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Revisiting Alaska's Sex Offender Registration and Public Notification Statute

Deborah Periman

In Alaska and throughout the country sex offender registration requirements have become more inclusive. Almost all convicted sex offenders now must register for extended periods; the registry is available over the Internet; and more details on the current status of the offender are available to the public. The intent of the registries is to protect the public from convicted offenders, but it can be argued that the increasingly stringent demands placed on offenders may be, in fact, counter-productive. The severity of the registration requirements may prohibit the rehabilitation of offenders and their reintegration into the community, and the increasing burden on law enforcement to monitor and maintain very broad registries may prevent police from focusing on the more serious sexual predators.

Background

The Alaska Sex Offender Registration Act was enacted in the wake of extensive publicity over the tragic rape and murder of young Megan Kanka,¹ a period in which lawmakers throughout the country were working to pass legislation designed to prevent a similar occurrence. The statute rests on specific legislative findings that (1) “sex offenders pose a high risk of reoffending after release from custody” and (2) release of information about sex offenders to the public “will assist in protecting public safety.” 1994 Alaska Sess. Laws 41, § 1.

The state legislature's findings were premised on testimony reflecting the commonly held belief that sex offenders as a class are different from other offenders—that they will inevitably reoffend and that they are not receptive to treatment. *See, e.g.*, Minutes, 18th Alaska Leg., S. Fin. Comm. (April 28 1993). In light of this testimony, the legislature did not attempt to distinguish among types of offenders or to evaluate which offenders were most likely to recidivate. Instead, it simply divided all offenders into two groups, aggravated and nonaggravated offenders, based

¹ The 1994 death of seven-year-old Megan in New Jersey sparked nationwide outrage and demands for action.

on the severity of the offense. 1994 Alaska Sess. Laws 41, § 4. These two categories cover offenders ranging from the 18-year-old who has consensual sex with a 14-year-old to the perpetrator of a violent rape and murder.

The registration statute that emerged was, at the time of its enactment, one of the most stringent in the country. In a case closely watched by state and federal lawmakers, the U.S. Supreme Court upheld its terms against an *ex post facto* challenge. Justice Stevens, dissenting, summarized the statute's effect:

In Alaska, an offender who has served his sentence for a single, nonaggravated crime must provide local law enforcement authorities with extensive personal information—including his address, his place of employment, the address of his employer, the license plate number and make and model of any car to which he has access, a current photo, identifying features, and medical treatment—at least once a year for 15 years. If one has been convicted of an aggravated offense or more than one offense, he must report this same information at least quarterly for life. Moreover, if he moves, he has *one* working day to provide updated information. Registrants may not shave their beards, color their hair, change their employer, or borrow a car without reporting those events to the authorities. Much of this registration information is placed on the Internet. In Alaska, the registrant's face appears on a webpage under the label "Registered Sex Offender." His physical description, street address, employer address, and conviction information are also displayed on this page. *Smith v. Doe*, 538 U.S. 84, 111 (2003).

At the time of its passage, Alaska's statute far exceeded the minimum requirements imposed on the states by the federal Jacob Wetterling Act. This legislation, adopted in 1994, required every state to enact a sex offender registration program meeting certain minimum guidelines or face a reduction in federal grant funding for law enforcement. 42 U.S.C.A. § 14071 (West 2008). Although the Wetterling Act required states to make information on released sex offenders available to the general public, it did not require active notification, and left the states with a great deal of flexibility in how they classified offenders and how they made information available.

Unlike Alaska, many states attempted to tailor the reach of their registration statutes to the actual risk posed by individual offenders. The Connecticut legislature, for example, adopted a system using individualized clinical assessment to determine which offenders would be subject to registration requirements. Offenders were required to register only if such assessment demonstrated that they were found to pose a high risk of recidivism. *See Roe v. Office of Adult Probation*, 125 F.3d 47, 54 (2d Cir. 1997) (explaining Conn. Gen. Stat. Ann. § 54-102r). This type of

classification system has come to be known as an “offender-based” system, reflecting the emphasis on the individual. Alaska’s system, in contrast, is “offense-based,” with classification resting solely on the conviction and no individual risk assessment undertaken.

