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No Place to Call Home: Rethinking Residency Restrictions for Sex Offenders

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NO PLACE TO CALL HOME: RETHINKING RESIDENCY RESTRICTIONS FOR SEX OFFENDERS

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Abstract: Modern day sex offender legislation was first implemented in the early 1990s in response to a number of headline-grabbing incidents. Seeking to protect families and children, federal and state legislators passed regulations aimed at tracking, monitoring, and controlling released sex offenders. A key portion of these legislative developments include state and local level residency restrictions, which prevent sex offenders from living within an established distance—usually 1000 to 2500 feet—of various places where children gather, such as schools and daycare facilities. These laws have created enormous hardship for released sex offenders as they attempt to reintegrate into society, and the effectiveness of these laws has increasingly been rejected. This Note argues for the implementation of more sensible sex offender legislation, including prioritizing individualized assessments over blanket restrictions, making an exception to allow offenders to live with family, and providing resources to help offenders comply with restrictions. Sex offender legislation based upon false assumptions should no longer be the norm, and these reforms will help balance the goals of sex offender management with the empirical data about offender reintegration.

INTRODUCTION

> *"If a person wants to offend, it doesn't matter how close he is to a convenient place to find kids."*[1]

Starting in 2013, the railroad tracks in the area of NW 36th Court and NW 71st Street in Florida's Miami-Dade County became notorious for all of the wrong reasons.[2] The area has received a great amount of media attention because it has become a homeless encampment for a number of sex offenders

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[1] Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step from Absurd?*, 49 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168, 174 (2005). In a study seeking to describe the impact of residency restrictions on sex offenders, one offender offered this opinion in regards to the perceived effectiveness of such legislation. *See id*. at 168, 174.

[2] Amended Complaint for Petitioners at 9, Doe v. Miami-Dade Cnty., No. 14-CV-23933 (S.D. Fla. Dec. 20, 2014); *see* Charles Rabin et al., *Sex Offenders Forced from Allapattah Trailer Park, Now in Hialeah*, MIAMI HERALD (Aug. 8, 2013, 7:10 PM), http://www.miamiherald.com/news/local/community/miami-dade/article1953953.html [http://perma.cc/F3MC-E9MD].

who have been unable to find otherwise appropriate housing.[3] The "residents" of this encampment, estimated to total more than fifty individuals, include three men who filed suit in October 2014 against the county and various other defendants in *Doe v. Miami-Dade County*, seeking a permanent injunction against a local housing ordinance thought to be the catalyst for the development of the encampment.[4] All three men are convicted sex offenders who have been under the supervision of the Florida Department of Corrections ("FDOC").[5] Upon their release, each was directed to the area surrounding NW 36th Court and NW 71st Street by his probation officer.[6] This encampment does not contain housing, sanitation facilities, or potable water, yet it still received approval as the "residence" of all three men by their respective probation officers.[7]

The ordinance at issue in the suit is Miami-Dade County's Lauren Book Child Safety Ordinance (the "Book Ordinance"), which prohibits former sex offenders from living within 2500 feet of any building the county labels a school.[8] As a 2014 National Public Radio (NPR) story covering the encamp-

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[3] *See* Charles Rabin, *ACLU Sues Over Rule on Where Sex Offenders Can Live in Miami-Dade*, MIAMI HERALD (Oct. 23, 2014, 5:21 PM), http://www.miamiherald.com/news/local/community/miami-dade/article3329717.html [http://perma.cc/L367-QRJ2].

[4] *See* Complaint for Petitioner, Doe v. Miami-Dade Cnty., No. 1:14-cv-23933 (S.D. Fla. Oct 23, 2014); Amended Complaint, *supra* note 2, at 1, 2; Press Release, ACLU, ACLU Challenges Miami-Dade Housing Restriction Forcing Former Sex Offenders to Live by Railroad Tracks (Oct. 23, 2014), https://www.aclu.org/criminal-law-reform/aclu-challenges-miami-dade-housing-restriction-forcing-former-sex-offenders-live [https://perma.cc/U6PR-A95Y]. In addition to "John Doe #1," "John Doe #2," and "John Doe #3," the Florida Action Committee ("FAC") is also a named plaintiff in the case. Amended Complaint, *supra* note 2, at 3, 4, 6, 7. According to the amended complaint, FAC is "a non-profit corporation that works to reform the sex offender laws in Florida . . . . [Its] mission is to educate the media, legislators, and the public with the facts surrounding sex offender laws." *Id.* at 7. The plaintiffs are represented by the American Civil Liberties Union (ACLU). *Id.* at 26. The named defendants include Miami-Dade County, the Florida Department of Corrections (the "FDOC"), and Sunny Ukenye, Circuit Administrator for the Miami Circuit Office for the FDOC. *Id.* at 8.

[5] Amended Complaint, *supra* note 2, at 3, 4, 6.

[6] *Id.* at 4, 5, 6.

[7] *Id.* at 1, 4, 5, 6.

[8] The Lauren Book Child Safety Ordinance, MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 21, art. XVII, §§ 21-277 to -285 (2010); *see* Amended Complaint, *supra* note 2, at 1, 15. The Book Ordinance applies to individuals convicted of the following crimes involving victims under age sixteen: sexual battery, lewd and lascivious acts upon or in the presence of persons under age sixteen, sexual performance by a child, sexual acts transmitted over a computer, and the selling or buying of minors for portrayal in sexually explicit conduct. The Lauren Book Child Safety Ordinance § 21-281(a). The ordinance defines "school" as a "public or private kindergarten, elementary, middle or secondary (high) school." *Id.* § 21-280(9). The Book Ordinance is named for Lauren Book, who was subject to over five years of sexual abuse at the hands of her nanny, beginning at age eleven. *See* Susan Donaldson James, *Nanny-Rape Victim Fights for Homeless Predators*, ABC NEWS (Oct. 12, 2009), http://abcnews.go.com/Health/MindMoodNews/sex-abuse-victim-advocates-homeless-molesters-miami/story?id=8793505 [http://perma.cc/HXD7-6VK4]. Following the discovery of the abuse, Lauren's father Ron Book became an outspoken and relentless lobbyist in the area of sex offender legislation. *See* Catharine Skipp, *The Lobbyist Who Put Sex Offenders Under a Bridge*,

ment explained, the Book Ordinance prevents released sex offenders from living in "almost every neighborhood in the county."[9] The three plaintiffs in the suit, identified only as "John Doe #1," "John Doe #2," and "John Doe #3," did, in fact, have other housing options that would provide a roof over their heads, but these residences were deemed ineligible as they did not fall outside the 2500-foot "buffer zone" created by the Book Ordinance.[10]

Plaintiff "John Doe #1" is a mentally disabled man in his mid-fifties and a registered sex offender in Miami-Dade County.[11] After his release from prison in January 2014, he struggled to find housing that complied with the Book Ordinance; as a result, he took up residence along the railroad tracks in the area of NW 36th Court and NW 71st Street in Miami-Dade County.[12] Also living at this location from January to September 2014 was "John Doe #2," a convicted sex offender in his late forties who was released from prison in January 2014.[13] "John Doe #3," a sex offender in his fifties, although employed, still has been unable to locate affordable and lawful housing under the statute, and thus has also been forced to live near the encampment since March 2014, sleeping in his vehicle.[14]

The experiences of these plaintiffs are far from unique.[15] Beginning in the mid-1990s, many states began enacting residency restrictions that prohibited sex offenders from residing within a certain distance—typically between 1000 to 2000 feet—of designated areas where children were likely to congregate.[16]

NEWSWEEK (Jul. 24, 2009, 8:00 PM), www.newsweek.com/lobbyist-who-put-sex-offenders-under-bridge-81755 [http://perma.cc/D973-KNLX]. Mr. Book's efforts brought a significant amount of media attention to Lauren's case in order to garner support for the implementation of municipal level residency restrictions in the Miami area and beyond. *See* Jill Levenson, *Sex Offender Residence Restrictions*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS 267, 272 (Richard G. Wright ed., 2009); Skipp, *supra*.

[9] Greg Allen, *ACLU Challenges Miami Law on Behalf of Homeless Sex Offenders*, NPR (Oct. 23, 2014, 5:29 PM), http://www.npr.org/2014/10/23/358354377/aclu-challenges-miami-law-on-behalf-of-homeless-sex-offenders [http://perma.cc/F6UX-32FU].

[10] *See* Amended Complaint, *supra* note 2, at 3, 5, 6.

[11] *Id.* at 3.

[12] *See id.* at 4.

[13] *Id.* at 4–5.

[14] *Id.* at 6.

[15] *See* Levenson, *supra* note 8, at 279–80.

[16] *See id.* at 268; Karen J. Terry & Alissa R. Ackerman, *A Brief History of Major Sex Offender Laws*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS, *supra* note 8, at 65, 82–85; *see also* GA CODE ANN. § 42-1-15 (2014) ("[N]o individual [who is required to register under the state's sexual offender registry] shall reside within 1,000 feet of any child care facility, church, school, or area where minors congregate . . . [nor] shall be employed by or volunteer at any child care facility, school, or church or by or at any business or entity that is located within 1,000 feet of a child care facility, a school, or a church . . . ."); OKLA. STAT. tit. 57, § 590 (2014) ("It is unlawful for any person registered pursuant to the Sex Offenders Registration Act to reside, either temporarily or permanently, within a two-thousand-foot radius of any public of private school site, educational institution, property or campsite used by an organization whose primary purpose is working with children, a playground or park . . . or licensed child care center . . . .").

By 2010, thirty states had adopted such restrictions.[17] In addition to state level restrictions, municipalities began imposing even more burdensome local restrictions.[18] In 2005, Miami Beach, Florida became the first municipality in the country to pass a local residency restriction ordinance and, by 2010, more than one hundred and fifty local ordinances had been passed in Florida alone.[19]

Proponents of residency restrictions maintain that these policies increase public safety and reduce recidivism rates by prohibiting sex offenders from residing near places frequented by children, thus reducing opportunities for sex offenders to interact with potential victims.[20] Scholars in the field, however, frequently cite the lack of empirical data supporting the effectiveness of such policies, and note the negative consequences that may result from restrictions on residency.[21] These policies may ultimately prevent offenders from successfully reintegrating into society, and may in fact lead to higher recidivism rates.[22]

This Note discusses the background of modern sex offender legislation in the United States and the implementation of state and local level residency restrictions, and advocates for sensible legislation, grounded in empirical data. Part I examines the driving forces behind the development of modern sex offender legislation and explains the legal context of *Doe v. Miami-Dade County*. Part I also provides examples of the various legal challenges that residency restrictions have faced across the country. Part II describes the false assumptions that underlie residency restriction legislation and the significant impact such policies have on offenders. This section also explains how residency restrictions function in practice. Part III describes alternative options and the approaches of states that have rejected blanket residency restrictions. Part III also argues for the implementation of more sensible legislation for released sex offenders based on empirical data, including individualized assessments and exceptions to allow released offenders to live with family members.

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[17] *See* Paul Zandbergen et al., *Residential Proximity to Schools and Daycares: An Empirical Analysis of Sex Offense Recidivism*, 37 CRIM. JUST. & BEHAV. 482, 482 (2010).

[18] *See* Levenson, *supra* note 8, at 270–71.

[19] *See id.* at 270; Zandbergen et al., *supra* note 17, at 486. The 2005 Miami Beach ordinance prohibited sex offenders convicted of certain crimes and whose victims were under the age of sixteen from establishing residence "within 2500 feet of any school, designated public school bus stop, day care center, park, playground, or other place where children regularly congregate." CITY OF MIAMI BEACH, FLA., CODE art. VI, § 70-402(a) (2005), *repealed by* The Lauren Book Child Safety Ordinance, MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 21, art. XVII, § 21-279(b) (2010).

[20] *See* Levenson, *supra* note 8, at 278; Terry & Ackerman, *supra* note 16, at 88.

[21] *See* Levenson, *supra* note 8, at 278–80; Terry & Ackerman, *supra* note 16, at 88.

[22] *See* CHARLES PATRICK EWING, JUSTICE PERVERTED: SEX OFFENDER LAW, PSYCHOLOGY, AND PUBLIC POLICY 109 (2011); Levenson & Cotter, *supra* note 1, at 169.

I. DEVELOPMENT OF MODERN DAY SEX OFFENDER LEGISLATION & LEGAL CHALLENGES

Modern day sex offender legislation in general was implemented in the early 1990s, often in response to high-profile sexual offense cases that involved children.[23] Specifically, residency restrictions for sex offenders stem from the 1994 federal enactment of the Jacob Wetterling Act ("Wetterling Act"), which was passed in response to the 1989 abduction of eleven-year-old Jacob Wetterling.[24] A masked man abducted Jacob at gunpoint as he biked home from a convenience store with his brother and a friend in St. Joseph, Minnesota.[25] Although Jacob was never found, it is believed that the perpetrator was a sex offender residing in a halfway house in Jacob's town.[26] In the aftermath of Jacob's abduction, his parents, Jerry and Patricia Wetterling, established the Jacob Wetterling Foundation in order to help prevent and better respond to child abductions, and became advocates for new legislation to track the personal information of sex offenders.[27] The Wetterlings maintained that efforts to find their son might have been more successful if law enforcement had been able to access a database of registered sex offenders who resided in the area at the time.[28]

Jacob's abduction and the Wetterling's resulting crusade served to intensify "stranger-danger" rhetoric and public panic over sexual offenses against

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[23] *See* Terry & Ackerman, *supra* note 16, at 65, 74. High profile cases often cited and used to justify such legislation include, "the abduction and murder of Adam Walsh in Florida; the abduction and presumed murder of Johnny Gosh in Iowa . . . the abduction and presumed sexual assault and murder of Jacob Wetterling in Minnesota; the abduction, sexual assault, and murder of Polly Klass in California . . . [and] of Megan Kanka in New Jersey." Rachel Kate Bandy, *The Impact of Sex Offender Policies on Victims*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS, *supra* note 8, at 471, 479.

