisNexis 2005) (defining habitual child-victim offender as an adult or juvenile age fourteen or older previously found guilty of or pleaded to a child-victim oriented offense, for which the offender was classified as a child-victim oriented offender or an out-of-state child-victim oriented offender registrant).

²²⁹§ 2950.01(U) (LexisNexis 2005) (defining child-victim predator as an offender additionally adjudicated as likely to engage in child-victim oriented offenses in the future).

²³⁰OHIO REV. CODE ANN. § 2950.07 (LexisNexis 2005).

²³¹*Id.* (also stating that habitual sex offenders and habitual child-victim offenders must register until death or for twenty years).

²³²OHIO REV. CODE ANN. § 2950.11 (LexisNexis 2005).

²³³Nichols, *supra* note 17.

Likewise, since registration and residency notification requirements vary depending on the classification, it seems that certain offenders are viewed as more of a risk to the community and to the public in general. Ohio should follow the examples of these states instead of restricting all offenders without looking at the crime or offender if their goal is to protect children from sexual crimes.

2. Factors that Predict Whether an Individual Offender Will Offend Again

Ohio legislators should realize that all sex offenders are not alike and can be distinguished using a number of factors that help predict if an individual offender will be dangerous in the future.²³⁴ Certain offenders commit violent rapes and assaults against strangers while others harm their own families.²³⁵ Other offenders engage in unusual activities such as voyeurism or exposing themselves.²³⁶ Furthermore, offenders often have a victim of choice and some are not tempted by children.²³⁷ By restricting all sex offenders, the law does not consider that certain sex offenders may not pose a risk by living near a school since they do not target children.

Specific factors relating to the individual offender can further predict whether the offender is likely to offend again. An offender's dangerousness may be accessed by examining their sexual history, frequency and variety of deviant behavior, and the process he or she uses to select a victim.²³⁸ Recidivism increases if an offender is unmarried and decreases with the age of the offender.²³⁹ Other devices professionals use to access recidivism include an enduring sexual preference for children,²⁴⁰ psychopathic ratings, and phallometric assessment data.²⁴¹

²³⁴LAFOND, *supra* note 9, at 49.

²³⁵*Id.* at 43.

²³⁶*Id.*

²³⁷Beyer, *supra* note 63.

²³⁸Candace Kim, *From Fantasy to Reality: The Link Between Viewing Child Pornography and Molesting Children*, 2004, available at www.ndaa-apri.org/publications/newsletters/child_sexual_exploitation_update_volume_1_number_3_2004.html. (last visited Mar. 13, 2006). This selection process is known as "grooming" and is the process child molesters use to build a nonsexual relationship of trust with their intended child victim. The molester does so in a natural and nonthreatening way and then transitions to a sexual relationship; *see also* Judith V. Becker & William D. Murphy, *What We know and Do Not Know About Assessing and Treating SexOffenders*, 4 PSYCHOL. PUB. POL'Y & L. 116 (1998).

²³⁹Becker & Murphy, *supra* note 238, at 116. Recidivism increases if an offender is not married and decreases as an offender becomes older. *Id.*

²⁴⁰*See* R. Karl Hanson, Richard A. Steffy, & Rene Gauthier, *Long-Term Recidivism of Child Molesters*, 61 J. CONSULTING AND CLINICAL PSYCHOL. 646, 650 (1993).

²⁴¹Marnie E. Rice & Grant T. Harris, *Cross-Validation and Extension of the Violence Risk Appraisal Guide for Child Molesters and Rapists*, 21 Law & Hum. Behav. 231, 231 (1997); *see also* Grant T. Harris & Marnie E. Rice, *The Science of Sex Offenders: Risk Assessment, Treatment, and Prevention: Appraisal and Management of Risk in Sexual Aggressors: Implications for Criminal Justice Policy*, 4 Psych. Pub. Pol. and L. 73, 75 (1998) (defining phallometry as the measurement of sexual arousal and monitoring of changes in penis size).