Alaska was one of the relatively few states to require Internet dissemination of registration information for all offenders. Other states attempted to strike a balance between the stigmatization and collateral consequences of public notification and an individual offender’s risk of recidivism. New Jersey, for example, classified its offenders by risk and required no public disclosure for those who posed the least risk of reoffending, a percentage estimated at 45 percent of the entire sex offender class. Widespread disclosure was required only for those at the highest risk of reoffending (approximately five percent) of the whole. *See Doe v. Otte*, 259 F.3d 979, 993-94 (9th Cir. 2001), *rev’d*, *Smith v. Doe*, 538 U.S. 84 (2003).

Some of the flexibility afforded states under the original Wetterling Act was reduced through subsequent amendment; the flexibility to utilize individualized risk assessments will disappear almost completely as the provisions of the Adam Walsh Child Protection and Safety Act, PL 109-248, become binding on the states. The Walsh Act, signed into law by President Bush on July 27, 2006, represents an extensive revision and expansion of federal sex offender legislation. One of its many purposes is to standardize and increase minimum registration requirements nationwide. It imposes on the states highly detailed requirements for sex offender registration and public notification—requirements the states must in general implement by July 27, 2009. A state’s failure to meet the implementation deadline will trigger a mandatory ten percent reduction in Byrne Justice Assistance Grant funding. 120 Stat. 587, 598-99 (2006); 42 U.S.C. 16925.

Key provisions of the Walsh Act include broadening the classes of sex offenses for which registration is required and extending it to cover juvenile offenses; requiring covered offenders to consistently remain registered in any jurisdiction in which they live, work, or attend school; expanding the scope of registration information required; imposing a national requirement for periodic in-person appearances by registrants; standardizing the required duration of registration; and widening the availability of information concerning registrants available to the public through required Internet posting. 72 Fed. Reg. 30210 (May 30, 2007). The act adopts an offense-based, three-tiered classification for offenders. It does not authorize the states to implement an offender-based classification using individualized risk assessment, nor, with limited exceptions, does it

authorize the states to implement ameliorative programs that would allow offenders to avoid or shorten registration based on treatment and rehabilitation. The net effect of the new federal legislation will be to bring all the states closer to Alaska's registration and publication requirements.

Alaska's Statute and its Federal Counterpart Rest on Disproved Assumptions

The myth of the incorrigible sex offender, all but guaranteed to reoffend, lies at the heart of Alaska's registration statute. Legislators heard extensive testimony, over several days, on the nature and predilections of sex offenders. Legislators were told that sex offenders have the highest recidivism rate of any offenders. A legislative staff attorney testified that therapy is ineffective, quoting studies purporting to find that sex offenders who complete psychological therapy are actually more likely to be re-arrested for new sex crimes than those who do not. Minutes, 18th Alaska Leg., S. Jud. Comm. no. 505 (April 14, 1993). In a similar vein, legislators were warned, "that sex offenders are not like other criminals. They are 'almost impervious' to the benefits of therapy . . . [T]reatment personnel who track offenders following release from prison indicate that recidivism is approximately 80% Unlike other criminals, sex offenders do not become less dangerous to over time." Minutes, 18th Alaska Leg., S. Fin. Comm. (April 28 1993).

If the evidence confirmed these assumptions, and all those convicted of sex crimes represented the same level of inevitable risk to the public, omitting individualized assessment and treatment incentives from registration systems as Alaska has done and as the Walsh requires, would make sense. These assumptions, however, are contradicted by much of the research conducted since creation of Alaska's sex offender registry.