[24] *See* Terry & Ackerman, *supra* note 16, at 79.

[25] *Id.*; Patricia Wetterling & Richard G. Wright, *The Politics of Sex Offender Policies: An Interview with Patricia Wetterling*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS, *supra* note 8, at 99, 99–100.

[26] Terry & Ackerman, *supra* note 16, at 79. Curiously, it is not even certain that Jacob was the victim of a sex crime. EWING, *supra* note 22, at 75.

[27] *See* 137 CONG. REC. S14945-01 (Oct. 22, 1991) (statement of Sen. Gorton); Wetterling & Wright, *supra* note 25, at 100–01. The Jacob Wetterling Foundation was subsequently renamed the Jacob Wetterling Resource Center, and in 2010 it merged with the National Child Protection Training Center. *See History*, GUNDERSON NAT'L CHILD PROT. TRAINING CTR., http://www.gundersenhealth.org/ncptc/jacob-wetterling-resource-center/who-we-are/history [http://perma.cc/WDJ8-CVMS].

[28] *See* EMILY HOROWITZ, PROTECTING OUR KIDS? HOW SEX OFFENDER LAWS ARE FAILING US 58 (2015). Lawmakers reiterated this argument when the legislation was being evaluated, with one lawmaker stating, "[I]f local and State police had been aware of the presence of any convicted sex offenders in the community, that information would have been invaluable during those first critical hours of investigation. The Jacob Wetterling bill will provide law enforcement with this tool." 139 CONG. REC. S6840-02 (May 28, 1993) (statement of Sen. Durenberger).

children, thus catalyzing legislative action.[29] Likewise, it provided an opportunity for the nation's lawmakers to stand behind a cause that appeals to all constituents: the safety of America's children.[30] Comments made by these lawmakers in the course of discussions and debates regarding the bill are telling, with one Senator noting: "There is evidence that the behavior of child sex offenders is repetitive to the point of compulsion. In fact, one state prison psychologist has observed that sex offenders against children have the same personality characteristics as serial killers."[31] Another Senator advocating for the passage of the legislation stated: "The reason this bill is so important is because of the high rate of recidivism in persons who have committed crimes against children . . . . The recidivism rate is probably higher in this area of our criminal justice system or in violations of the criminal code."[32]

When the Wetterling Act was eventually passed in 1994, one lawmaker noted that Jacob's mother Patricia "deserves most of the credit for passing this bill" and lauded her for turning "a family tragedy into a legislative crusade."[33] The Wetterling Act required each state to create a registry to provide local police departments with personal information about released sex offenders, including their home and work addresses.[34] Ultimately, the Wetterling Act was only the beginning of a long succession of legislation aimed at restricting the freedoms of sexual offenders in the name of protecting children from the possibility of sexual abuse.[35]

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[29] *See* 139 CONG. REC. S6840-02 (May 28, 1993) (statement of Sen. Durenberger); Terry & Ackerman, *supra* note 16, at 74, 79.

[30] *See* Wetterling & Wright, *supra* note 25, at 107.

[31] *See* 139 CONG. REC. S6840-02 (May 28, 1993) (statement of Sen. Durenberger).

[32] *See* 139 CONG. REC. H10319-02 (Nov. 20, 1993) (statement of Rep. Sensenbrenner).

[33] *See* 139 CONG. REC. H10319-02 (Nov. 30, 1993) (statement of Sen. Ramstad). Interestingly, Patricia Wetterling's stance on sex offender legislation has greatly evolved over the years. *See* HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 34 (2007), http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf [http://perma.cc/U2XR-GMXU]. In an interview with Human Rights Watch she noted, "I based my support of broad-based community notification laws on my assumption that sex offenders have the highest recidivism rates of any criminal. But the high recidivism rates I assumed to be true do not exist." *Id.* Moreover, Patricia Wetterling has addressed her objections to residency restrictions directly: "Residency restrictions are also wrong and ludicrous and make no sense at all. We're putting all of our energy on the stranger, the bad guy, and the reality is . . . most sex offenses are committed by somebody that gains your trust, or is a friend or relative, and so none of these laws address the real, sacred thing that nobody wants to talk about." Wetterling & Wright, *supra* note 25, at 103.

[34] Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071 (2006) (Supp. II 2008, Supp. V 2011), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §§ 16901–16991 (2012); *see* Terry & Ackerman, *supra* note 16, at 79; Wetterling & Wright, *supra* note 25, at 100. The Wetterling Act conditioned federal funding to states for crime prevention and control programs on the implementation of registration and notification provisions. HUMAN RIGHTS WATCH, *supra* note 33, at 36. States that did not comply with federal registration and community notification laws would lose ten percent of their federal funding from the Edward Byrne Justice Assistance Grant Program. *Id.* at 36 n.93.

[35] *See* Terry & Ackerman, *supra* note 16, at 65–66.

A. The Impact & Underlying Assumptions of the Wetterling Act

Once the Wetterling Act was enacted in 1994, state legislatures across the country began using the new database of information created pursuant to the Act to implement residency restrictions, typically by prohibiting registered sex offenders from residing within 500 to 2500 feet of locations where children congregate.[36] In 1995, Florida was the first state to enact such regulations, requiring a 1000-foot residency "buffer zone" around specific locales to exclude sex offenders who were released on probation for abusing minors.[37] Although these statewide residency restrictions had been in effect since 1995, the City of Miami Beach became the first municipality to enact a local ordinance in 2005.[38] The local ordinance extended beyond the state level restriction of 1000 feet by imposing a 2500-foot "buffer zone."[39] Other municipalities rapidly followed suit, with 133 local ordinances enacted in Florida alone between 2005 and 2008.[40] Similar local ordinances have even been implemented in states that do not have a statewide statute.[41]

Tragic cases such as that of Jacob Wetterling, which received intense media coverage, portrayed perpetrators of child sex abuse as strangers to their victims and repeat offenders that "lurk[] in schoolyards."[42] Thus, the policies at the heart of the Wetterling Act and subsequent legislation were largely motivated by two popular, yet questionable, assumptions: that sex offenders have

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[36] *See* Levenson, *supra* note 8, at 267. These restricted locations typically include schools, parks, playgrounds, and day care centers. *Id.* at 268.

[37] *Id.* at 268. Florida's current statute provides that a person convicted of an offense enumerated within the legislation that occurred while the victim was under sixteen years of age, "may not reside within 1,000 feet of any school, child care facility, park, or playground." FLA. STAT. § 775.215(2)(a) (2010 & Supp. 2012). The restriction does not apply if a prohibited locale subsequently opens within 1000 feet of an offender's residence after their residency has already been established. *Id*.

[38] *See* Levenson, *supra* note 8, at 268, 270.

[39] CITY OF MIAMI BEACH, FLA., CODE art. VI, §§ 70-400 to -402 (2005). Also in 2005, in response to the kidnapping, rape, and murder of nine-year-old Jessica Lunsford at the hands of a repeat sex offender, a crime which was heavily reported in the national media, the Florida legislature passed the Jessica Lunsford Act ("Jessica's Law"). Terry & Ackerman, *supra* note 16, at 89; Levenson, *supra* note 8, at 268–69. Jessica's Law increased the penalties for "sexually based offenses against minors," including a mandatory minimum twenty-five year sentence for first-time child sex offenders and electronic tracking for life. *See* Terry & Ackerman, *supra* note 16, at 78, 89. As of 2011, forty-four states have enacted a version of Jessica's Law. Ben Jones, *Growing Number of Laws Propelled by Crime Victims*, USA TODAY (Sept. 23, 2011, 12:27 PM), http://usatoday30.usatoday.com/news/nation/story/2011-09-23/child-laws/50518548/1 [http://perma.cc/GVE9-Y2P4].

[40] *See* Levenson, *supra* note 8, at 271.

[41] *Id.*

[42] Matt R. Nobels et al., *Effectiveness of Residence Restrictions in Preventing Sex Offense Recidivism*, 58 CRIME & DELINQ. 491, 494–95 (2012); *see* Terry & Ackerman, *supra* note 16, at 93. Cases like that of Jacob Wetterling, which receive an immense amount of media attention, tend to be "outliers." *See* Dwight Merriam, *Residency Restrictions for Sex Offenders: A Failure of Public Policy*, 60 PLAN. & ENVTL. L. 4 (2008). Statistics vary, but "most victims are family, friends, or acquaintances of the sex offender." *Id.*

higher recidivism rates than other types of criminals and the concept of "stranger-danger."[43] Discussed more in depth in Part II, these assumptions are not supported by empirical data, yet still continue to be championed by proponents of residency restriction legislation.[44] Residency restrictions seek to serve the goal of public safety by allowing law enforcement agencies to better monitor and track registered sex offenders and by reducing the opportunities for offenders to recidivate by minimizing their interaction with children.[45] Thus, it is unsurprising that these policies easily resonate with the public and politicians alike.[46]

B. Federal Legislative Developments Since the Wetterling Act

Following the lead of the Wetterling Act, state and federal legislation have continued to attempt to address the management and supervision of sex offenders.[47] For example, in 1996, a provision entitled Megan's Law was added as a subsection to the Wetterling Act; the provision *mandates* specific notification procedures and public access to information regarding registered offenders, rather than simply leaving the dissemination of such information to the discretion of law enforcement officials.[48] Because the legislation did not provide detailed instructions regarding notification, states varied in their approaches to implementing Megan's Law.[49] As was the case with the Wetterling Act, Megan's Law received overwhelming support from lawmakers because it

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[43] *See* Francis Williams, *The Problem of Sexual Assault*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS, *supra* note 8, at 39 (noting that the available research indicates that the commonly accepted notion that sex offenders have high recidivism rates as compared to other criminals is a false premise); Michelle L. Meloy et al., *Making Sense Out of Nonsense: The Deconstruction of State-Level Sex Offender Residence Restrictions*, 33 AM. J. CRIM. JUST. 209, 210 (2008).

[44] *See infra* notes 120–133 and accompanying text.

[45] *See* Levenson, *supra* note 8, at 271; Lisa L. Sample & Mary K. Evans, *Sex Offender Registration and Community Notifications*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS, *supra* note 8, at 211, 221 (stating that the goals of sex offender legislation include "decreas[ing] victimization rates and increas[ing] public safety through improved monitoring and tracking mechanisms for sex offenders"); Terry & Ackerman, *supra* note 16, at 88.

[46] *See* Levenson, *supra* note 8, at 267, 272.

[47] *See* Terry & Ackerman, *supra* note 16, at 75–78.

[48] *See id.* at 80; HUMAN RIGHTS WATCH, *supra* note 33, at 2. Megan's Law was enacted in response to the 1994 rape and murder of seven-year-old New Jersey resident Megan Kanka by a neighbor who was "a recidivist pedophile." Terry & Ackerman, *supra* note 16, at 79; *see* HUMAN RIGHTS WATCH, *supra* note 33, at 48. The case was extensively covered in the media, highlighting Kanka's parents' argument that the registration requirements of the Wetterling Act were not sufficient. *See* KAREN TERRY, SEXUAL OFFENSES AND OFFENDERS: THEORY, PRACTICE, AND POLICY 217 (2nd ed. 2012); HUMAN RIGHTS WATCH, *supra* note 33, at 48. They petitioned for legislation that would require notification to community members if a repeat child sex offender were living in close proximity to their houses. *See* TERRY, *supra*, at 217. By August 1996, all fifty states had enacted a version of Megan's Law. *See* Terry & Ackerman, *supra* note 16, at 80; HUMAN RIGHTS WATCH, *supra* note 33, at 48.

[49] Sample & Evans, *supra* note 45, at 214; *see* TERRY, *supra* note 48, at 220.

requires sex offenders to provide a plethora of personal information to law enforcement officials, including "photograph[s] . . . addresses . . . telephone numbers, social security numbers, employment information and fingerprints."[50] The registration requirements of the Wetterling Act, combined with the notification requirements of Megan's Law, have been described as the "one-two punch" necessary to address sex offender recidivism.[51]

The Pam Lychner Sexual Offender Tracking and Identification Act ("Lychner Act") was passed in 1996 as an additional subsection to the Wetterling Act.[52] The Lychner Act called for the creation of a national database at the Federal Bureau of Investigations (FBI) "to track the whereabouts" of sexually violent predators and those convicted of sexually violent crimes or offenses against children.[53] The Lychner Act further required certain types of offenders to verify address changes directly with the FBI and permitted the FBI to communicate such registration information to other law enforcement agencies.[54] The Lychner Act was intended to create a centralized national database that would eliminate the lack of consistency between states in regards to registration and notification procedures.[55]

Later, in 2006, the Wetterling Act and Megan's Law were both supplanted by the Adam Walsh Child Protection and Safety Act ("Adam Walsh Act"), which has been described as "one of the most comprehensive acts ever created to supervise and manage sex offenders."[56] The Adam Walsh Act set national standards regarding certain contemporary, hot button legal issues, including the registration and notification of sex offenders, civil commitment, child pornography prevention, and internet safety.[57] The Adam Walsh Act also created a national sex offender registry, which combined all of the already-existing state registries to create national registration and notification standards for all of-

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[50] *See* Sample & Evans, *supra* note 45, at 215; HUMAN RIGHTS WATCH, *supra* note 33, at 48.