Another important predictor of recidivism is a sex offender's criminal history for both sexual and nonsexual crimes.²⁴² Repeat offenders are more likely to offend again than first-time offenders.²⁴³ An offender's likelihood of being arrested for another sex crime after leaving prison rises with their number of prior arrests for any type of crime.²⁴⁴ For example, released child molesters with more than one prior arrest for child molesting were more likely to be rearrested for child molesting (7.3%) than released child molesters with no prior arrests (2.4%).²⁴⁵ Sex offenders in general with more than one sex crime arrest were about twice as likely to be rearrested for another sex crime when compared to those offenders with no prior sex crime arrests.²⁴⁶ These statistics show that a sex offender's criminal record is another factor that can greatly help predict whether that particular offender is likely to commit another sexual offense. These studies show that all sex offenders do not pose an equal risk of offending again, especially by living near schools, and therefore laws that target all sex offenders restrict more individuals than is necessary.

Victim characteristics such as age, sex, and relationship to their offender also affect recidivism.²⁴⁷ Rapists and men that have offended against both women and children are at a higher risk of committing new violent offenses than men whose only victims were children.²⁴⁸ Furthermore, child molesters are at a higher risk for committing new sexual offenses compared to all sexual offenders in general.²⁴⁹ Child molesters that select only unrelated male victims recidivate at a significantly higher rate than those that select related males, unrelated females, and related female victims.²⁵⁰ Lastly, sexual offenders with victims from all categories are the most dangerous.²⁵¹ These studies show that the likelihood that a sex offender will commit another sexual crime varies depending on the victim involved.

while stimuli are presented to the participant in a controlled fashion to obtain phallometric data).

²⁴²Becker & Murphy, *supra* note 238.

²⁴³The Association for the Treatment of Sexual Abuse, *supra* note 60.

²⁴⁴U.S. Dept. of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released From Prison in 1994* (2003).

²⁴⁵*Id.*

²⁴⁶*Id.* Those with more than one sex crime arrest had a recidivism rate of 8.3% while those with no prior arrests had a recidivism rate of 4.2%.

²⁴⁷Becker & Murphy, *supra* note 238, at 124.

²⁴⁸Rice & Harris, *supra* note 241, at 239.

²⁴⁹*Id.* at 231.

²⁵⁰Hanson, et al., *supra* note 240, at 650; *see also* Vernon L. Quinsey, Marnie E. Rice, & Grant T. Harris, *Actuarial Prediction of Sexual Recidivism*, 10 J. INTERPERSONAL VIOLENCE 85 (1995) (finding offenders with extra familial male victims had a recidivism rate of thirty-five percent, offenders with extra familial female victims recidivated at eighteen percent, and incest offenders had a recidivism rate of nine percent).

²⁵¹Rice & Harris, *Cross-Validation*, *supra* note 241, at 240.

3. Ohio's Residency Law Does Not Use Limited Resources Efficiently

In addition to being inaccurate, blanket residency restrictions do not use resources effectively. Many sexual offenders are not dangerous and are never reconvicted for a new sexual offense.²⁵² The belief that all sex offenders will offend again is not accurate. Admittedly, a small number of extremely dangerous sex offenders, such as those that commit violent crimes against children, are highly likely to offend again and pose a serious threat to the community.²⁵³ This group should be subject to aggressive and carefully tailored strategies to prevent new crimes.²⁵⁴ But, blanket policies targeting all offenders use limited resources on large groups of offenders who, with only minimal restrictions, would not offend again.²⁵⁵ For example, in Cuyahoga County, Ohio, more than 300 of the county's 2,400 registered sex offenders are in violation of state law for living within 1000 feet of a school.²⁵⁶ Resources would be saved and Ohio could enforce the law more effectively if only the offenders that truly presented a risk of danger by residing near schools were subject to section 2950.031. For maximum efficiency, Ohio should apply intensive restrictions to high-risk offenders while managing low-risk offenders with less restrictive means such as probation and attendance at treatment meetings. Government agencies should classify sex offenders who need different types and levels of restrictions so the government's limited resources are not wasted.²⁵⁷

C. No Protection for Offenders Who Owned Residences Prior to the Law's Enactment or Own Homes Within 1000 Feet of a New School

Ohio's residency law does not contain sufficient grandfather clauses to exclude certain offenders from the law's application.²⁵⁸ Currently the law contains two grandfather clauses: 1) the law does not apply to rental agreements that were entered into before the statute was enacted and 2) sex offenders do not have to register if they were released from prison prior to July 1, 1997.²⁵⁹ Two main flaws still remain

²⁵²Hanson, *supra* note 149, at 55.