A study by the Alaska Justice Statistical Analysis Center of sex offenders released from Alaska corrections facilities in 2001 found that non-sex offenders were more likely to be rearrested than sex offenders. See Alan R. McKelvie, *Recidivism of Alaska Sex Offenders*, 25 Alaska Justice Forum 1-2, 14-15 (Spring/Summer 2008). With respect to sex crimes specifically, the study found no statistically significant difference between the rates at which sex offenders were rearrested for a new sex crime and the rates at which non-sex offenders were arrested for a first sex crime. These patterns are consistent with the results of studies elsewhere finding that sex offenders as a class are somewhat less likely than other categories of offenders to re-offend.

Moreover, recent studies conclude that treatment programs are, in fact, effective in reducing the overall rate of recidivism for many offenders. A Canadian study published in late 2007, for example, found that high-risk sex offenders who participated in a community-based treatment project had lower rates of reoffending of any type than did offenders who did not participate. R. Wilson, J. Picheca & M. Prinzo, *Evaluating the Effectiveness of Professionally-Facilitated Volunteerism in the Community-Based Management of High Risk Sexual Offenders: Part Two – A Comparison of Recidivism Rates*, 46 (4) *The Howard Journal* 327 (September 2007). Although sex offender treatment remains a controversial issue, these results are consistent with the general findings of studies conducted over the last decade or so—studies that refute the earlier belief that sex offenders are impervious to treatment.

The foregoing is particularly true with respect to juvenile offenders. Although offenders as young as 14 are subject to registration and public notification requirements under the Walsh Act, research establishes that recidivism rates for juvenile sex offenders are substantially lower than the rates for other types of juvenile offenders. Juvenile offenders have, in addition, proven highly amenable to treatment.

Problems with the Existing System

The Walsh Act and its antecedents rest on the premise that state registration and notification systems advance public safety. Former Attorney General Alberto Gonzalez hypothesized that registration systems may have “salutary effects in relation to the likelihood of registrants committing more sex offenses. Registered sex offenders will perceive that the authorities’ knowledge of their identities, locations, and past offenses reduces the chances that they can avoid detection and apprehension if they reoffend, and this perception may help to discourage them from doing so.” 72 Fed. Reg. 30210 (May 30, 2007).

Unfortunately, empirical evidence disproves this premise. Studies show that after more than ten years of national registration and public notice, sex offender registries have made no discernable difference in sex offender recidivism rates. R. Tewksbury & M. Lees, *Perceptions of Punishment: How Registered Sex Offenders View Registries*, 53 *Crime & Delinquency* 380, 403 (2007). (Although the registries have not curbed the commission of sex offenses, it should be

noted that law enforcement officials in Alaska do view the offender database as a useful investigatory tool after an offense occurs.)

The weaknesses of Alaska’s registration and notice system are well documented. Justice Ginsberg (dissenting) put it simply—the statute is excessive in relation to its purpose. “The Act applies to all convicted sex offenders, without regard to their future dangerousness. And the duration of the reporting requirement is keyed not to any determination of a particular offender’s risk of reoffending, but to whether the offense of conviction qualified as aggravated.” *Smith*, 538 U.S. at 116–17. Moreover, “the Act makes no provision whatever for the possibility of rehabilitation: offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation. However plain it may be that a former sex offender currently poses no threat of recidivism he will remain subject to long-term monitoring and inescapable humiliation.” *Id.*

Of course, no matter how excessive the reach of the statute in relation to its goals, many would argue that the disabilities imposed on low-risk or rehabilitated offenders are warranted if the system serves to protect even one child.² The difficulty, however, is that Alaska’s registration and notification system, and others like it, do not demonstrably make the public safer. To the contrary, they are likely to trigger a host of consequences antithetical to the public interest.

Unemployment, Instability and Enhanced Risk of Recidivism

After ten-plus years of national experimentation with sex offender registries, the destabilizing effects of being listed on a sex offender registry are well understood. They include profound humiliation and social isolation, loss of employment and housing, and destruction of family ties. Registrants and their families have experienced vigilantism in the form of harassment, threats of violence, physical attacks and arson.

