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Safe from Sex Offenders? Legislating Internet Publication of Sex Offender Registries

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I. Introduction

HIGH PROFILE CASES OF CHILD ABDUCTION, molestation, and murder have recently pointed the nation's attention to the problem of sex offenders. Seventeen of these cases were offered as the purpose behind the passage of the federal Adam Walsh Child Protection and Safety Act of 2006.¹ The Act expanded on previous federal legislation calling for the registration and community notification of sex offenders.²

In accordance with laws in effect in all fifty states and the District of Columbia, sex offenders are required to register with local law enforcement upon their release from incarceration and when they move to a new residence. Members of communities in which sex offenders relocate might receive a phone call from police or read a notice in their local newspaper that a sex offender has moved into their neighborhood. In every state, photos, names, addresses, and other identifying information are posted on the Internet.³

Megan Kanka was the namesake for the registration and community notification laws, commonly referred to as Megan's Laws. She was seven years old when she was raped and murdered by a sex offender who lived across the street from her New Jersey home.⁴ Megan's parents were unaware that their neighbor had twice been convicted of sex crimes against children, and after her death they successfully lobbied

*The authors wish to thank the Marion Brechner Citizen Access Project (www.citizenaccess.org) for state access law summaries that served as the foundation of this research.

1. Pub. L. No. 109-248, 120 Stat. 587 (2006).

2. *Id.*

3. This information was obtained by visiting the Internet site of each state that has a sex offender registry page available.

4. Parents for Megan's Law, Inc., Commonly Asked Questions, <http://www.parentsformeganslaw.com/html/questions.lasso> (last visited Dec. 20, 2006).

the federal government to make sex offender information available to the public.⁵

Following the passage of Megan's Law, states have employed a variety of methods to ensure that the public is aware of potentially dangerous sex offenders in the community. Early notification methods include billboards, red stop signs in front of offenders' residences, self-disclosure by offenders, and CD-ROMs available at county sheriff's offices.⁶ Community notification methods have been categorized by researchers and legislators as either "active" or "passive." Examples of active community notification methods include sending law enforcement officers door-to-door or calling to notify residents that a sex offender has moved into their neighborhood.⁷ Passive community notification methods refer to those where the government makes information available to citizens who wish to seek it out.⁸ One common passive method of disseminating information about the approximately 386,000 U.S. sex offenders⁹ to the public is the Internet. Every state has a searchable website that allows computer users to look up offenders by name, zip code, county, and other factors.

In July 2005, the U.S. Department of Justice implemented the National Sex Offender Public Registry, which links the registries of individual states.¹⁰ A year later, the Adam Walsh Bill created the Dru Sjojin National Sex Offender Public Website, which required the Department of Justice to maintain a comprehensive national sex offender registry.¹¹

The purpose of this article is to examine the statutory provisions of every state and the District of Columbia regarding the use of the Internet as a tool in administering Megan's Law. The analysis begins by examining sex offender registration and notification laws at the

5. *Id.*

6. KAREN J. TERRY & JOHN S. FURLONG, *SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION: A "MEGAN'S LAW" SOURCEBOOK A2* (2d ed. 2004).

7. Center for Sex Offender Management, *An Overview of Sex Offender Community Notification Practices: Policy Implications and Promising Approaches* (Nov. 1997), available at <http://www.csom.org>. The Center for Sex Offender Management is a national project sponsored by the U.S. Department of Justice, Office of Justice Programs, National Institute of Corrections, State Justice Institute, and the American Probation and Parole Association. *Id.* The purpose of the center is to support state and local jurisdictions in managing registered sex offenders. *Id.*

8. *Id.*

9. Devon B. Adams, *Summary of State Sex Offender Registries, 2001*, Bureau of Justice Statistics Fact Sheet, NCJ-192265 (Mar. 2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sssor01.pdf>.

10. Press Release, Department of Justice, Department of Justice Activates National Sex Offender Public Registry Website (July 20, 2005), available at <http://www.ojp.usdoj.gov/pressreleases/BJA05028.htm>. The site address is www.nsopr.gov.

11. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

federal level and discussing major federal legislation and United States Supreme Court cases that impact how states draft their Megan's Laws. Next, the portions of each state's Megan's Law that mentions the Internet as a notification tool, if any, are categorized. This article concludes that though state legislatures have embraced the Internet as a notification model, the model itself will not be effective unless the registry information disseminated is accurate and up-to-date. States can help ensure the effectiveness of online registries by including provisions in their statutes for the accuracy, timeliness, and publicity of the sites.

II. Federal Legislation

One of the federal government's first steps in asserting its interest in protecting the public from sex offenders, whose rates of recidivism are significantly higher than other criminals,¹² took place the same year of Megan Kanka's death. In 1994, Congress passed the Jacob Wetterling Act.¹³ That statute¹⁴ directed states to require individuals convicted of sexual crimes against children or sexually violent crimes to register with the government after their release from prison or placement on parole or probation.¹⁵ Examples of crimes for which those convicted would be required to register include sexual battery, kidnapping of a child, production or distribution of child pornography, and sexual conduct with a minor.¹⁶ States were given two years to comply with the Act or face a ten percent cut in federal funding for state law enforcement.¹⁷ All fifty states and the District of Columbia had complied by 1996.¹⁸

12. *McKune v. Lile*, 536 U.S. 24, 32–33 (2002) (noting that when convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault); Center for Sex Offender Management, *Recidivism of Sex Offenders* (May 2001), available at <http://www.csom.org/pubs/recidsexof.html> (synthesizing current research on the reoffense rate of sex offenders).

13. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (Title XVII of Violent Crime Control and Law Enforcement Act of 1994), 42 U.S.C. § 14071 (2004).

14. Jacob Wetterling was an eleven-year-old Minnesota boy who was abducted by an armed, masked man in 1989, while Jacob was riding his bicycle home from a store. The abduction apparently garnered a significant amount of publicity nationwide, and a Minnesota senator sponsored the legislation that became known as the Jacob Wetterling Act. Jacob's whereabouts are still unknown. See also Keith S. Hampton, *Children in the War on Crime: Texas Sex Offender Mania and the Outcasts of Reform*, 42 S. TEX. L. REV. 781 (2001) (reviewing sex offender laws in the historical context of high-profile child abductions and murders).

15. 42 U.S.C. § 14071.

16. *Id.*

17. *Id.* § 14071(g)(2)(A).

18. *Smith v. Doe*, 538 U.S. 84, 90 (2003).

Two years after the Jacob Wetterling Act was signed into law, the federal Megan's Law made two changes to the Jacob Wetterling Act.¹⁹ First, it eliminated the requirement for registry data to be treated as private information.²⁰ Second, it required state and local law enforcement agencies to release relevant sex offender registry information deemed necessary to protect the public.²¹ According to the final guidelines for the federal Megan's Law, the mandatory disclosure requirement applies to offenders required to register for offenses against minors and those convicted of sexually violent offenses.²² The Megan's Law legislation did not specify what methods states should use when releasing sex offender registry information to the public.²³ A related piece of federal legislation passed in 1996, the Pam Lychner Sexual Offender Tracking and Identification Act, directed the FBI to compile a national database of registered sex offenders.²⁴ It also gave the FBI discretion to release relevant information from the registry to the public.²⁵

While Megan's Law and the Pam Lychner Act did not specify the means to release registry information to the public, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 did.²⁶ The PROTECT Act amended the Jacob Wetterling Act to require the maintenance of an Internet site as a method of releasing sex offender information to the public.²⁷ States were given an April 30, 2006, deadline to comply with the Internet requirement, subject to a potential two-year extension at the discretion of the U.S. Attorney General.²⁸ The PROTECT Act contained many provisions to strengthen law enforcement agencies' powers in preventing, investigating, prosecuting, and punishing sex crimes against children.²⁹ It also established a national Amber Alert program to help recover abducted children.³⁰

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act.³¹ The law established guidelines for state registries, mandated a

19. Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 62 Fed. Reg. 39,009, 39,009 (July 21, 1997).

20. *Id.*

21. *Id.*

22. *Id.* at 39,011.

23. Megan's Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (1996).

24. Pam Lychner Act, Pub. L. No. 104-236, § 2, 110 Stat. 3093 (1996).

25. *Id.*

26. The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, Pub. L. No. 108-21, 117 Stat. 650 (2003).

27. *Id.* § 604.