²⁵³LAFOND, *supra* note 9, at 49.

²⁵⁴*Id.* at 49.

²⁵⁵WINICK & LAFOND, *supra* note 11.

²⁵⁶*Law Prevents Police From Keeping Sex Offenders Away From Kids*, Nov. 6, 2005, <http://www.newsnet5.com/pring/5243140/detail.html>. This reports the number of offenders in violation of § 2950.031 at the time of this broadcast.

²⁵⁷"Community Supervision of the Sex Offender: An Overview of Current and Promising Practices," available at <http://www.csom.org/pubs.supervision2.html> (last visited Dec. 18, 2006).

²⁵⁸Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 2, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Feb. 25, 2005) (on file with author and with the United States District Court for the Southern District of Ohio). Arkansas, Illinois, Iowa, Michigan, and Oklahoma have laws that protect offenders from being forced to move if they established their homes prior to the law's enactment. Iowa, Alabama, Arkansas, Missouri, and Tennessee do not force offenders to move if a new school is built near the offender's home.

²⁵⁹*Coston v. Petro*, 398 F.Supp.2d 878, 883 (S.D. Ohio 2005). July 1, 1997 is the date OHIO REV. CODE ANN. § 2950.031 was enacted.

that produce unfair results for sex offenders. First, section 2950.031 applies to residences owned before the effective date of the statute.²⁶⁰ Second, the statute does not exempt offenders legally living in a residence if a new school is later built within 1000 feet of an offender's home.²⁶¹

When defending Ohio's sex offender residency law in *Coston v. Petro*, a class action brought by sex offenders challenging the law, the government argued that no additional grandfather clauses are needed.²⁶² Attorneys representing sex offenders in this case argued extensively that the two clauses now included in the residency law do not adequately protect the interests of sex offenders. As attorneys representing the sex offenders point out, the rental agreement exception is very limited and only applies if sex offenders were in the middle of a lease agreement at the time the statute was passed.²⁶³ These protections cease if the sex offender completes the old lease agreement after the date the statute was enacted and enters a new contract, even if the lease is for the same residence with the same landlord.²⁶⁴ Additionally, even though the law exempts offenders from registering if they were released from prison prior to July 1, 1997, this clause provides no protection for the offenders released after this date or offenders that will be charged in the future. These limited grandfather clauses help offenders, but are not sufficient to produce fair results.

The attorneys representing a group of sex offenders challenging the constitutionality of Ohio's sex offender law in *Coston v. Petro* first pointed out that section 2950.031 applies to any residence owned before the effective date of the statute.²⁶⁵ Thus, sex offenders must move even if they established their homes prior to the law's enactment.²⁶⁶ For example, one offender was forced to move out of the home he lawfully owned and occupied with his wife and two children for twelve years before Ohio's law passed because he lived 983 feet from a school.²⁶⁷ No credit

²⁶⁰Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *supra* note 18.

²⁶¹*Id.*

²⁶²*Coston*, *supra* note 259.

²⁶³Plaintiffs' Post-Trial Brief with Proposed Findings of Fact and Conclusions of Law at 3, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Oct. 14, 2005) (on file with author and with the United States District Court for the Southern District of Ohio). [Section 8 of Senate Bill 5 states that "any rental agreements that are entered into prior to July 31, 2003 are exempt."]

²⁶⁴*Id.* at 3.

²⁶⁵Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 8, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Feb. 25, 2005) (on file with author and with the United States District Court for the Southern District of Ohio).