[51] Elizabeth Rahmberg Walsh & Fred Cohen, SEX OFFENDER REGISTRATION & COMMUNITY NOTIFICATION: A "MEGAN'S LAW" SOURCEBOOK 1–2 (2000).

[52] Pam Lychner Sexual Offender Tracking and Identification Act of 1996, 42 U.S.C. §§ 14071–14073, *repealed by* Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §§ 16901–16991 (2012); *see* Terry & Ackerman, *supra* note 16, at 77.

[53] *See* Terry & Ackerman, *supra* note 16, at 58; *see also Background on the National Sex Offenders Registry*, FBI, https://www.fbi.gov/scams-safety/registry/background_nsor [https://perma.cc/4JWF-VHW8]. The Lychner Act was named after Pam Lychner, an adult victim of a violent sexual attack at the hands of a recidivist sex offender. *See* TERRY, *supra* note 48, at 218; Terry & Ackerman, *supra* note 16, at 86.

[54] *See* LISA N. SACCO, CONG. RESEARCH SERV., FEDERAL INVOLVEMENT IN SEX OFFENDER REGISTRATION AND NOTIFICATION: OVERVIEW AND ISSUES FOR CONGRESS, IN BRIEF 4 (Mar. 25, 2015), https://www.fas.org/sgp/crs/misc/R43954.pdf [https://perma.cc/7JMA-KPA3].

[55] *See* TERRY, *supra* note 48, at 218; Terry & Ackerman, *supra* note 16, at 81.

[56] 42 U.S.C. §§ 16901–16991; Terry & Ackerman, *supra* note 16, at 78, 90. The Adam Walsh Act is named after Adam Walsh, who was abducted and killed in Florida in 1981. *See* TERRY, *supra* note 48, at 219.

[57] *See* Terry & Ackerman, *supra* note 16, at 91.

fenders.[58] The enactment of these national standards provides consistent policies and guidelines for sex offender management across all states, which was lacking in previous legislation.[59] The Adam Walsh Act is also much more expansive than predecessor legislation.[60] Its provisions "expanded . . . to include additional offenses and offenders, enhanced supervision, and extended the time in which offenders would be subject to these requirements."[61]

Further, the development of the Adam Walsh Act, similar to its predecessors, was heavily influenced by the concept of "stranger-danger" and the notion that sex offenders are high-risk recidivists.[62] The legislation calls for community notification of all offenders, rather than just high and moderate-risk offenders.[63] This expansion faced criticism because it was not properly tailored to require notification only of those offenders most at risk to recidivate.[64] The Adam Walsh Act also makes failure to comply with registration requirements a felony, punishable by up to ten years in prison.[65] The legislation has been described as "sweeping" and troubling because of its "one-size-fits-all" approach.[66]

C. The Legal Landscape Surrounding Doe v. Miami-Dade County

Since Miami Beach's implementation of its 2500-foot "buffer zone" in 2005, released sex offenders have struggled to find legal and affordable housing in Miami-Dade County.[67] The local ordinance ultimately culminated in the development of an encampment of homeless sex offenders who took up residence under a bridge on the Julia Tuttle Causeway (the "Causeway").[68] The encampment began receiving significant attention shortly after enactment of the 2005 ordinance as more than seventy people took up residence there at the

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[58] *See* Sample & Evans, *supra* note 45, at 216; HUMAN RIGHTS WATCH, *supra* note 33, at 38.

[59] *See* TERRY, *supra* note 48, at 220.

[60] *Id.* at 230.

[61] *Id.*

[62] *See* Terry & Ackerman, *supra* note 16, at 65, 90–91; Sample & Evans, *supra* note 45, at 217.

[63] TERRY, *supra* note 48, at 231.

[64] *Id.* ("This is problematic because the community will no longer be able to discern which of the offenders are the most dangerous and most likely to recidivate, which was the original purpose of the notification legislation.").

[65] *Id.*

[66] *Id.*

[67] *See* Amended Complaint, *supra* note 2, at 1.

[68] *See* Catharine Skipp, *A Law for the Sex Offenders Under a Miami Bridge*, TIME MAG. (Feb. 1, 2010), http://content.time.com/time/nation/article/0,8599,1957778,00.html [http://perma.cc/KZL7-4KAF]; Press Release, ACLU, ACLU Challenges Miami-Dade County's 2,500-Foot Sex Offender Residency Restriction (Oct. 9, 2009), https://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/aclu-challenges-miami-dade-countys [https://perma.cc/LBA7-77P4]. The Causeway connects Miami Beach with mainland Miami. John Zarrella & Patrick Oppmann, *Florida Housing Sex Offenders Under Bridge*, CNN (Apr. 6, 2007, 1:16 AM), http://www.cnn.com/2007/LAW/04/05/bridge.sex.offenders [http://perma.cc/4HUR-JMRG].

direction of their probation officers.[69] This was the only housing option these residents could find that was in compliance with the local residency restrictions.[70] The Causeway encampment was eventually disbanded by 2010, resulting in the development of various similar homeless camps throughout the county that have persisted.[71]

Due to the critical lack of housing options that the 2005 ordinance left available to released offenders, Miami-Dade County passed The Lauren Book Child Safety Ordinance ("the Book Ordinance") in January 2010.[72] The Book

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[69] *See* Skipp, *supra* note 68; Zarrella & Oppmann, *supra* note 68. The number of individuals reported to have lived under the Julia Tuttle Causeway during this time varies. *See* Amended Complaint, *supra* note 2, at 9 (stating that over one hundred people lived at the encampment by 2010); David Reutter, *Band-Aid Applied to Florida's Homeless Sex Offender Colony Falls Off*, PRISON LEGAL NEWS (Mar. 2011), https://www.prisonlegalnews.org/news/2011/mar/15/band-aid-applied-to-floridas-homeless-sex-offender-colony-falls-off [https://perma.cc/9SKB-PCL9] ("In July 2009, as many as 140 people were living under the Julia Tuttle bridge."); Skipp, *supra* note 68 (stating that the encampment had "as many as 70 residents").

[70] *See* Zarrella & Oppmann, *supra* note 68.

[71] *See* Amended Complaint, *supra* note 2, at 9, 11–12, 14. After receiving a significant amount of negative publicity, authorities responded by installing "No Trespassing" signs and by ultimately tearing down the encampments. Reutter, *supra* note 69. Following the dissolution of the Causeway encampment, many of the "residents" relocated and formed alternative encampments that also received extensive media coverage. *See* Amended Complaint, *supra* note 2, at 11, 12. "Residents" of the so-called "Shorecrest encampment," developed on a sidewalk in the Miami neighborhood of its namesake, were forced to relocate in 2012 when Miami's City Commissioner strategically established a small public park in the area, preventing convicted sex offenders from taking up residency within 2500 feet of the locale. *See id.*; Christiana Lilly, *Marc Sarnoff Creates Little River Pocket Park to Keep Sex Offenders From Shorecrest*, HUFFINGTON POST (Apr. 17, 2010, 11:29 AM), http://www.huffingtonpost.com/2012/04/16/marc-sarnoff-creates-pocket-park-sex-offenders_n_1428637.html [http://perma.cc/2ZAP-6YEQ]. In 2013, up to fifty-four individuals who had taken up residency in a mobile home park known as "River Park" in the neighborhood of Allapattah, Florida, were also forced to relocate after a nearby emergency youth shelter was deemed to be a "school" under the 2010 Lauren Book Child Safety Ordinance; thus the area became off limits to those subject to the ordinance's residency restrictions. *See* Amended Complaint, *supra* note 2, at 12, 14. The encampment at issue in *Doe* was established in 2013 on railroad tracks in the area of NW 36th Court and NW 71st Street in the Miami-Dade County city of Hialeah, Florida. *See* Amended Complaint, *supra* note 2, at 1; Rabin, *supra* note 3. There are approximately fifty "residents" at this encampment, which has been described as "the only possible location for scores of individuals." Press Release, ACLU, *supra* note 4.

[72] *See* Amended Complaint, *supra* note 2, at 9 & n.2; Julie Brown, *Miami-Dade Votes to Widen Housing Options for Sex Offenders*, SUN SENTINEL (Jan. 21, 2010), http://articles.sun-sentinel.com/2010-01-21/news/fl-miami-tuttle-vote-20100121_1_sexual-offenders-housing-options-child-safety-zones [http://perma.cc/BR9C-UQ8S]; *see also supra* note 8 and accompanying text. After the Book Ordinance was passed in January 2010, it was subsequently renamed the Lauren Book Safety Ordinance in October 2010. Amended Complaint, *supra* note 2, at 9 n.2. Lauren Book, the daughter of prominent Florida lobbyist Ron Book, was the victim of daily physical and sexual abuse at the hands of her long-time, live-in nanny, beginning when she was eleven years old. *See Sexual Abuse: What Finally Made It 'Ok to Tell'*, NPR (Apr. 9, 2012, 12:00 PM), http://www.npr.org/2012/04/09/150286297/sexual-abuse-what-finally-made-it-ok-to-tell [http://perma.cc/ASD4-ZWWC]; Skipp, *supra* note 8. Lauren's nanny, Waldina Flores, was later sentenced to ten years in prison after being convicted of sexual battery and lewd and lascivious molestation of a minor. *See Sexual Abuse: What Finally Made It 'Ok to Tell'*, *supra*; Skipp, *supra* note 8. Her sentence was extended to twenty-five years when it was discovered that Flores was still in contact with Lauren. *See Sexual Abuse: What*

Ordinance repealed sex offender laws in at least twenty-four municipalities within the county and sought to address the problems created by the strict 2005 ordinance.[73] The updated, more relaxed ordinance prohibited sex offenders convicted of certain crimes against victims under the age of sixteen from residing within 2500 feet of any *school*.[74] By limiting prohibited locations under the Book Ordinance to simply schools, rather than a host of areas frequented by children, the state sought to create more housing options for offenders, thus reducing homelessness and the development of encampments, such as the one that had developed under the Causeway.[75] Nonetheless, many of the issues that resulted from the earlier ordinances persisted.[76]

Finally Made It 'Ok to Tell', *supra*. Feeling guilt and confusion after the ordeal, Lauren wrote to Flores in prison and the two began what Lauren described as a "writing campaign back and forth." *Id.* In contrast, the letters from Flores to Lauren have been described elsewhere in the media as "love letters from prison." *See* Jeffrey Pierre, *Lauren Book to Be Honored for Her Work in Speaking Out Against Childhood Sexual Abuse*, MIAMI HERALD (Oct. 21, 2014, 4:11 PM), http://www.miamiherald.com/news/local/community/miami-dade/downtown-miami/article3205437.html [http://perma.cc/39BA-6A3V]. Lauren's experience led her to establish a non-profit organization to help "prevent childhood sexual abuse and help other survivors heal." *About Lauren's Kids*, LAUREN'S KIDS, http://laurenskids.org/about [http://perma.cc/QJ8L-468T]. Lauren and her father have since been strong supporters of stricter Florida sex offender laws—in particular residency restrictions. *See* Skipp, *supra* note 68; *Legislation*, LAUREN'S KIDS, http://laurenskids.org/advocacy/legislation [http://perma.cc/V9RF-QEML]. Notably, Ron Book has since conceded that the Book Ordinance has led to various unintended consequences—namely the development of homeless encampments—and has stated his commitment to "be part of the solution." Skipp, *supra* note 8. Yet, following the filing of the ACLU's complaint in the matter of *Doe v. Miami-Dade*, Ron reaffirmed his support for residency restrictions by stating, "I don't support those with sexual deviant behavior living in close proximity to where kids are." *See* Rabin, *supra* note 3.

[73] *See* Brown, *supra* note 72.

[74] The Lauren Book Child Safety Ordinance, MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 21, art. XVII, §§ 21-277 to -285 (2010); *see supra* note 8 and accompanying text.

[75] *See* Skipp, *supra* note 68; Brown, *supra* note 72.

[76] *See* Allen, *supra* note 9. As explained in the plaintiff's Amended Complaint in *Doe*:

> There is no centralized, accurate, or reliable process under the Ordinance for regularly classifying new schools, accounting for previously omitted schools, or declassifying and removing facilities that are no longer schools. While the Miami-Dade Police Department provides online mapping assistance for the residency restrictions, it expressly "does not assume responsibility for the accuracy or timeliness of the information displayed" . . . . There is no exemption for an individual whose noncompliance results from inaccurate or outdated information from government officials as to what constitutes a school . . . [and] there is no language in the Ordinance narrowing the scope of the term "school" to clarify whether the definition may apply to facilities not expressly labeled as or commonly considered schools, but which may provide educational programming for youth, such as emergency youth shelters, hospitals, juvenile detention centers, prisons and home-school arrangements.