² Such an argument is supported by the Alaska legislature’s specific finding that the privacy interests of Alaska’s sex offenders are “less important” than the safety interests of the public. 1994 Alaska Sess. Laws 41 § 1.

The Alaska Supreme Court has noted the severity of these consequences. Citing examples of Alaska registrants who had lost their jobs, been forced to move their residences, and received threats of violence, the Court observed that “the potentially destructive practical consequences that flow from registration and widespread governmental distribution of disclosed information” are grave. “[O]utside Alaska, there have been incidents of suicide by, and vigilantism against, offenders on state registries, and offenders listed on registries often have unique difficulties locating places to reside and work. Offenders are sometimes subjected to protests and group actions designed to force them out of their jobs and homes.” *Doe v. State*, 92 P.3d 398, 410 (Alaska 2004). Registrants have suffered neighborhood rallies staged to protest their presence, bricks thrown through windows, and harassing calls to employers. *Id.* at n. 77.

Of these negative consequences, employment difficulties are perhaps most significant. The Ninth Circuit Court of Appeals concluded that Alaska’s system of putting offenders’ employment information on the Internet is likely to make registrants “completely unemployable.” *Otte*, 259 F.3d at 988. The system “creates a substantial probability that registrants will not be able to find work, because employers will not want to risk loss of business when the public learns that they have hired sex offenders.” *Id.* The court cited the experience of one Alaska business owner who suffered community hostility and damage to his business after print ads from the Alaska sex offender registry web site were publicly distributed and posted on a bulletin board.

It may be tempting to dismiss these adverse consequences as the just result of the registrant’s own conduct, but these consequences also disserve the community in several important ways. First, study after study has identified stress as one of the antecedents to sex offender relapse. Chronic torment and hostility from the public, fractured social relationships, lack of stable housing, and unemployment are likely to cause the registered offender heightened stress, anxiety and resentment, all of which may erode a registrant’s self-restraint. M. Cohen & E. Jeglic, *Sex Offender Legislation in the United States: What Do We Know?*, 51 *Int’l J. of Offender Therapy & Comparative Criminology* 369, 376 (2007). Lack of social support, in particular, and the accompanying stress on the registrant has been identified as a key trigger in sex offense recidivism. J. Levensen & L. Cotter, *The Effect of Megan’s Law on Sex Offender Reintegration*, 21 *J. of Contemporary Criminal Justice* 49, 62 (2005).

These problems are particularly acute for juvenile registrants. Young persons subject to registration have been harassed at school; some have dropped out. The stigma associated with the public notice system causes a loss of social networks, which in turn increases the risk of anti-social behaviors.

The extreme length of the registration period may exacerbate these problems. Under the Walsh Act, states must require a minimum of 25 years registration for mid-level offenses and lifetime registration for the most serious offenses. 73 Fed. Reg. 38068 (July 2, 2008). Studies show, however, that registrants who view punishment as too severe or inescapable may be more likely to reoffend and that many offenders subject to the lifetime registration requirement feel states have opened the door to endless harassment and stigmatization. *See* Levenson & Cotter, *supra*.

The majority of registrants surveyed report that they have experienced first-hand social or psychological effects resulting from the public registries. The consequent shame, isolation, fear, and hopelessness all interfere with a registrant's reintegration and recovery. In other words, Levenson and Cotter note, while "sex offenders inspire little sympathy from the public, ostracizing them may increase their danger." *Id.*

Lifetime Registration as a Disincentive to Therapy or Recovery

In Alaska, a sex offender "cannot escape the [registration] Act's grasp no matter how clearly he may demonstrate that he poses no future risk to anyone, and no matter how final the judicial determination that he has been successfully rehabilitated" *Otte*, 259 F.3d at 994. Alaska's failure to provide any avenue for relief from or mitigation of the registration requirement is one of its statute's failings.