²⁶⁶*Id.*

²⁶⁷Plaintiffs' Post-Trial Brief with Proposed Findings of Fact and Conclusions of Law at 14, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Oct 14, 2005) (on file with author and with the United States District Court for the Southern District of Ohio) (citing Tony Cook, *Sex Offender Must Vacate His Home*, CINCINNATI POST, Sept. 29, 2005; Denise Wilson, *Court: Sex Offender Must Move*, CINCINNATI POST, Oct 8, 2005. The sex offender, Gerry Porter, had to move even though just seventeen feet of his back yard was in the 1000 foot restricted zone. *Id.* Porter would again be forced to move if a new school moves within 1000 feet of his new residence.

or exemption is given to an offender that invested in a home he or she could legally reside in prior to the law going into effect.²⁶⁸

Second, attorneys arguing that the residency law is unconstitutional noted that the statute applies if a new school is built within 1000 feet of an offender's home after the statute's effective date. It is not possible to know if residential property will end up within 1000 feet of a new school because it is impossible to know the geographical location of all the schools that will be built around the state in the future.²⁶⁹ Therefore, sex offenders can not purchase a home with confidence that they will not be forced to move at a later date. Thus, offenders are always at risk of facing significant financial and personal loss that may result from moving if a school is built nearby.²⁷⁰ A hypothetical situation shows the unfair results that this may have on an individual. An offender determined to follow the law could build a home on property in a remote rural location after checking that there is no school in the area.²⁷¹ However, if a new school is built a year later within 1000 feet of this home, this offender would be forced to move.²⁷² An offender can never move into a home knowing that he will not be put out on the street at anytime if a new school is built. It is not fair to put offenders at a continual risk of being forced to leave their home every time a school district adds a new facility.

Although Ohio's residency law contains two grandfather clauses to exempt certain offenders from the law's application, they do not adequately protect many sex offenders. The possibility still remains that a large number of sex offenders will face unjustified burdens and unfair results under the law.

²⁶⁸Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *supra* note 18.

²⁶⁹Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *supra* at 9, *see also* Plaintiffs' Post-Trial Brief with Proposed Findings of Fact and Conclusions of Law at 21, *Coston v. Petro*, No. 1:05-CV-125 (S.D. Ohio Oct. 14, 2005) (on file with author and with the United States District Court for the Southern District of Ohio). The Director of Facilities of the Cincinnati Public Schools testified that the district's plan for acquiring new property to build schools provides the location or address of the property but does not list the property's perimeter, its metes and bounds. Joni Cunningham, Associate Director of the Ohio Office of Community Schools testified that when a license is issued to open a Community School, the school does not need to have a physical location, address, or parcel number. The school must pass inspection before it actually opens, but it is impossible to know where all Community Schools will be before they open. Cunningham testified that 30 "new start up" community schools were approved to open in the 2005-2006 school year. As of September 14, 2005, only nineteen of the schools had identified buildings. The remaining eleven schools may open at any point during the school year, but these schools did not yet report the parcel number or address where the school will be located.

²⁷⁰Plaintiffs' Post-Trial Brief with Proposed Findings of Fact and Conclusions of Law, *supra* note 88. For example, if the offender is forced to sell earlier than they expected and therefore lose their financial investment or forced to move from a city with a high quality school district.

²⁷¹*Id.*

²⁷²*Id.* at 20.

D. Conclusion

Section V demonstrates the two main problems with Ohio's sex offender residency law: 1) it applies blanket residency requirements on all sex offenders without looking at the individual offender or crime committed, and 2) it does not exempt an offender from the law's application if he purchased a home prior to the law's enactment or if a new school building is built in the area. The result is that children are less safe and a large number of sex offenders are forced to face unjustified burdens.

V. RECOMMENDATIONS

Ohio's law is flawed because it applies blanket residency restrictions without looking at the individual offender and does not contain adequate grandfather clauses to protect offenders from unfair applications of the law. Ohio must amend its law to include additional broader grandfather clauses and evaluate offenders on a case by case basis so only those offenders that present a risk of harm to children by residing near schools are restricted. Ohio cannot stop at amending its laws to ensure that the state's children are protected from sex offenders and sex crimes. If Ohio still wishes to restrict where sex offenders may live, the legislature must adopt policies that research shows are effective, review sentencing provisions for sex offenders, and educate the public on the facts regarding sex offenders.