Amended Complaint, *supra* note 2, at 11, 21. The Amended Complaint continues to explain that, at a July 2013 meeting between the Miami-Dade Police Department, staff from the Miami-Dade County Public Schools, and the Miami-Dade County Attorney's office, the meaning of "school" under the Ordinance was updated to include "any location where children receive instruction." *Id.* at 13. As a result of this change, at least one locale was reclassified as a "school" under the Ordinance. *See id.* at

In the context of this legal landscape, the plaintiffs in *Doe v. Miami-Dade County* brought various claims against Miami-Dade County, the Florida Department of Corrections, and Sunny Ukenye, the Circuit Administrator for the Miami Circuit Office of the Florida Department of Corrections.[77] The Amended Complaint alleged that the Book Ordinance should be void for vagueness because it fails to definitively define what constitutes a "school," and that enforcement of the Book Ordinance is a substantive due process violation of the plaintiffs' fundamental rights to personal security and to acquire residential property under the Fourteenth Amendment.[78] The Amended Complaint also alleged that the Book Ordinance is an unconstitutional ex post facto law, as the plaintiffs claim that the residency restrictions are "clearly punitive" and were passed "with the intent to punish" convicted sex offenders.[79] At the core of these claims is the contention that the defendants' "arbitrary and discriminatory enforcement" of the Book Ordinance diminished the housing options available to the plaintiffs to the point of forcing them into homelessness.[80] The Amended Complaint specifically made note of the "false assumptions" and lack of factual basis to support the means by which the Book Ordinance purports to serve the goal of public safety.[81]

Unsurprisingly, the defendants filed a motion to dismiss all of the plaintiffs' claims and the United States District Court for the Southern District of

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14. Almost one hundred offenders were then notified that their residences were no longer in compliance with the Ordinance, and they would have five days to relocate. *See id.* These notifications were later abruptly rescinded. *See id.* at 15. The plaintiffs argue that this exemplifies the arbitrary nature of enforcement and the confusion created by the terms of the Ordinance. *See id.* at 1.

[77] Amended Complaint, *supra* note 2, at 8.

[78] *Id.* at 21, 22, 24.

[79] *Id.* at 25. An ex post facto law is a law "that impermissibly applies retroactively . . . in a way that negatively affects a person's rights . . . [by] increasing the punishment for past conduct. Ex post facto criminal laws are prohibited by the U.S. Constitution." *Ex post facto law*, BLACK'S LAW DICTIONARY (10th ed. 2014). The plaintiffs argued that the Book Ordinance, and the negative effects that flow from its application, serve as additional punishment for their offenses, especially given that it applies to offenders that are not required to register under Florida law. Amended Complaint, *supra* note 2, at 25.

[80] *See* Amended Complaint, *supra* note 2, at 16.

[81] *Id.* at 17–19. The Amended Complaint specifically makes note that "sexual offender recidivism rates are among the lowest for any category of offenses, and that this lower risk of sexual offense recidivism steadily declines over time." *Id.* at 18. Further, the Amended Complaint explains:

> Research has also consistently shown that individual risk assessments are the most reliable method for determining the risk of recidivism for former offenders, rather than categorical assumptions about groups of former sexual offenders . . . residence restrictions of any stripe do not advance public safety. The vast majority of sexual crimes are committed by offenders familiar with the victim . . . . How close an individual lives to a school is irrelevant. The only demonstrated means of effectively managing reentry and recidivism are targeted treatment, along with maintaining supportive, stable environments that provide access to housing, employment, and transportation.

Id. at 18–19.

Florida subsequently granted the defendants' motion on April 3, 2015.[82] Consistent with courts that have had the opportunity to consider challenges to residency restrictions for sex offenders, the court was unwilling to seriously entertain the plaintiffs' claims.[83] It quickly dismissed the plaintiffs' ex post facto claim, finding that the Book Ordinance advances the legitimate governmental interest of "protecting children from the threat of repeat offenses posed by sex offenders . . . by reducing opportunities for contact between sex offenders and children."[84]

Likewise, the court determined that the terms of the Book Ordinance are not void for vagueness.[85] "[T]he plain language of the statute itself," the court reasoned, "provide[d] fair notice" of what constitutes a school and thus, what locales are included under the terms of the Book Ordinance.[86] Finally, the court dismissed the plaintiffs' substantive due process claims.[87] It mentioned that other courts "have found that reasonable restrictions on convicted sex offenders serve the legitimate public interest in protecting children from the 'frighteningly high' risk of recidivism posed by such individuals" and that such restrictions do not necessarily have to be the "best and most effective public policy available."[88]

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[82] *See* Fla. Dep't of Corr. and Sunny Ukenye Motion to Dismiss, Doe v. Miami-Dade Cnty., No. 14-CV-23933 (S.D. Fla. Nov. 28, 2014); Miami-Dade County Motion to Dismiss, Doe v. Miami-Dade Cnty., No. 14-CV-23933 (S.D. Fla. Nov. 26, 2014). The defendants claimed that the plaintiffs failed to state a claim under Federal Rule of Civil Procedure 12(b)(6). Order Granting Motion to Dismiss at 4, Doe v. Miami-Dade Cnty., No. 14-CV-23933 (S.D. Fla. Apr. 3, 2015).

[83] *See* Order Granting Motion to Dismiss, *supra* note 82, at 14, 16, 19; *see also infra* notes 91–104 and accompanying text.

[84] Order Granting Motion to Dismiss, *supra* note 82, at 7, 14. In its analysis, the court also noted that the Book Ordinance was not overly broad and excessive because it is "tailored to cover only those offenders who pose the greatest danger to children," because it applied to offenders convicted of only certain enumerated offenses. *Id.*at 8–9. The court determined that this sufficiently narrowed the scope of the residency restrictions, even though the terms of the Book Ordinance apply indefinitely and fail "to account for rehabilitation and treatment." *Id.* at 8.

[85] *Id.* at 16.

[86] *Id.* The language of the Book Ordinance specifies that sex offenders convicted of certain offenses may not "reside within 2,500 feet of any school." The Lauren Book Child Safety Ordinance, MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES ch. 21, art. XVII, § 21-281 (2010). "School" is defined as "a public or private kindergarten, elementary, middle or secondary (high) school." *Id.* § 21-280(9).

[87] *See* Order Granting Motion to Dismiss, *supra* note 82, at 17, 19.

[88] *Id.* at 18 (quoting Smith v. Doe, 538 U.S. 84, 102–03 (2003)). With this determination, the court seemingly ignored the data cited by the plaintiffs in their Amended Complaint that pointed to the "false assumptions" about sex offender recidivism rates and the lack of evidence regarding the effectiveness of residency restrictions. *See id.* at 18–19; Amended Complaint, *supra* note 2, at 17–19.

D. Legal Challenges to Residency Restrictions

The plaintiffs in *Doe v. Miami-Dade County* are far from the first to challenge the legality of residency restrictions.[89] However, outcomes to these challenges have varied.[90]

1. *Doe v. Miller*: Challenging Iowa's Residency Restrictions

Perhaps the most well-known legal challenge stems from Iowa's notorious residency restriction law, first passed in 2002.[91] The legislation prohibited convicted sex offenders with juvenile victims from residing within 2000 feet of a school or day care facility.[92] Seeking a permanent injunction to prevent enforcement of the law, a group of sex offenders brought a class action suit against the state in *Doe v. Miller*.[93] The suit alleged a host of constitutional infringements.[94] In 2004, the U.S. District Court for the Southern District of Iowa agreed with the plaintiffs' claims and issued a permanent injunction preventing enforcement of the residency restrictions.[95] However, the U.S. Court of Appeals for the Eighth Circuit later reversed the district court decision and upheld the law as constitutional.[96] Upon being reinstated, the law "was retroac-

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[89] *See infra* notes 91–115 and accompanying text.

[90] *See infra* notes 91–115 and accompanying text.

[91] Levenson, *supra* note 8, at 269.

[92] IOWA CODE § 692A.2A (2002) (current version at 692A.114 (2016)); Levenson, *supra* note 8, at 269; *see* HUMAN RIGHTS WATCH, *supra* note 33, at 104.

[93] Doe v. Miller (*Miller II*), 298 F.Supp.2d 844, 847 (S.D. Iowa 2004). One of the plaintiffs in the case, "John Doe 1," was forced to register as a sex offender in Iowa after moving from Wisconsin to Iowa City, Iowa in Johnson County to attend college. *Id*. at 852; *see* Doe v. Miller (*Miller I*), 216 F.R.D. 462, 468 (S.D. Iowa 2003). In Wisconsin, he was convicted of second-degree sexual assault after engaging in consensual sex with a fourteen-year-old girl when he was eighteen years old. *Miller II*, 298 F. Supp. 2d at 852. The act, if committed in Iowa, would not have constituted a crime. *Id*. The District Court for the Southern District of Iowa noted at an earlier phase in the case that "[a] map of Johnson County shows that there is virtually no place in Iowa City for a sex offender to live." *Miller I*, 216 F.R.D. at 468.

[94] *See Miller II*, 298 F. Supp. 2d at 847. The plaintiffs alleged that the law violated their "substantive due process rights of family privacy and freedom to travel, the Fifth Amendment right against self-incrimination, the Eighth Amendment's guarantee against cruel and unusual punishment, and the right to procedural due process." *Id*. In addition, the plaintiffs argued that the law was "an unconstitutional ex post facto law" as it would retroactively apply to sex offenders who committed their crimes prior to its enactment. *Id*.

[95] *Id*. at 871, 880. The district court held that the law did represent "retroactive punishment forbidden by the Ex Post Facto Clause" and violated the plaintiffs' substantive and procedural due process rights. *Id*. at 871. The district court further held that the law did not violate "the Eighth Amendment's guarantee against cruel and unusual punishments." *Id*. at 880.

[96] Doe v. Miller (*Miller III*), 405 F.3d 700, 705 (8th Cir. 2005). Notably, the plaintiffs specifically argued before the Eighth Circuit that "there is no scientific study that supports the legislature's conclusion that excluding sex offenders from residing within 2000 feet of a school or child care facility is likely to enhance the safety of children." *Id*. at 714. Although the court acknowledged that "precise statistical data is unavailable and human behavior is necessarily unpredictable," it maintained that the

tively applied to its original implementation date in 2002, and thousands of sex offenders were forced to relocate."[97]

2. *Mann v. Georgia Department of Corrections*: Challenging Georgia's Residency Restrictions

Similarly, Georgia's residency restrictions have faced numerous challenges in court.[98] First implemented in 2003, Georgia's initial residency restriction legislation prohibited registered sex offenders from living within 1000 feet of any school, childcare facility, or other areas where minors congregate, such as parks, recreation facilities, gymnasiums, skating rinks, and playgrounds.[99] These regulations were made even more restrictive in 2006 when the Georgia General Assembly passed additional legislation that added churches, swimming pools, and school bus stops to prohibited locales and also banned registered sex offenders from working within 1000 feet of a childcare facility, school, or church.[100]

These restrictions were challenged in *Mann v. Georgia Department of Corrections*, in which registered sex offender Anthony Mann argued that the law was an unconstitutional taking of his property.[101] After a childcare facility

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legislature had the discretion to make a policy determination regarding the implementation of residency restrictions. *Id*. at 714–16.

[97] Levenson, *supra* note 8, at 269. The "crisis" that resulted from this retroactive application of the law prompted the Iowa County Attorneys Association to issue a 2006 report noting the failures of the legislation and calling for reform. *Id*.; *see* IOWA CNTY. ATTORNEYS ASS'N, STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA 1, 5 (Dec. 11, 2006), http://www.csom.org/pubs/Iowa%20DAs%20Association_Sex%20Offender%20Residency%20Statement%20Dec%2011%2006.pdf [https://perma.cc/RAH2-V9W9].

[98] *See* Levenson, *supra* note 8, at 269; Memorandum from Sarah Geraghty et al., The Law Office of the S. Ctr. for Human Rights, Overview of *Whitaker v. Perdue* 2, 4–5 (Apr. 12, 2010), https://www.schr.org/files/post/Overview%20of%20Litigation%207.23.10.pdf [https://perma.cc/4CPF-U7L3].

[99] GA. CODE ANN. § 42-01-13 (2003) (current version at GA. CODE ANN. § 42-01-15 (2012)); *see* Geraghty et al., *supra* note 98, at 1.

[100] H.B.1059, Reg. Sess. (Ga. 2006) (codified as amended at GA. CODE ANN. § 42-01-15 (2014)). It has been suggested that the more restrictive measures passed by the Georgia Legislature in 2006 may have been motivated in part by the 2005 abduction, rape, and murder of Jessica Lunsford in neighboring Florida. *See* Sarah Geraghty, *Challenging the Banishment of Registered Sex Offenders from the State of Georgia: A Practitioner's Perspective*, 42 HARV. C.R.–C.L.L. REV. 513, 515 (2007). In addition, as 2006 was an election year, one scholar suggested that the legislative changes were used to gain political support. *See id*.