In a recent sampling of individual sex offender perceptions, several offenders observed that the ability to have a risk evaluation completed while on the registry would provide an incentive and motivation "to pursue treatment, to avoid problematic situations, and . . . [maintain] a crime free lifestyle" Tewksbury & Lee, *supra*, at 400. Another study looking at the social and psychological effects of registration on sex offenders found many experiencing feelings of despair and

hopelessness in the absence of individualized assessment. One respondent stated, “no one believes I can change, so why even try?” (Levensen & Cotter, *supra*, at 52).

As written, the statute fails to recognize the possibility of rehabilitation and provides registrants considering treatment no hope that their efforts might eventually reduce the stigma associated with the registry’s public notification system.

Mandatory Internet Publication and Chilled Reporting

The inability to avoid publication of a registrant’s personal information on the internet and the ensuing social obloquy may also discourage family members of some offenders from reporting offenses. The spouse of an offender, particularly of an offender who may be the family’s primary source of economic support, faces a terrible dilemma in reporting: While the report may protect the spouse herself or himself, or a child, the report may consign the entire family to a lifetime of poverty, to loss of the family home if the offender is evicted, and to shared shame and harassment once the offender’s personal information is placed on the Internet. Studies suggest that reporting may be equally difficult for the parent or sibling of an offender. Thus, to the extent that mandatory Internet publication acts as a disincentive to reporting intra-family offenses, Alaska’s notification statute ill-serves Alaska’s abused children and spouses.

Obfuscation of More Dangerous Offenders

The extraordinarily broad reach of Alaska’s publication requirement has ramifications beyond its collateral consequences to the registrant and his or her family. Indiscriminate posting of information on all registrants tends to obscure from the public pertinent information relating to very dangerous sexual predators. Including low-risk registrants also places an unnecessary administrative burden on state officials responsible for establishing and maintaining the posting, with a concomitant increase in public expense. In addition, the greater the number of postings, the more difficult and expensive it is for the state to ensure accuracy and respond to noncompliant registrants.

Offenders themselves identify over-inclusiveness as one of the greatest failures of most sex registration statutes. One lifetime registrant expressed the commonly held view that “by literally taking 95% of the people who come out and putting them all on the list for life—and they put how many more thousands of people on their every year -- [a]t some point there will be so damn many people on that list that, to some extent, you’re just another face in the crowd. I think that lessens the impact of it to the public. When they look at it there is 400 people on there—you say, ‘hell, it’s everywhere, what can you do?’” Tewksbury & Lees, *supra*, at 393.

Possible Changes

During the 2008 session, the Alaska legislature passed and the governor signed into law CSSB 185, which extends the reach of existing sex offender registration requirements. The new law adds the requirement that registrants provide the Department of Corrections with every email or instant messaging address or other Internet communication identifier they use—information mandated by the Walsh Act. 2008 Alaska Sess. Laws 42. This type of legislative fine-tuning, however, will not solve the most fundamental problems with the statute—overbreadth and the absence of treatment incentives.

Recent data show that those states whose legislation is most narrowly drawn to focus on the highest-risk offenders are most likely to achieve their legislative goals. A sex offender registration system is most effective where it uses actuarial risk-assessment measures to ascertain which sex offenders are at the highest risk of reoffending, distinguishes among registrants based on risk, and imposes the disabilities of registration and publication only on those most likely to recidivate. This type of registration and publication system allows the public to readily identify the most dangerous individuals and allows law enforcement to focus its resources on the most likely threats to the community. Cohen & Jeglic, *supra*.

Unfortunately, the Walsh Act, with its offense-based tier structure, has foreclosed to a significant extent the states’ ability to implement a true risk assessment scheme and retain eligibility for full Byrne Grant funding. There are, however, a few windows left open for small improvements to Alaska’s statute.

Minimize the impact on employment. For reasons stated above, Internet publication of an employer name and address is one of the consequences of registration most likely to de-stabilize a registrant socially and psychologically. The risk of consigning a registrant to a lifetime of unemployment may also be a factor in deterring some family reporting.