The current trend in Ohio is to increase the restrictions placed on sex offenders. Some cities in the state want to expand restricted zones by also prohibiting offenders from residing within 1000 feet of parks, swimming pools, libraries, preschools, and day-care centers.²⁷³ Other cities hope to expand the zones off limits to sex offenders by prohibiting offenders from living within 2,500 feet of schools.²⁷⁴ Currently the Ohio legislature is debating bills that would prohibit sex offenders from residing within 1000 feet of preschool premises and school bus-stops.²⁷⁵ The House of Representatives is also considering requiring registered sex offenders to obtain a sex offender license plate.²⁷⁶ Another bill proposes that sexually violent predators that harm children under the age of thirteen receive longer prison sentences and if released wear a global positioning system device to monitor their whereabouts.²⁷⁷ State representatives also want to make it a fifth degree felony for registered sex offenders to reside within 1000 feet of any school premises.²⁷⁸ Private parties that

²⁷³Rita Price & Tom Sheehan, *Sex-Offender Zoning Faulted; Cities Seem to Want it, but Experts Say it's Useless*, COLUMBUS DISPATCH, (Columbus, OH) Oct. 16, 2005, at 1C.

²⁷⁴*Id.* (North Canton, Ohio passed this ordinance).

²⁷⁵H.B. 118, 2005 Gen. Assem., Reg. Sess. (Oh. 2005); S.B. 146, 2005 Gen. Assem., Reg. Sess. (Oh. 2005).

²⁷⁶H.B. 217, 2005 Gen. Assem., Reg. Sess. (Oh. 2005).

²⁷⁷S.B. 260, 2006 Gen. Assem., Reg. Sess (Oh. 2006). (proposing a person convicted of rape when the victim is less than 13 years old be sentenced to a prison term of 25 years to life. A person convicted of gross sexual imposition when the victim is less than 13 years of age would be sentenced 15 or 25 years to life).

²⁷⁸H.B. 191, 2005 Gen. Assem., Reg. Sess (Oh. 2005). (currently not abiding by the residency law is not a criminal offense. A sex offender can only be forced to move after an injunction is issued).

feel these government steps are not enough are also adding additional restrictions. More than 100 homeowner associations in Cuyahoga County have banned sexual predators from moving into their communities and the city councils in two Cleveland suburbs have encouraged other associations to do so.²⁷⁹

While cracking down on sex offenders is likely to help get politicians re-elected,²⁸⁰ the laws are not based on any solid research.²⁸¹ One can not blame elected officials for not wanting to tell their constituents we should go easier on sex offenders or lessen restrictions. But politicians should look at what research shows works best to treat offenders and prevent them from offending again. Lawmakers in certain states, such as Nebraska, have criticized these laws and have decided not to pass legislation limiting where sex offenders may reside.²⁸² These legislators stated that studies show “residency restrictions do not work. Any politician who advocates for them is simply pandering to the ‘get tough on crime’ vote.”²⁸³

Ohio legislators should follow these lawmakers’ leads and consider other options that would more effectively protect the health and welfare of children and adults in Ohio while ensuring offenders’ constitutional rights are protected. Research suggests sex offender residency restrictions should not be used or depended on to protect children.²⁸⁴ However, if Ohio lawmakers insist on keeping this law on the books, several steps must be taken to adequately protect children. Blanket residency requirements must be removed, certain offenders should be exempt from the law’s application, sex offenders sentences should be reevaluated, and the public should receive increased education on sex offenders.

Ohio should follow the model that is used in other sections of the Ohio Revised Code’s sex offender chapter for its residency law so that the treatment of convicted sex offenders is uniform. Ohio is moving in the right direction by classifying set offenders on a case by case basis. These distinctions made regarding the different levels of offenders should not be ignored when enforcing residency restrictions. Ohio should recognize that these categories exist and only prohibit certain offenders from living near a school.