[101] Mann v. Ga. Dep't of Corr. (*Mann II*), 653 S.E.2d 740, 742 (2007). Mann previously brought suit against the state in *Mann v. State* (*Mann I*), 603 S.E.2d 283 (2004). At the time of his first suit, Mann was living in his parents' home. *Id.* at 285. The court, therefore, rejected his challenge to the residency restriction because Mann had only a "minimal" property interest in his living arrangement. *See id.* In 2003, Mann purchased a home with his wife. *See Mann II*, 653 S.E.2d at 742. When the home was purchased, it was not within 1000 feet of any restricted location under the law. *See id.* In 2004, Mann purchased a barbecue restaurant that was, likewise, not within 1000 feet of any restricted locale. *See id.* Childcare facilities later opened within 1000 feet of both Mann's home and business, which prompted him to again file suit. *See id.*

opened within 1000 feet of both Mann's home and restaurant business, Mann's probation officer "demanded" that he quit his business and move from his home in order to avoid arrest and revocation of his probation.[102] On appeal, the Georgia Supreme Court held that, with respect to Mann's home, the law constituted a taking of Mann's property without compensation in violation of the Fifth Amendment.[103] However, the court also held that Mann "failed to establish that the economic impact of the work restriction . . . effected an unconstitutional taking" with regards to his business.[104]

3. *In re Taylor*: Challenging Residency Restrictions in California

In California, voters overwhelmingly supported Proposition 83 in November 2006, which prohibited all registered sex offenders from living within 2000 feet of any school, daycare facility, park, or other place where children gather.[105] The law garnered significant support, despite an August 2006 report from the California Research Bureau highlighting the unintended consequences of residency restrictions and warning that such legislation might actually decrease public safety by "driv[ing] . . . offenders in the country underground."[106] California's victim advocacy group also opposed the law.[107] Its position stated that the legislation was "a shortsighted approach to sex offender management that will place California communities in greater danger" and that it would "waste valuable resources on sex offenders who are unlikely to reoffend."[108]

The law was quickly challenged in California courts.[109] In San Diego County, a group of sex offenders challenged the constitutionality of the residency restrictions, arguing that the restrictions violated "various state and federal constitutional rights, including their privacy rights, property rights, rights

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[102] *Mann II*, 653 S.E.2d at 742.

[103] *See id.* at 745–46. In a unanimous opinion, the Georgia Supreme Court notably stated that, "[u]nder the terms of [the 2006 statute], it is apparent that there is no place in Georgia where a registered sex offender can live without being continually at risk of being ejected." *Id.* at 742.

[104] *Id.* at 746.

[105] CAL. PENAL CODE § 3003.5 (West 2014) (originally passed by ballot proposition as "Proposition 83: Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute"); *see* HUMAN RIGHTS WATCH, *supra* note 33, at 112. Proposition 83 passed with support from seventy percent of voters. *See* HUMAN RIGHTS WATCH, *supra* note 33, at 112. The law was named "Jessica's Law" in honor of Jessica Lunsford and was modeled after the Florida legislation of the same name. *See* Levenson, *supra* note 8, at 269; Terry & Ackerman, *supra* note 16, at 78.

[106] *See* MARCUS NIETO & DAVID JUNG, CALIFORNIA RESEARCH BUREAU, THE IMPACT OF RESIDENCY RESTRICTIONS ON SEX OFFENDERS AND CORRECTIONAL MANAGEMENT PRACTICES: A LITERATURE REVIEW 1, 21, 24 (Aug. 2006), https://www.library.ca.gov/crb/06/08/06-008.pdf [https://perma.cc/ACW7-K26C]; *see also* HUMAN RIGHTS WATCH, *supra* note 33, at 113.

[107] *See* Levenson, *supra* note 8, at 269.

[108] *See* HUMAN RIGHTS WATCH, *supra* note 33, at 113.

[109] *See* Bruce Zucker, *Jessica's Law Residency Restrictions in California: The Current State of the Law*, 44 GOLDEN GATE U. L. REV 101, 110 (2014).

to intrastate travel, and substantive due process rights."[110] After an evidentiary hearing, the San Diego Superior Court held that the residency restriction "was 'unconstitutionally "unreasonable"' as applied . . . because it violated petitioners' right to intrastate travel, their right to establish a home, and their right to privacy and was not narrowly drawn and specifically tailored to the individual circumstances of each sex offender parolee."[111] Throughout the proceedings, the court also found that the residency restriction prevented sex offender parolees from living in "[ninety-seven percent] of the existing rental property that would otherwise be available to [them]."[112]

The state appealed the trial court's decision, which was affirmed by California's Fourth District Court of Appeals.[113] The Supreme Court of California also affirmed the judgment and stated in its opinion that residency restrictions "bear[] no rational relationship to advancing the state's legitimate goal of protecting children" and cited increased homelessness and decreased access to "rehabilitative social services" among the many problems created by residency restrictions.[114] Although California's Department of Corrections and Rehabilitation may still impose a residency restriction on individual offenders, if supported by the particular circumstances of the offender's case, blanket restrictions imposed on all released offenders are now prohibited in the state.[115]

II. The False Assumptions & Real Impact of Residency Restrictions

Residency restrictions for sex offenders have been justified over the years as a tool to increase public safety.[116] By prohibiting known sex offenders from living within close proximity to places where children commonly congregate, proponents claim that an offender's opportunity and temptation to reoffend

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[110] *In re* Taylor, 147 Cal. Rptr. 3d 64, 67 (2012), *review granted and opinion superseded*, 290 P.3d 1171 (Cal. 2013), *aff'd*, 343 P.3d 867 (Cal. 2015).

[111] *See id.*

[112] *Id.* at 75.

[113] *Id.* at 84.

[114] *In re Taylor*, 343 P.3d at 869. In its opinion, the court discusses the "disturbing" results of blanket enforcement of residency restrictions:

> Detective Jim Ryan, a supervisor in the San Diego Police Department's Sex Offender Registration Unit, testified to a dramatic increase in the number of sex offender parolees who registered as transient with his department in the two years after the law took effect. The trial court specifically found that blanket enforcement of the residency restrictions in the County has "result[ed] in large groups of parolees having to sleep in alleys and riverbeds, a circumstance that did not exist prior to Jessica's Law."

Id. at 881.

[115] *Id.* at 882.

[116] *See* Terry & Ackerman, *supra* note 16, at 88; Levenson & Cotter, *supra* note 1, at 169.

will be reduced, in turn protecting children from such offenders.[117] As residency restrictions have been implemented and applied, however, there is an emerging recognition that the goal of public safety is not being accomplished through these means.[118] This failure can be attributed to two myths heavily underlying sex offender policies: the myth of "stranger danger" and the myth that sex offender recidivism is inevitable.[119]

A. False Assumptions & Myths

Although the intentions motivating the passage of sex offender legislation and residency restrictions may be commendable, there is a lack of empirical data supporting the effectiveness of such legislation.[120] Primarily, the core contention that child sex abuse is perpetrated at the hands of strangers has repeatedly been disproven.[121] Rather, "sexual violence against children . . . is overwhelmingly perpetrated by family members or acquaintances."[122] According to a 2000 U.S. Department of Justice study, thirty-four percent of juvenile sexual abuse victims are molested by a family member and fifty-nine percent are molested by close acquaintances.[123] Thus, in this study, only seven percent of child sexual assault perpetrators were strangers to their victims.[124] The considerable amount of research in this area has reliably dispelled the myth of "stranger-danger," which has long served as a basis for sex offender legislation.[125]

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[117] *See* Terry & Ackerman, *supra* note 16, at 88; HUMAN RIGHTS WATCH, *supra* note 33, at 4.

[118] *See* Levenson, *supra* note 8, at 278; HUMAN RIGHTS WATCH, *supra* note 33, at 4.

[119] *See* Levenson, *supra* note 8, at 275–76; Merriam, *supra* note 42, at 4.

[120] *See* Levenson, *supra* note 8, at 283; Terry & Ackerman, *supra* note 16, at 93.

[121] *See* Merriam, *supra* note 42, at 4.

[122] HUMAN RIGHTS WATCH, *supra* note 33, at 24.

[123] HOWARD N. SNYDER, BUREAU OF JUSTICE STATISTICS, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 10 (July 2000), http://www.bjs.gov/content/pub/pdf/saycrle.pdf [https://perma.cc/2SU7-NQUQ]. The study defined juveniles as eighteen years or younger at the time of the crime. *Id*. at 2.

[124] *Id*. at 10.

[125] *See* DANIEL M. SPRAGUE ET AL., COUNCIL OF STATE GOV'TS, ZONED OUT: STATES CONSIDER RESIDENCY RESTRICTIONS FOR SEX OFFENDERS 1, 6 (2008), http://www.csg.org/knowledgecenter/docs/pubsafety/ZonedOut.pdf [http://perma.cc/CEU4-9JVB] (noting a 1997 Bureau of Justice Statistics study that found "approximately 75 percent of all sexual assault victimizations are committed by an individual known to the victim" and, in ninety percent of rape cases with a victim under twelve years old, the offender was known to the victim); Merriam, *supra* note 42, at 4 (stating that "[a]bout 93 percent of victims of sex offenders know the perpetrator" and that the myth of "stranger-danger" is the "most common misperception" about sex offenders); NIETO & JUNG, *supra* note 106, at 24 (finding that, although most high-profile child sexual assault cases involve a stranger assailant, statistical research from the U.S. Department of Justice has consistently demonstrated that this is not the norm). It is important to note, however, that such statistics are limited by the fact that they do not—and cannot—take into account unreported incidents of sexual abuse on minors. *See* JOHN Q. LAFOND, PREVENTING SEXUAL VIOLENCE: HOW SOCIETY SHOULD COPE WITH SEX OFFENDERS 16 (2005).

Likewise, the perception of the effectiveness of residency restriction laws lacks a basis in empirical data.[126] Residency restrictions are not only rooted in the concept of "stranger-danger," but also in the widely accepted notion that sex offenders have a high probability of recidivism.[127] Given these complementary perceptions, which lack empirical support, it is believed that potential victims of sexual abuse are best protected by preventing sex offenders from residing in areas that easily allow access to children, thereby reducing opportunities to recidivate.[128] Although researchers in this area acknowledge that "official recidivism rates do underestimate true offense rates," there is a broad range of research that concludes that recidivism of sex offenders is not nearly as high as the public has been made to believe.[129]

For example, a U.S. Department of Justice study released in 2003 found that only 3.3 percent of released child molesters were rearrested within three years for another sex crime against a child.[130] An additional study, described in 2007 by Human Rights Watch as "the most comprehensive study of sex offender recidivism to date," found a slightly higher recidivism rate, concluding that within four to six years of release, "child molesters" had a recidivism rate of thirteen percent.[131] Given the exaggerated assumptions regarding recidivism rates, residency restrictions not only fail to successfully accomplish the goals they purport to serve, but also have led to a plethora of unintended conse-

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[126] *See* Alissa R. Ackerman & Karen J. Terry, *Leaders in Sex Offender Research and Policy*, *in* SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS, *supra* note 8, at 399, 411; JILL LEVENSON, A REPORT TO THE FLORIDA LEGISLATURE 2–3 (2005).

[127] *See* HUMAN RIGHTS WATCH, *supra* note 33, at 4, 24–25; Levenson, *supra* note 8, at 274, 276.

[128] *See* Levenson, *supra* note 8, at 277; Terry & Ackerman, *supra* note 16, at 88.

[129] *See* Levenson, *supra* note 8, at 274–75; *see* HUMAN RIGHTS WATCH, *supra* note 33, at 25–26; Ackerman & Terry, *supra* note 126, at 411.

[130] PATRICK A. LANGAN ET AL., BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, 1, 31 (Nov. 2003), http://www.bjs.gov/content/pub/pdf/rsorp94.pdf [http://perma.cc/NP5F-HYTV].

[131] ANDREW J.R. HARRIS & R. KARL HANSON, PUB. SAFETY AND EMERGENCY PREPAREDNESS CANADA, SEX OFFENDER RECIDIVISM: A SIMPLE QUESTION 7 (2004), https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/sx-ffndr-rcdvsm/index-en.aspx [https://perma.cc/M4EU-R6CB]; *see* HUMAN RIGHTS WATCH, *supra* note 33, at 26–27. Despite the difficulties in determining actual recidivism rates, and data that suggests recidivism rates of sex offenders are far lower than assumed, the media and legislators have consistently justified sex offender legislation on the basis of high recidivism rates. *See* Levenson, *supra* note 8, at 272. For example, in 2006, New Hampshire's Attorney General Kelly Ayotte argued for stronger penalties for sex offenders and stated to lawmakers that "sex offenders are committing the same type of offense over and over." *Id*. Likewise, a California Assemblyman in 1997 stated to *The New York Times* that "[w]hat we're up against is the kind of criminal who, just as soon as he gets out of jail, will immediately commit this crime again at least ninety percent of the time." *Id.*

quences.[132] Nonetheless, residency restrictions have persisted and many supporters of these restrictions remain resolute in their positions.[133]

B. The Human Impact: Offenders

Critics of residency restriction legislation have long noted that the one-size-fits-all approach in regards to sex offenders is problematic for a number of reasons.[134] Representing a disconnect between purported goals and actual policy, most states that have enacted a statewide residency restriction for sex offenders apply the restriction to all offenders, regardless of the age of their victim.[135]

Although there is limited research on the concrete impact such legislation has on the individuals it is applied to, the available data tells a story of significant burden.[136] A 2005 survey of registered sex offenders in Fort Lauderdale and Tampa, Florida sought to gain a better understanding of how offenders perceive and are impacted by residency restriction legislation.[137] The results indicated that twenty-five percent of respondents were unable to return to their homes following release from prison and fifty-seven percent reported that the restrictions made it difficult to find affordable housing.[138] Notably, the participants of this survey were only subject to the 1000-foot buffer zone imposed by Florida's statewide residency restriction law.[139] The study also solicited opinions from sex offenders about the effectiveness of residency restrictions.[140] Among the responses were statements such as: (1) "The rule 'serves no purpose but to give some people the illusions of safety,'" (2) "If a person wants to offend, it doesn't matter how close he is to a convenient place to find kids," and (3) "I think that if someone wanted to offend, then they would do it at a place away from home."[141] In sum, the study concluded that offenders felt as

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[132] *See* Levenson, *supra* note 8, at 278–83 (providing an overview of the unintended consequences of residency restrictions, including severely limited housing options, financial instability, and adverse psychological effects); *see also infra* notes 134–163 and accompanying text.