The public interest associated with making employment available to released offenders is implicitly recognized under the new federal guidelines for state registries. Section 118(c)(2) of Walsh Act authorizes the states to exclude from their websites the name (though not the address) of a sex offender's employer. To facilitate offender reintegration and to protect the economic welfare of offenders' families, Alaska could avail itself of this option. While it is argued that knowing the name of an offender's employer enhances public safety, there is no empirical evidence to support this claim.

Omit the lowest risk offenders from internet publication. Another option granted the states under the new federal guidelines pertains to offenders classified under the statute as "Tier I Sex Offenders." This is a "catch-all" category of offenders whose convictions are not serious enough to move them into Tier II or Tier III. The higher tiers include offenders whose offenses are punishable by imprisonment for more than one year, and whose crimes include sexual abuse or exploitation of a minor, aggravated abuse or exploitation or use of force or drugs. Thus Tier I offenders include those whose registration offense is not punishable by imprisonment for more than one year, whose offense is receipt or possession of child pornography, or whose offense is a sexual assault against an adult that involves sexual contact but not a completed or attempted sexual act. 73 Fed. Reg. 38053 (July 2, 2008).

Section 118 (c)(1) of the Walsh Act provides the states discretion to omit offenders in this category (other than those convicted of specified offenses against a minor) from placement on the state sex offender web site. With respect to this grant of discretion, Alaska legislators might do one of two things: either adopt an individualized risk assessment program for offenders within this category and exclude from web publication those deemed to pose a low community risk or simply exclude these offenders as a class. The first approach would strike the optimal balance between the competing goals of providing adequate public notice and promoting offender reinte-

gration and rehabilitation. It would also be much more expensive to administer, leaving the second approach a reasonable alternative with respect to these low-level offenders.³

Include the limited treatment incentives authorized under the Walsh Act. The new federal requirements also offer states some latitude to include treatment incentives in their registration statutes. The Walsh Act generally requires the states to register Tier I offenders for 15 years, Tier II offenders for 25 years, and Tier III offenders for life. However, Section 115(b) provides that Tier I offenders' registration periods may be reduced by five years if they maintain a clean record within the statutory definition of that term, which includes successful completion of an approved treatment program. (No reduction of the mandatory 25 year registration period is authorized for offenders classified as Tier II, nor is a reduced term available for Tier III offenders whose conviction is for an offense committed or charged as an adult.) 73 Fed. Reg. at 38068.⁴ This window of opportunity for offering reduction of the registration period as a treatment incentive is very small. Nevertheless, in light of recent data showing that treatment is often effective in deterring future offenses, Alaska should take advantage of this limited opportunity to encourage released offenders to seek treatment. *Cf.* La. Rev. Stat. Ann. § 15-544 (2008) (incorporating the federal treatment incentives).

Conclusion

There are opportunities, albeit limited, to refine the current sex offender registration system to ensure that it better protects the public. The revulsion and anger that most of us feel toward those convicted of sex crimes should not blind us to the safety interest served by affording released offenders treatment incentives and the opportunity to live stable and socially productive

³ For examples of individualized approaches to risk assessment, see New Jersey Code of Criminal Justice § 2C:7-8 (West 2008) and Consolidated Laws of New York Correction Law § 43:168-b (McKinney 2008).

⁴ Tier III offenders whose conviction stemmed from a delinquency proceeding are eligible for a reduction in term. In Alaska, however, a conviction triggering registration is defined as a conviction of an adult or a juvenile charged as an adult. AS 12.63.100(3).

lives. Within the confines of the federal funding mandates, Alaska can strike a more effective balance between warning the public of the most dangerous sexual predators and promoting the reintegration and rehabilitation of the larger class of offenders.

Author's Note: This is an extremely abbreviated look at a complex federal initiative and how specified aspects of the initiative relate to weaknesses in Alaska's sex offender registry. Issues of federalism and due process are not addressed, nor does this piece attempt to identify how the statutory elements of sex and kidnapping offenses under Alaska's code fit within the Walsh Act offender tiers. Finally, the reader should draw no inferences regarding Alaska's overall level of compliance with the Walsh Act requirements.