Ohio’s law should also be modified so it is consistent with the majority of laws in other states.²⁸⁵ Twelve of the seventeen states with residency laws apply to a

²⁷⁹Homeowner Associations Ban Sexual Predators, *supra* note 14.

²⁸⁰Duster, *supra* note 1, at 771.

²⁸¹Demsky, *supra* note 95; *see also* text, *supra* at page 13-15.

²⁸²*Residency Law Gets Cool Response*, last visited Dec. 31, 2005, available at <http://www.fremontneb.com/articles/2005/12/29/news/news1.prt>. In a survey of Nebraska’s 49 lawmakers, only seven said Nebraska should adopt restrictions on where sex offenders may live and five others were leaning towards that conclusion. *Id.* Fourteen senators said the state should not adopt these restrictions and eight others were leaning towards this view.

²⁸³*Id.* Quote from Senator Pat Bourne of Omaha, Nebraska. *Id.*

²⁸⁴*See* text, *supra* at 13-15.

²⁸⁵*See* ARK. CODE ANN. § 5-14-128 (2005); CAL. PENAL CODE § 3003 (Deering 2005); FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2005); 720 ILL. COMP. STAT. ANN. 5/11-9.3(b-5) (West 2005); IND. CODE ANN. § 35-38-2-2.2 (West 2005); IOWA CODE ANN. § 692A.2A (West 2004); KY. REV. STAT. ANN. § 17.495 (MICHIE 2005); LA. REV. STAT. ANN. § 14:91.1(A) (2005); OR. REV. STAT. ANN. § 144.642(1)(a) (West 2005); TEX. CODE CRIM. PROC. ANN. art.

narrower class of offenders than Ohio.²⁸⁶ Those laws apply to only dangerous offenders at a high risk of offending again, to those convicted of crimes against minors, or only while the offender is on parole, probation, or community supervision.²⁸⁷ Indiana even permits the court to allow an offender to reside within 500 feet of school property if the court notifies schools in the vicinity.²⁸⁸

Section 2950.031 should not prohibit all registered sex offenders and child-victim offenders from residing near schools without looking at the individual offender and crime committed. Ohio should follow its other sex offender laws, the examples of other states, and studies in the area to develop a system that does not treat all sex offenders equally. Limited resources will not be wasted and children will be better protected as a result.

There are three options legislators have for amending section 2950.031 to remove blanket residency restrictions. Any of these possibilities would protect the health and safety of children more effectively than Ohio's current law. The best choice for Ohio legislators is to amend section 2950.031 to only prohibit certain sex offenders from residing near school premises if after a careful analysis a court finds this will make children safer.

An alternative possibility is only applying the law against offenders that commit a crime against a minor. After all, offenders are likely to stay with their victim of choice²⁸⁹ so those who targeted minors in the past would be prohibited from residing near where children attend school. Another option if the state continues to restrict all sex offenders is to amend the statute to allow sex offenders to present evidence at a hearing to prove that they do not pose a danger by residing near schools and therefore should not be subject to the law. Both the offender and the state could present evidence for a judge to make this determination. To make this procedure less costly for the state and decrease the chance for error, a sex offender would have the burden to prove by clear and convincing evidence that they do not pose a risk of danger to children by living near a school.²⁹⁰ The sentencing court would then have discretion to allow sex offenders to live within 1000 feet of a school if appropriate and then if necessary notify schools in the area of this decision.²⁹¹

The most effective option would be to evaluate an offender's risk of recidivism on a case by case basis and only prohibit a person from living near school premises if

42.12 (Vernon 2005); H.B. 1147 59th Gen. Assem., Reg. Sess. (Wash. 2005). *Compare with* ALA. CODE § 15-20-26 (LEXISNEXIS 2005); GA. CODE ANN. § 41-1-13(b)(2005); MICH. COMP. LAWS ANN. § 28.735 (West 2005); MO. ANN. STAT. § 566.147 (West 2005); OKLA. STAT. ANN. tit. 57, § 590 (West 2005); TENN. CODE ANN. § 40-39-211 (2005).