[133] *See* Levenson, *supra* note 8, at 272; Levenson & Cotter, *supra* note 1, at 169.

[134] *See* SPRAGUE ET AL., *supra* note 125, at 4; NIETO & JUNG, *supra* note 106, at 27.

[135] *See* HUMAN RIGHTS WATCH, *supra* note 33, at 101. Human Rights Watch reported in 2007 that only four states—Illinois, Indiana, Iowa, and Tennessee—"limit their residency restriction laws to persons convicted of sex offenses involving child victims." *Id.* at 101 n.347. Additionally, Florida's statewide residency restriction applies only to offenders convicted of certain offenses against victims under age sixteen. FLA. STAT. § 775.215(2)(a) (2010 & Supp. 2012). Local level residency restrictions vary. *See* NIETO & JUNG, *supra* note 106, at 21. For example, Miami-Dade County's Book Ordinance applies only to sex offenders convicted of certain crimes against a victim less than sixteen years of age. *See supra* note 8 and accompanying text.

[136] *See* Jill S. Levenson & Andrea L. Hern, *Sex Offender Residence Restrictions: Unintended Consequences & Community Reentry*, 9 JUST. RES. & POL'Y 59, 63 (2007).

[137] *See* Levenson & Cotter, *supra* note 1, at 168, 170.

[138] *Id.* at 173.

[139] *See id.* at 171.

[140] *See id.* at 170.

[141] *Id.* at 174.

though "housing restrictions increased isolation, created financial and emotional hardship, and led to decreased stability."[142]

These conclusions have been reiterated in other studies as well.[143] A study published in 2008 evaluated sex offender recidivism among Minnesota offenders and found that, when sex offender recidivists directly establish contact with their victims, "it was often more than a mile away from where they lived," and that, "[o]f the few offenders who directly contacted a juvenile victim within close proximity to their residence, none did so near a school, park, playground, or other locations included in residential restriction laws."[144]

An additional 2006 study conducted in Orange County, Florida sought to demonstrate the expansive reach of residency restriction buffer zones.[145] The study found that 95.2% of "potentially available properties" in the county were off limits under a 1000-foot residency restriction.[146] Under a 2500-foot restriction—the same buffer zone limitation that the plaintiffs in *Doe v. Miami-Dade County* are subject to—that percentage increased to 99.7%.[147] This study provides an example of just how severely residency restrictions can decrease housing options for sex offenders, particularly in a metropolitan area.[148] The same study also found, unsurprisingly, that school bus stops are the most restrictive category.[149] The results demonstrated that a 1000-foot buffer zone that includes school bus stops as a restricted locale is, in effect, *more* restrictive than a 2000-foot buffer zone around only schools and childcare facilities.[150]

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[142] *Id.* at 175.

[143] *See* Grant Duwe et al., *Does Residential Proximity Matter? A Geographic Analysis of Sex Offense Recidivism*, 35(4) CRIM. JUST. & BEHAV. 484, 500 (2008).

[144] *Id.* The study concluded that "not one of the 224 sex offenses would have likely been prevented by residency restrictions," and thus, "the findings from this study provide little support for the notion that such restrictions would significantly reduce sexual recidivism." *Id.* at 484.

[145] *See* Paul A. Zandbergen & Timothy C. Hart, *Reducing Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction Laws Using GIS*, 8 JUST. RES. & POL'Y 1, 1 (2006).

[146] *Id.* at 15.

[147] *Id.*; *see* Amended Complaint, *supra* note 2, at 1.

[148] *See* Zandbergen & Hart, *supra* note 145, at 15.

[149] *See id.*

[150] *See id.* at 20. Studies in other states have also demonstrated the significant reach of residency restrictions:

> [Ninety-three] percent of residential territory in Newark, New Jersey, is located within 2,500 feet of a school, and in Camden, New Jersey, 80 percent of residents live within 2,500 feet of schools, parks, or day care centers. In four major metropolitan areas of South Carolina, 45 percent of housing is within a 1,000 feet [sic] of schools or day care centers, and in Omaha, Nebraska, 79 percent of all residential parcels are within 2,000 feet. In Columbus, Ohio, 60 percent of residential dwellings are within a 1,000-foot buffer.

Jill S. Levenson, *Restricting Sex Offender Residences: Policy Implications*, 36 HUM. RTS. 21, 22 (2009).

A 2004 Colorado study further reinforced the ineffectiveness of residency restrictions as a tool for sex offender management.[151] The study, performed by the Colorado Division of Criminal Justice, concluded that residency restrictions "may not deter the sex offender from re-offending and should not be considered as a method to control . . . recidivism."[152] Further, the study found that offenders who had a positive support system in place had "significantly lower numbers of [probation] violations."[153]

Research describing the unintended consequences of residency restrictions and expressing skepticism of their effectiveness is not hard to come by.[154] What is often missing from the conversation, however, is a discussion about what actually *does* work to accomplish the goals of increasing public safety and reducing recidivism rates.[155] Although early studies failed to support the idea that sex offender treatment resulted in lower recidivism rates, recent research has been more promising.[156] Results from a number of studies have concluded that recidivism rates are indeed lower among sex offenders who receive treatment, as compared to those who do not receive treatment.[157]

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[151] *See* COLO. DEP'T OF PUB. SAFETY DIV. OF CRIMINAL JUSTICE SEX OFFENDER MGMT. BOARD, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 4 (Mar. 15, 2004), http://www.csom.org/pubs/CO%20Residence%20Restrictions%201.pdf [https://perma.cc/QE7S-K755].

[152] *Id.*

[153] *Id.* at 5.

[154] *See* Levenson, *supra* note 8, at 276–81; Meloy et al., *supra* note 43, at 212–13; IOWA CNTY. ATTORNEYS ASS'N, *supra* note 97, at 1.

[155] *See* HUMAN RIGHTS WATCH, *supra* note 33, at 33 (noting that the Center for Sex Offender Management has expressed concern that, "the current emphasis on registration, community notification laws, and residency restrictions for individuals who have been convicted of sex offenses 'has begun to overshadow the important role of treatment in sex offender management efforts'").

[156] *See* Williams, *supra* note 43, at 47; R. Karl Hanson et al., *First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders*, 14 SEXUAL ABUSE: A J. OF RES. & TREATMENT 169, 186 (2002) (explaining some of the issues associated with studying sex offender treatment programs, including overall low recidivism rates among sex offenders, which makes a statistically significant study difficult to conduct). Criminal Justice professor Francis Williams provides a succinct overview of common treatments for sex offenders:

> Types of treatment that have been shown to have success come in two categories, biological . . . and psychological. Biological approaches focus on reducing sex drive . . . [and] the aim is to decrease or eliminate sex drive . . . . Psychological approaches attempt to change offenders by modifying their behaviors. These approaches include behavioral, cognitive, and psychodynamic interventions. Behavioral therapy assumes that people are conditioned by learning to act in certain ways, and that behavior can also be unlearned with appropriate behaviors replacing deviant behaviors . . . . With pedophiles, the idea is to eliminate the sexual desire for children and direct it appropriately.

Williams, *supra* note 43, at 49.

[157] Hanson et al., *supra* note 156, at 186. The treatments referred to in this study were psychological. *Id.* at 169. This study relied upon meta-analysis in order to produce a more statistically significant result. *Id.* at 170. Meta-analysis allows researchers "to integrate many separate studies on [a] question into a single study. This practice allows [researchers] to draw general conclusions on [a]

Further, research indicates that "[s]ocial stability and support increase the likelihood of successful reintegration for criminal offenders," and recidivism rates are lower among those who have a positive support system in their lives.[158] These findings, coupled with the immense negative consequences experienced by those subject to residency restrictions, suggest that there is significant room for improvement in how released sex offenders are managed.[159]

Residency restrictions undeniably hindered the plaintiffs' successful reintegration in *Doe v. Miami-Dade County*.[160] "John Doe #1" was unable to continue living at his sister's home.[161] "John Doe #2," prohibited from residing with his aunt, was unable to find otherwise affordable housing.[162] As of 2014, "John Doe #3" was employed, yet unable to find affordable housing that was in compliance with the Book Ordinance.[163] Although the goals of residency restriction legislation are well intentioned, the existing literature and research increasingly urges a need for reform.[164] The consequences of residency restrictions are substantial and real for those subject to their terms, whereas their efficacy is increasingly called into question.[165]

C. Sex Offender Legislation & Residency Restrictions in Practice

Sex offender legislation and residency restrictions have not successfully embodied or accomplished the goals they were intended to serve.[166] The experience in Iowa following passage of new sex offender legislation exemplifies the shortcomings of residency restrictions.[167] In 2002, the Iowa Legislature passed a law prohibiting registered sex offenders whose victims were minors from living within 2000 feet of any school or childcare center.[168] The law went into effect in 2005 after a host of legal challenges, and the negative repercus-

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question by aggregating virtually all sound prior research." LAFOND, *supra* note 125, at 78. This particular study used meta-analysis to aggregate the results of forty-three studies, evaluating 9000 offenders. Hanson et al., *supra* note 156, at 186.

[158] Levenson, *supra* note 8, at 283; *see* COLO. DEP'T OF PUB. SAFETY, *supra* note 151, at 5.

[159] *See* Levenson, *supra* note 8, at 285 (recommending more individualized treatment of released sex offenders which should, in part, seek to prevent opportunities to "easily cultivate relationships with children"); LAFOND, *supra* note 125, at 57, 81 (noting that, although more research is needed, "there *is* some basis for concluding that treatment can reduce sexual reoffending," and suggesting that sex offender legislation should more appropriately concentrate on dangerous sex offenders).

[160] *See* Amended Complaint, *supra* note 2, at 3–6.

[161] *Id.* at 3.

[162] *Id.* at 5.

[163] *Id.* at 6.

[164] *See supra* notes 116–133 and accompanying text.

[165] *See supra* notes 134–159 and accompanying text.

[166] *See* Levenson, *supra* note 8, at 276–78.

[167] *See id.* at 279.

[168] IOWA CODE § 692A.2A (2002) (current version at § 692A.114 (2009 & Supp. 2011)).

sions were evident almost immediately.[169] Although many offenders were simply prevented from residing in entire communities, the more significant result was a considerable increase in the number of missing offenders.[170] Within six months of the law's enactment, the number of registered sex offenders in the state who could not be located more than doubled.[171] Because the law severely limited housing options for released offenders, many became "homeless or transient, making them more difficult to track and monitor."[172] The fallout of the legislation was so inimical that it led the Iowa County Attorneys Association to issue a 2006 report calling for the law to be replaced by "more effective measures that do not produce [these] negative consequences."[173] One state legislator even stated that former legislative support for the residency restrictions was "a mistake."[174]

The unintended effects of residency restrictions are well documented.[175] Limited housing options and homelessness are clear consequences, but residency restrictions also exacerbate issues offenders face in their processes of reintegration.[176] Financial instability, emotional stress, unemployment, psychosocial stress, and relationship instability are among the many unfortunate, yet common, outcomes of residency restrictions.[177]

The problems in Iowa have not gone unnoticed.[178] In part due to the perceived failure of Iowa's residency restriction legislation, the Kansas Legislature in 2006 rejected a similar proposed statewide "buffer zone" law and also explicitly prohibited local municipalities from establishing their own local ordinances.[179] This decision came after the Kansas Sex Offender Policy Board

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[169] *See* Levenson, *supra* note 8, at 269, 279; HUMAN RIGHTS WATCH, *supra* note 33, at 104–05; IOWA CNTY. ATTORNEYS ASS'N, *supra* note 97, at 1–5.

[170] *See* HUMAN RIGHTS WATCH, *supra* note 33, at 105.

[171] Levenson, *supra* note 8, at 279. Some sources reported that the number of missing offenders more than tripled during this time period. *See* Monica Davey, *Iowa's Residency Rules Drive Sex Offenders Underground*, N.Y. TIMES (Mar. 15, 2006), http://www.nytimes.com/2006/03/15/national/15offenders.html [http://perma.cc/47YG-UDE5].

[172] Levenson, *supra* note 8, at 279.

[173] IOWA CNTY. ATTORNEYS ASS'N, *supra* note 97, at 4–5.

[174] *See* HUMAN RIGHTS WATCH, *supra* note 33, at 104.

[175] *See* Levenson, *supra* note 126, at 5, 6; HUMAN RIGHTS WATCH, *supra* note 33, at 102.

[176] *See* Levenson, *supra* note 8, at 278–83; HUMAN RIGHTS WATCH, *supra* note 33, at 102.

[177] Levenson, *supra* note 8, at 278–79; Levenson, *supra* note 126, at 5, 6. Other unintended consequences of residency restrictions, identified by experts in the area, include "an increase in the likelihood of reoffending, public anxiety, retaliation, harassment, stigmatization, and retribution." *See* Zandbergen & Hart, *supra* note 145, at 2.

[178] *See* NIETO & JUNG, *supra* note 106, at 15; HUMAN RIGHTS WATCH, *supra* note 33, at 104–105.

[179] KAN. STAT. ANN. § 22-4913 (2007 & Supp. 2015); Levenson, *supra* note 8, at 270; KAN. SEX OFFENDER POLICY BD., JAN. 8, 2007 REPORT 26, 28–29, 31 (2007), http://www.calcasa.org/wp-content/uploads/2007/11/sopbreport.pdf [https://perma.cc/7Q3Z-CVJD] (noting that the Kansas Sex Offender Policy Board's research included evaluating studies from various states, including Iowa and

submitted a report outlining that, although "residency restrictions are extremely popular with the general public," they do not, in fact, increase public safety and, rather, have led to a number of unwanted consequences in other states.[180] The Kansas Legislature's solution is rather unique in that it not only prevents local level ordinances from being implemented, but was based upon a rational review of the available information about residency restrictions.[181] This approach demonstrates that not all states are willing to enforce blanket residency restrictions, especially in light of the mounting evidence that their costs significantly outweigh any perceived benefits.

III. INCORPORATING THE EMPIRICAL EVIDENCE TO CREATE MORE SENSIBLE POLICIES

The development and implementation of federal sex offender legislation is grounded in the notion that the tracking of released sex offenders is beneficial, and that the ability to notify communities of the presence of sex offenders contributes to an increase of awareness and public safety.[182] Building upon these federally mandated registration systems are state and local level residency restrictions that severely limit where sex offenders may reside.[183] Since their inception, however, these policies have lacked a basis in empirical data and have not been shown to be effective.[184]

Over time, the detrimental repercussions of residency restrictions have become clear and the need for reform is evident.[185] Legislators and citizens alike should reject the continued enforcement of these policies, which are predicated on false data and thus ill-suited to accomplish their stated goals.[186] Given the sensitive nature of child sexual assault, it would be overly idealistic to call for a total revocation of all residency restriction legislation.[187] More

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the Iowa County Attorneys Association report and concluding that "sex offender residence restrictions have no demonstrated efficacy as a means of protecting public safety").

[180] KAN. SEX OFFENDER POLICY BD., *supra* note 179, at 26, 28–29, 31. The Kansas governor and legislature created the Kansas Sex Offender Policy Board in 2006 for the purpose of researching policies and legislation "relating to the treatment, rehabilitation, reintegration and supervision of sex offenders." SPRAGUE ET AL., *supra* note 125, at 6–7. The January 2007 report was the result of a yearlong study, which culminated in its recommendations to the Kansas legislature. *Id.* at 7.

[181] *See* Levenson, *supra* note 8, at 270.

[182] *See* Jill Levenson, *Sex Offender Residency Restrictions Impede Safety Goals*, JURIST (Feb. 2, 2012, 8:00 AM), http://jurist.org/hotline/2012/02/jill-levenson-sexoffenders-residency.php [http://perma.cc/PB4S-CFL3]; Terry & Ackerman, *supra* note 16, at 80.

[183] *See* Levenson, *supra* note 150, at 21–22.

[184] *See* Levenson, *supra* note 8, at 278.

[185] *See id.* at 278–85.

[186] *See id.* at 285; HUMAN RIGHTS WATCH, *supra* note 33, at 118.

[187] *See* Nobels et al., *supra* note 42, at 508; Cassie Dallas, Comment, *Not in My Backyard; The Implications of Sex Offender Residency Ordinances in Texas and Beyond*, 41 TEX. TECH. L. REV. 1235, 1238 (2009); SPRAGUE ET AL., *supra* note 125, at 8 (noting that, "it is not good enough to simply tell communities not to enact residence restrictions").

effective and sensible policy is, however, both possible and preferable.[188] The practice of banishing sex offenders from living in large portions of any given community only compounds the problems faced by offenders seeking to reintegrate into society.[189]

Such a multifaceted problem calls for a multifaceted solution.[190] Sensible legislative reform should offer more individualized assessments before imposing residency restrictions, allow offenders to live with supportive family members, and provide the data and tools needed for offenders to reliably determine when a residence is off limits.[191]

A. Alternatives to Blanket Restrictions

Although residency restrictions continue to be implemented and enforced throughout the country, statewide restrictions do not exist across the board.[192] There are multiple states that take a more individualized approach, rather than imposing blanket restrictions on all offenders.[193] For example, in Texas, residency restrictions for registered sex offenders are determined on an individual, case-by-case basis by the Parole Board.[194] Thus, the Parole Board can take into account whether an offender's victim was a child and make an individual determination regarding the necessity of restricting where an offender can reside.[195] However, municipalities are not prohibited from adopting their own local residency restrictions.[196] Because of this, the efficacy of the progressive approach taken by the Texas legislature is difficult to evaluate.[197]

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[188] *See* Levenson, *supra* note 8, at 285 ("Professionals and policymakers alike are encouraged to consider a range of options available for building safer communities and to endorse those that are most likely to achieve their stated goals while minimizing collateral consequences."); Merriam, *supra* note 42, at 12, 13 ("[R]esidential restrictions should be largely eliminated for most of sex offenders . . . . Residency restrictions will not stop an offender from victimizing a family member or acquaintance in their home . . . and will not keep an offender from getting access to a stranger.").

[189] *See* Levenson, *supra* note 182.

[190] *See* Levenson, *supra* note 8, at 285; *see also supra* note 187 and accompanying text.

[191] *See* Levenson, *supra* note 8, at 285; *see also infra* notes 230–255 and accompanying text.

[192] *See* NIETO & JUNG, *supra* note 106, at 17.

[193] *See id.* at 17, 18.

[194] TEX. GOV'T CODE ANN. § 508.187 (West 2011); *see* SPRAGUE ET AL., *supra* note 125, at 5.

[195] *See* TEX. GOV'T CODE ANN. § 508.187; Dallas, *supra* note 187, at 1264. Specifically, the Texas statute allows the Parole Board to establish a "child safety zone" for an offender. TEX. GOV'T CODE ANN. § 508.187(b)(1). The imposition of a "child safety zone" prevents an individual offender from "go[ing] in, on, or within a distance specified by the [Parole Board] of premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility." *Id.* § 508.187(b)(1)(B).

[196] *See* Dallas, *supra* note 187, at 1265. In addition to Texas, New Jersey does not have a statewide residency restriction, yet more than one hundred municipalities in the state had local restrictions until 2009. *See* HUMAN RIGHTS WATCH, *supra* note 33, at 114; NIETO & JUNG, *supra* note 106, at 21. However, these local level ordinances were challenged in *G.H. v. Twp. of Galloway* (*Galloway I*), 951 A.2d 221, 223 (N.J. Super. Ct. App. Div. 2008). The plaintiff in the case was a twenty-year-old college freshman, who "had been adjudicated delinquent for an offense committed when he

Further, in Minnesota, the Parole Commissioner is responsible for determining if the highest risk offenders will be subject to a residency restriction as a condition of release.[198] This more individualized approach, focusing on high-risk offenders, was implemented in Minnesota after the state legislature declined to pass a statewide residency restriction for all offenders.[199] Minnesota's approach has been lauded as an "evidence-based practice[]" that more holistically assesses an offender's level of dangerousness and implements conditions of release accordingly.[200]

Likewise, Oregon has taken a more sensible and individualized approach to sex offender management.[201] Oregon's statute does not implement a strict residency restriction, but rather delegates power to its Department of Corrections to promulgate rules to regulate the residences of released sex offenders.[202] The statute takes the position that the Department of Corrections "shall include in the rules . . . a general prohibition against allowing a sex offender to reside near locations where children are the primary occupants or users."[203] Pursuant to this legislative mandate, the Oregon Administrative Rules (the "Rules") reiterate this policy and prohibit certain classes of sex offenders from living near locales where children congregate.[204] What is unique about the Or-

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was fifteen years old" with a thirteen-year-old victim. *Id.* at 224. After moving into a college dormitory, he received notice requiring him to move out of the dorm within sixty days and find residency at least 2500 feet from his college campus, pursuant to a township ordinance. *See id.* The New Jersey Supreme Court held that the statewide Megan's Law preempted municipal level residency restrictions for sex offenders. G.H. v. Twp. of Galloway (*Galloway II*), 971 A.2d 401, 401 (N.J. 2009).

[197] *See* Dallas, *supra* note 187, at 1268.

[198] MINN. STAT. § 244.052(2)(e), (3)(k) (2012 & Supp. 2013); *see* NIETO & JUNG, *supra* note 106, at 17.

[199] *See* NIETO & JUNG, *supra* note 106, at 18. The legislature decided not to enact a statewide restriction after reviewing the results of a study from the Minnesota Department of Corrections. *See* Ackerman & Terry, *supra* note 126, at 411–12. The study analyzed 224 recidivists, released between 1990 and 2002, "who were reincarcerated for a sex crime prior to 2006." MINN. DEP'T OF CORR., RESIDENTIAL PROXIMITY & SEX OFFENSE RECIDIVISM IN MINNESOTA 1 (Apr. 2007), http://www.csom.org/pubs/MN%20Residence%20Restrictions_04-07SexOffenderReport-Proximity%20MN.pdf [https://perma.cc/Y6D3-NZBE]. The study sought to determine whether residency restriction legislation would have affected these cases. *See id.* The study concluded that "not one of the 224 sex offenses would likely have been deterred by a residency restrictions law." *Id.* at 2.

[200] *See* Ackerman & Terry, *supra* note 126, at 409; HUMAN RIGHTS WATCH, *supra* note 33, at 11. An additional 2007 study conducted by the Minnesota Department of Corrections found that sexual recidivism rates decreased between 1990 and 2002, suggesting that Minnesota's approach has been effective. *See* MINN. DEP'T OF CORR., SEX OFFENDER RECIDIVISM IN MINNESOTA 20 (2007); *see* Ackerman & Terry, *supra* note 126, at 413.

[201] *See* OR. REV. STAT. § 144.642 (2013); *see* Justin Boyd, Comment, *How to Stop a Predator: The Rush to Enact Mandatory Sex Offender Residency Restrictions and Why States Should Abstain*, 86 OR. L. REV. 219, 221 (2007).

[202] OR. REV. STAT. § 144.642.

[203] *Id.* §144.642(1).

[204] OR. ADMIN. R. 255-060-0009 (2012). Specifically, the rule states that "[a] sex offender classified as a sexually violent dangerous offender or a predatory sex offender may not reside near locations where children are the primary occupants or users." *Id.* Neither the rule nor the statute specify a par-

egon approach, however, is that the Rules provide a number of exceptions that a parole or probation officer may take into account when determining if an offender's residence is compliant with the statute.[205] A parole or probation officer has the authority to allow for an exception to the general rule when the interests of "public safety and the rehabilitation of the offender" can be better served.[206] The Rules state:

> In making this determination, the following factors *must* be considered:
>
> (a) Other residential placement options pose a higher risk to the community, or
> (b) An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
> (c) Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
> (d) The residence includes 24-hour case management, or
> (e) The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible. If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition *may* be allowed.[207]

This flexible rule maintains the general policy that sex offenders should not reside near locales where children congregate, yet allows for exceptions to ensure that offenders will not be forced into homelessness.[208] This more individualized approach, along with those of Minnesota and Texas, make clear that alternatives to blanket, statewide restrictions exist, and that broad restrictions have not been thoughtlessly implemented by all states.[209]

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ticular buffer zone area where sex offenders may not reside, nor do they include a list of prohibited locales. *See* OR. REV. STAT. § 144.642; OR. ADMIN. R. 255-060-0009.

[205] *See* OR. ADMIN. R. 255-060-0009(3).

[206] *See id.*

[207] *See id.* (emphasis added).

[208] *See id.*; Boyd, *supra* note 201, at 243. The legislation was written with the intention of allowing for parole officers to have broad discretion in approving residences. Boyd, *supra* note 201, at 243. As told by Darcey Baker, a former board member on the Board of Parole and Post-Prison Supervision who helped draft the state statute, the legislation was influenced by the following situation:

> [A] sex offender resided in a home near a school and church. Although the community was enraged by the placement, the sex offender would have been homeless otherwise and perhaps would have fled elsewhere to find housing. Knowing the offenders location, law enforcement officers could effectively monitor his actions.

See id.

[209] *See* SPRAGUE ET AL., *supra* note 125, at 5, 7.

Although little empirical data exists to date to demonstrate the impact of Oregon's approach, there is more than enough evidence demonstrating that strict, uniform residency restrictions impede the goals they intend to serve.[210] Oregon's approach should be lauded as a rational solution that promotes the policy of protecting children from sex offenders, balanced with the flexibility to ensure that the unintended and unnecessary consequences of residency restrictions do not inhibit offenders from successful reintegration.[211] The Oregon experience further demonstrates that the goal of promoting the safety of children does not necessitate irrational legislation based on flawed myths and assumptions.[212]

B. Encouraging Narrowly Tailored & Individualized Assessments

All sex crimes are not the same.[213] Likewise, all offenders are not the same and the circumstances surrounding their offenses vary greatly.[214] Despite these variations, what is certain is that the headline-garnering incidents of sex offenses perpetrated by strangers do not represent the majority of sex crimes against children.[215] Rather than continue to impose and enforce wide-reaching blanket restrictions, determining whether or not to impose a residency restriction on an offender as a condition of parole should be an individual assessment.[216] The totality of the circumstances surrounding the crime and various risk assessment mechanisms should be used in making this determination.[217] Most critically, this determination should be analyzed within a framework supported by empirical data.[218]

A majority of offenses are committed by an offender known to the victim.[219] More sensible sex offender policies should begin by incorporating this known, baseline premise.[220] Preventing released offenders from residing within

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[210] *See supra* notes 134–159 and accompanying text.

[211] *See* Boyd, *supra* note 201, at 245, 248.