²⁸⁶*Id.*

²⁸⁷*Id.*

²⁸⁸IND. CODE ANN. § 35-38-2-2.2 (West 2005).

²⁸⁹Beyer, *supra* note 63.

²⁹⁰*See* OHIO REV. CODE ANN. § 2950.09(F) (West 2005) (This statute uses a similar process to allow an adult offender or delinquent child classified as a sexual predator to petition a court to remove this classification).

²⁹¹*See* IND. CODE ANN. § 35-38-2-2.2 (LexisNexis 2005) (permits a court to allow an offender to reside within 500 feet of school property if the court notifies schools nearby of an offender's residence).

an individual assessment shows that they pose a risk to children by residing near schools. This decision could be made using victim characteristics, details regarding the individual offender, a professional's assessment, and a pre-sentence investigation (PSI) report.²⁹² Since these reports are now completed for most cases, this practice would not require the state to spend any additional funds or resources. Even if this process proves to be more costly and time consuming, money will be saved in the long run because only truly dangerous offenders living near a school will need to be monitored.²⁹³ By zeroing in on the offenders that target children and are likely to offend again, law enforcement officials will be able to more effectively monitor individuals that actually create a risk by residing near a school. Furthermore, the public will be better informed and not led to believe that all offenders are highly dangerous.

Another amendment Ohio legislators should consider is adding provisions to section 2950.031 to exempt offenders if they purchased a home before the law's enactment or if a new school is built within 1000 feet of the home. If an offender purchased a home without ever knowing the law was going to be enacted, it seems unfair to force them to move out of a home that was a legal residence when purchased. Also, sex offenders should not continually be at risk of having to relocate if a new school is built. These changes would result in fewer offenders being forced to move. Therefore, the factors that can increase recidivism rates such as stress and decreased stability discussed earlier in this Note would occur less often.

Ohio legislators should also review the sentencing provisions for sex crimes. Offenders with high recidivism rates that commit heinous crimes against children should receive increased prison sentences and be required to seek treatment.²⁹⁴ Sentences should be proportionate to the harm caused to the victim and the offender's dangerousness.²⁹⁵ Repeat offenders and those that harm children should receive harsher punishment.²⁹⁶ If necessary to protect the public, highly dangerous offenders should be incarcerated for life.²⁹⁷ If law enforcement officials truly believe an offender presents a great risk to the public it makes more sense to keep this person in prison where they can receive treatment instead of simply keeping this person away from schools.

There is one other change that lawmakers, the media, educators, and government officials should take to protect children. The public must be educated on the nature and severity of sex crimes, mainly that most sex crimes are committed by someone the victim knows.²⁹⁸ Lawmakers should focus less on targeting strangers and instead

²⁹²Center for Sex Offender Management, *Community Supervision of the Sex Offender: An Overview of Current and Promising Practices*, available at, <http://www.csom.org/pubs/supervision2.html> (last visited Oct. 16, 2006) (the pre-sentence investigation report could include such things as probability of offending again, factors that increase this chance, and conditions suggested the particular offender needs for community supervision).

²⁹³Duster, *supra* note 1, at 757.

²⁹⁴*Id.* at 776.

²⁹⁵LAFOND, *supra* note 9, at 238.

²⁹⁶*Id.* at 239.

²⁹⁷*Id.* at 237.

²⁹⁸WINICK & LAFOND, *supra* note 11, at 158.

enact laws to protect children from people they know.²⁹⁹ Newspaper and television shows should also be encouraged to highlight the danger of nonstranger sex crimes and report more on these occurrences.³⁰⁰ Educators who interact with children daily are also in a good position to teach students the facts on sex offenders and sex crimes. It is especially important that parents are educated on the truths of sex crimes so that they can accurately educate their children and warn them of dangerous situations such as date rape and molestation posed by people in their children's lives.³⁰¹ Parents can also teach their children how to recognize and avoid improper contacts from adults.³⁰² Parents should also learn which people are more likely to sexually abuse children and signs of abuse to watch for in their children.³⁰³ If parents are educated in this area they can then tell their children what situations to be cautious of and also provide opportunities for children to report abuse if it occurs.³⁰⁴

VI. CONCLUSION

While it may seem easy to banish sex offenders to a small island, it is important to make sure that the most effective policies are implemented to protect children. Most adults convicted of sexual offenses will return to the community after serving their sentences.³⁰⁵ Therefore, it is vital for Ohio's legislature to enact effective laws that protect the public from sexual offenders while reducing the likelihood that these offenders will offend again.