[212] *See id.* at 241; *see also supra* notes 201–208 and accompanying text.

[213] *See* RICHARD TEWKSBURY ET AL., U.S. DEP'T OF JUSTICE, SEX OFFENDERS: RECIDIVISM AND COLLATERAL CONSEQUENCES 14–15 (Mar. 2012), https://www.ncjrs.gov/pdffiles1/nij/grants/238060.pdf [https://perma.cc/P5XC-4H7N].

[214] *See* Levenson, *supra* note 126, at 7.

[215] *See* Terry & Ackerman, *supra* note 16, at 65; Merriam, *supra* note 42, at 4; *see also supra* notes 23–26 and accompanying text.

[216] *See* Levenson, *supra* note 8, at 285; Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 ANALYSES OF SOC. ISSUES & PUB. POL'Y 1, 20 (2007) ("Factors associated with sex offense recidivism have been identified through research and have been incorporated into the development of actuarial risk assessment instruments . . . . Though they cannot predict that a specific individual will or will not reoffend, risk assessment instruments are useful for screening offenders into relative risk categories.") (citations omitted).

[217] *See* Levenson, supra note 216, at 20.

[218] *See* Nobels et al., *supra* note 42, at 506; Levenson, *supra* note 150, at 23.

[219] *See* Merriam, *supra* note 42, at 4; *see also supra* notes 121–125 and accompanying text.

[220] *See* Levenson, *supra* note 126, at 8; Merriam, *supra* note 42, at 4, 13.

a particular distance from certain locales where children congregate cannot reasonably lower the possibility of recidivism as it does not accurately address the reality of most offenses.[221] It is not impossible to imagine a scenario in which subjecting an offender to a residency restriction would be a rational condition of release.[222] Blanket restrictions, however, that fail to take into account any individualized factors should no longer be the norm in sex offender residency management.[223]

In addition, residency restrictions should be imposed on a more individualized basis in order to decrease the unintended consequence of homelessness.[224] In places such as Florida, released sex offenders have been left with minimal options for affordable and compliant housing.[225] By so severely restricting where offenders may reside, many have been forced into homelessness.[226] Given what is known about how expansive residency restrictions can be, this result is hardly surprising.[227] Forcing offenders into homelessness undermines the efficiency of sex offender legislation and risks increasing recidivism rates.[228] These results are unacceptable and at odds with the ultimate goals of sex offender legislation.[229]

C. Making an Exception for Living with Family

Included in the need for individualized assessment prior to imposing a residency restriction on a released sex offender is the need for certain exceptions and flexibility.[230] Parole officers should have leeway in allowing for an offender to live with family members.[231] Although sex offenders are far from a homogenous group, the available research consistently demonstrates that family support increases "successful reintegration."[232] For example, the 2006 Iowa County Attorneys Association report, discussed previously, concluded that

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[221] *See* Levenson, *supra* note 150, at 21; Merriam, *supra* note 42, at 13.

[222] *See* Levenson, *supra* note 8, at 285.

[223] *See id.*

[224] *See* Levenson, *supra* note 150, at 21; Merriam, *supra* note 42, at 12–13.

[225] *See* Amended Complaint, *supra* note 2, at 1; Levenson, *supra* note 150, at 22.

[226] *See* Amended Complaint, *supra* note 2, at 1, 4, 6, 7; Levenson, *supra* note 150, at 22.

[227] *See* Zandbergen & Hart, *supra* note 145, at 1 (finding that only five percent of "available parcels" in Orange County, Florida complied with Florida's 1000 foot residency restriction law); *see also supra* notes 134–150 and accompanying text.

[228] *See* Levenson, *supra* note 182; Levenson, *supra* note 8, at 284 ("[T]ransience undermines the validity of registries, making it more difficult to track the whereabouts of sex offenders and to supervise their activities.").

[229] *See* Levenson, *supra* note 8, at 285; Merriam, *supra* note 42, at 13.

[230] *See* Levenson, *supra* note 8, at 285; Merriam, *supra* note 42, at 13.

[231] *See* Levenson, *supra* note 8, at 283, 285. ("[R]esidence restrictions should not be legislated, but should be a case management decision best left to the discretion of supervision officers . . . .").

[232] *See* Levenson, *supra* note 8, at 283 ("Social stability and support increase the likelihood of successful reintegration for criminal offenders, and public policies that create obstacles to community reentry may compromise public safety.").

"[e]fforts to rehabilitate offenders and to minimize the rate of reoffending are much more successful when offenders are employed, have family and community connections, and have a stable residence."[233] Given that sex offender legislation has the ultimate aim of increasing public safety, more sensible policies should incorporate and promote this ideal.[234] The opportunity to live with a supportive family member upon release has a multitude of benefits, including decreasing financial pressures and increasing stability during the difficult transition of reintegration.[235]

There is a critical need for legislation that allows for individualized assessments to be made in order to determine if the benefits of allowing an individual offender to live with a family member outweigh the need to enforce a strict buffer zone in any particular scenario.[236] Individual determinations are necessary to encourage sensible flexibility; common sense suggests that a low-risk offender should be allowed to live with a supportive family member—even if within 2000 feet of a school— rather than be forced into homelessness.[237] As previously discussed, Oregon's model provides an example of how such legislation would work in practice and demonstrates that a compromise in legislation is feasible.[238] The Oregon legislation maintains the position that preventing sex offenders from residing near locales where children congregate is preferred, yet allows for sensible exceptions to be made in order to avoid unreasonable results.[239]

At least two of the plaintiffs in *Doe v. Miami-Dade County* could have greatly benefitted from an exception allowing them to reside with family members; all three plaintiffs would benefit from a policy that favors granting reasonable exceptions.[240] Although "John Doe #1" and "John Doe #2" both had family members who were willing to provide housing for them, the locations of the housing violated residency restrictions and, as a result, they both

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[233] *See* IOWA CNTY ATTORNEYS ASS'N, *supra* note 97, at 4. Various other studies have reiterated this finding. *See* COLO. DEP'T OF PUB. SAFETY, *supra* note 151, at 5 (finding that "[t]hose who had support in their lives had significantly lower numbers of [probation] violations than those who had negative or no support," but noting that "[e]fforts should be made to ensure that the sex offender's support in the home is *positive* in order to aid in his or her treatment" (emphasis added)); JOHN R. HEPBURN & MARIE L. GRIFFIN, U.S. DEP'T OF JUSTICE, AN ANALYSIS OF RISK FACTORS CONTRIBUTING TO THE RECIDIVISM OF SEX OFFENDERS ON PROBATION 100 (Jan. 2004), https://www.ncjrs.gov/pdffiles1/nij/grants/203905.pdf [https://perma.cc/WCD9-9PYN] ("[T]he findings indicate that social support from family and friends is important . . . persons with lower social stability and social integration are less likely to abide by the official rules and regulations imposed by probation.").

[234] *See* Levenson, *supra* note 150, at 21; IOWA CNTY ATTORNEYS ASS'N, *supra* note 97, at 4.

[235] *See* Levenson & Hern, *supra* note 136, at 62, 63, 67.

[236] *See* Levenson, *supra* note 126, at 9; Boyd, *supra* note 201, at 243, 244.

[237] *See* Levenson, *supra* note 150, at 23; Boyd, *supra* note 201, at 243, 244.

[238] *See* OR. REV. STAT. § 144.642(1) (2013).

[239] *See id.*; OR. ADMIN. R. 255-060-0009(3) (2012); Boyd, *supra* note 201, at 243–44.

[240] *See* Amended Complaint, *supra* note 2, at 3, 5, 6–7.

have struggled to find stable housing.[241] Beyond being mandated to follow overly burdensome residency restrictions, they are also required to submit to extensive supervision conditions, including electronic monitoring and a daily curfew.[242] Although "John Doe #3" did not have family to live with upon his release from jail, he was similarly subject to a daily curfew and, as of 2014, was unable to find affordable, compliant housing.[243] Unable to afford rent payments at a compliant apartment close to his place of employment, "John Doe #3" was forced to sleep in his vehicle.[244]

A model based upon the Oregon legislation would have allowed for a probation officer to approve the residences of "John Doe #1" and "John Doe #2" with family members under a number of exceptions listed in the Oregon Administrative Rules.[245] Further, the Oregon model would give a probation officer the discretion to make an exception for "John Doe #3," rather than leave him with no viable housing options.[246] With stable and affordable housing, it is likely that these individuals would have a more realistic chance of successfully reintegrating into society, without the added burden of homelessness.[247]

D. Increasing Certainty and Ability to Comply

Where any residency restriction continues to be imposed on released sex offenders, a reliable database of up-to-date information about exactly what locations are prohibited is necessary.[248] Released sex offenders face immense challenges in their efforts to reintegrate.[249] As evidenced by the plaintiffs in

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[241] *See id.* at 3–5.

[242] *See id.* at 4, 6.

[243] *See id.* at 6–7.

[244] *See id.* at 6.

[245] *See* OR. ADMIN. R. 255-060-0009(3) (2012); Amended Complaint, *supra* note 2, at 3–6.

[246] *See* OR. ADMIN. R. 255-060-0009(3)(a), (c), (e); Amended Complaint, *supra* note 2, at 6–7 (noting that "John Doe #3" was employed, but could not find affordable housing that was also compliant with the Book Ordinance residency restriction); Boyd, *supra* note 201, at 243–44.

[247] *See* Amended Complaint, *supra* note 2, at 19–20; Zandbergen et al., *supra* note 17, at 499 ("Residence restriction zones create barriers to reentry and inhibit the factors known to contribute to successful reintegration, such as employment, housing stability, prosocial relationships, and civic engagement.").

[248] *See* Amended Complaint, *supra* note 2, at 11, 15; Michael J. Duster, Note, *Out of Sight, Out of Mind: State Attempts to Banish Sex Offenders*, 53 DRAKE L. REV. 711, 765–66 (2005) (focusing on the Iowa experience and noting that "there are very few maps available indicating what areas of the state are unavailable for sex offenders to reside" and "[e]ven maps that are available . . . 'are only meant to provide general guidance'" (quoting Doe v. Miller, 298 F. Supp. 2d at 850 (quoting Carroll County Attorney John Werden))). As noted *supra* note 76, Miami-Dade County provides an online mapping resource that identifies the location of "schools," as designated under the Book Ordinance, to assist offenders in establishing compliant housing. *See supra* note 76. A number of disclaimers, however, make it clear that the county assumes no responsibility for "the accuracy or timeliness" of the data. *See* MIAMI-DADE COUNTY, *Sexual Offenders/Predators Residence Search*, http://gisweb.miamidade.gov/seopbuffer [http://perma.cc/7TDW-X3Y8].

[249] *See supra* notes 134–165 and accompanying text.

Doe v. Miami-Dade County, many offenders want to be compliant with the necessary terms.[250] Compliance is hindered when interpretations regarding what constitutes prohibited locales are amorphous or data are unavailable.[251] States and municipalities should provide a database, updated at regular intervals, that includes all locations deemed off-limits for offenders subject to residency restrictions, and offenders should be permitted to rely on these determinations when seeking to establish their residences.[252]

This combination of conditions allows for residency restrictions to be enforced in a more sensible manner, without placing an unreasonable burden on offenders.[253] Further, these conditions lend more credibility to sex offender legislation by more practically sharing the liability between the state or local governing body and the offender.[254] It is counterintuitive to continue to defend such policies on the basis of public safety, yet not provide the tools necessary for compliance.[255]

CONCLUSION

Sex offender legislation has been swiftly implemented in response to high-profile sex crimes against children, rather than as a result of careful research and of the weighing of policy considerations. The reality is that most sex offenders do not victimize strangers and most sex offenders do not reoffend. Despite these facts, residency restrictions have been passed and enforced on state and local levels. Residency restrictions vary, but most prohibit sex offenders from residing within 500 to 2500 feet of schools and other places where children often congregate. Their expansive reach leaves sex offenders with extremely bleak housing options.

Despite various legal challenges, residency restrictions persist. Rather than contributing to an increase in public safety, such policies have hindered sex offenders' ability to reintegrate into society and have left many homeless. It is time for such policies to more sensibly reflect the empirical data. Residency restrictions cannot reasonably be expected to decrease incidents of child sexual assault because they do not reflect what is known about such offenses. Although complete abandonment of residency restrictions might not be realistic at this time, certain reforms should be incorporated into state and local legislation. Residency restrictions should be imposed on only high-risk offenders, rather than as a blanket condition imposed on all offenders equally. Certain individual determinations should be permitted in order to increase an offend-

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[250] *See* Amended Complaint, *supra* note 2, at 4, 6, 7, 16.
[251] *See id.* at 11, 21; *see also supra* note 76 and accompanying text.
[252] *See* Amended Complaint, *supra* note 2, at 15–16; Duster, *supra* note 248, at 765–66.
[253] *See* Duster, *supra* note 248, at 765–66.
[254] *See id.*
[255] *See id.*

er's chance of successful reintegration, including an exception to allow offenders to live with supportive family members. Finally, where residency restrictions continue to be enforced, up-to-date information must be made available to offenders that allows them to locate compliant housing, and they must be able to rely on this data without fear of changing or ambiguous interpretations.

Residency restrictions are not accomplishing the goals they were intended to serve. Furthermore, they create extreme hardships for those subject to their terms and may ultimately work against their intended goals by producing an abundance of unintended consequences. Reform is necessary to better serve the fundamental purpose of sex offender legislation—public safety—and to ensure offenders are given a realistic opportunity to successfully reenter society.