While residency restriction laws may appear to be a good idea, they place unjustifiable burdens on sex offenders and their families. Sex offenders face limited housing options because the laws may result in entire towns being off limits if there are many parks or schools in the area. "[These] exclusion[s] make it more difficult for sex offenders to re-establish families in a community, get a job, participate in treatment programs, and do everything we want them to do, namely, to be a law-abiding citizen."³⁰⁶ Residency restrictions can also inadvertently make it more likely that a sex offender will offend again by making an offender's life more stressful and less stable.³⁰⁷ Furthermore, the laws focus on stranger offenders and therefore the majority of sex crimes that occur are not prevented.³⁰⁸ Lastly, research shows that

²⁹⁹*Id.* at 159.

³⁰⁰*Id.* at 158.

³⁰¹*Id.* at 156.

³⁰²Roos, *supra* note 138.

³⁰³ Cory Jewell Jensen, M.S. & Steve Jensen, M.A., *Understanding and Protecting Your Children From Child Molesters and Predators*, available at, http://www.unitedforjustice.com/PDF/tows_20020426_abuse.pdf (last visited Feb. 1, 2006).

³⁰⁴*Id.*

³⁰⁵LAFOND, *supra* note 9, at 201.

³⁰⁶Demsky, *supra* note 95.

³⁰⁷Cotter & Levenson, *supra* note 10, at 175.

³⁰⁸WINICK & LAFOND, *supra* note 11, at 156.

residency restrictions do not deter sex offenders from offending again and should not be used to control recidivism.³⁰⁹

Ohio's sex offender residency law places unjustified burdens on sex offenders and increases the chances for recidivism. The law is flawed because it applies blanket residency restrictions on all registered sex offenders and does not contain sufficient grandfather clauses to exempt certain offenders from the law.

Section 2950.031 should be modified to remove blanket residency requirements and only restrict offenders if an individual assessment shows that children will be safer if that individual is not permitted to reside near a school. The individual circumstances of the offender and the crime can be used to predict recidivism³¹⁰ and are good indicators of what forms of supervision will be most effective to prevent that particular offender from offending again. Ohio's law should be amended to exempt registered sex offenders from the residency restrictions if they purchased a home prior to the law's enactment and also if a new school is built within 1000 feet of an offender's residence. These amendments will ensure that limited resources will be used on dangerous offenders that are likely to offend again against children and not wasted on those that will not offend again with only minimal supervision.³¹¹ Lawmakers should take an individualized approach and keep in mind that not all sex offenders are the same and do not all have an equal chance of recidivating.³¹²

Amending the current law, examining sentencing provisions, and increasing sex offender education are necessary changes. For this to occur, law enforcement officials, legislators, and other elected officials must demand that the public and lawmakers look at what research shows is effective to combat sex offenders and prevent sexual offenses. It will take a brave individual to stand up against the public's get tough on sex offenders attitude and demand for more restrictions. However, only then will more effective laws and policies be implemented to protect the health and safety of children.

MARGARET TROIA³¹³

³⁰⁹See text, *supra* page 13-15.

³¹⁰Center For Sex Offender Management, *supra* note 128.

³¹¹Hanson, *supra* note 149.

³¹²*Id.*

³¹³I would like to dedicate this note to my family and friends who have helped me make it through the stressful days of law school. I have them to thank for my achievements and success. I would also like to thank the Parma Law Department for exposing me to this issue and for helping to develop this topic. Lastly, I would like to thank Professor Phyllis Crocker for dedicating her time, hard work, and expertise as my note advisor.