28. *Id.*

29. *Id.*

30. *Id.*

31. Pub. L. No. 109-248, 120 Stat. 587 (2006).

nationwide sex offender registry, and required tougher penalties on sex offenders.³² It included specific requirements for state sex offender registry websites, such as links to educational resources, instructions on how to correct erroneous information on the site, and warnings of the potential civil and criminal penalties for unlawfully using registry information.³³ To assist states in complying with the law within three years of its passage, the Act also required the U.S. Attorney General to collaborate with the states in order to develop registry website software that will also facilitate the quick transfer of registry information between jurisdictions.³⁴ States could face a reduction in federal funds if they fail to comply with the Act.³⁵

III. United States Supreme Court Interpretations of Megan's Laws

The major legal challenges³⁶ levied against Megan's Law have been alleged violations of the Constitution's Ex Post Facto Clause,³⁷ which

32. Press Release, The White House, President Signs H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006 (July 27, 2006), available at 2006 WL 2076691 (Adam Walsh disappeared from a Florida department store on July 27, 1981. He was later found murdered).

33. 42 U.S.C.A. § 16918 (2006). The law also required state registries to be searchable by either zip code or a geographic radius determined by the computer user. *Id.* The U.S. Attorney General has discretion to develop mandatory and optional exemptions from public registries, in addition to the ones outlined in the law. *Id.* Mandatory exemptions outlined in the law are victim identities, Social Security numbers, and references to arrests without convictions. *Id.*

34. 42 U.S.C.A. § 16923 (2006).

35. 42 U.S.C.A. § 16925 (2006).

36. *E.g.*, Smith v. Doe, 538 U.S. 84 (2003); Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1 (2003); see also Andrea L. Fischer, Note, *Florida's Community Notification of Sex Offenders on the Internet: The Disregard of Constitutional Protections for Sex Offenders*, 45 CLEV. ST. L. REV. 505 (1997) (analyzing the constitutionality of Florida Internet notification); James Graziano, *Creating New Victims: Megan's Law, the Third Circuit and Punishment*, 22 RUTGERS L. REC. 10 (1997) (examining the analysis of Megan's Law by the United States Court of Appeals for the Third Circuit); Keith S. Hampton, *Children in the War on Crime: Texas Sex Offender Mania and the Outcasts of Reform*, 42 S. TEX. L. REV. 781 (2001) (reviewing sex offender laws in the historical context of high-profile child abductions and murders); Note, *Making Outcasts Out of Outlaws: The Unconstitutionality of Sex Offender Registration and Criminal Alien Detention*, 117 HARV. L. REV. 2731 (2004) (exploring sex offender registration and criminal alien detention in terms of constitutional violations); William F. Shimko, Case Note, *Smith v. Doe*, 4 WYO. L. REV. 477 (2004) (criticizing the United States Supreme Court decision based on the reported flaws of the Mendoza-Martinez test); Daniel J. Solove, *The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure*, 53 DUKE L.J. 967 (2003) (analyzing the shortcomings and privacy implications of using the Internet to disseminate sex offender information); *The Supreme Court, 2002 Term—Leading Cases*, 117 HARV. L. REV. 327 (2003) (arguing that Internet registries are punitive in nature and not necessarily effective); Daniel L. Feldman, *The "Scarlet Letter Laws" of the 1990s: A Response to Critics*, 60 ALB. L. REV. 1081 (1997) (presenting the popular arguments against Megan's Laws and his defenses to them).

37. U.S. CONST. art. I, §§ 9, cl. 3, 10.

prohibits retroactive criminal punishments, and alleged violations of the Constitution's Due Process Clause, which guarantees the rights to life, liberty, and property.³⁸ The United States Supreme Court struck down the ex post facto and due process claims against Megan's Law in two cases initiated by registered sex offenders, each decided on March 5, 2003.³⁹

In the first of these cases, *Smith v. Doe*, two men convicted of sexually abusing minors challenged Alaska's version of Megan's Law,⁴⁰ the Alaska Sex Offender Registration Act.⁴¹ The men claimed that the law violated the Ex Post Facto Clause of the Constitution because it was a punishment not enacted until four years after their release from prison.⁴² However, the *Smith* Court held that the registration and notification requirements were not punitive, and therefore not a violation of the Ex Post Facto Clause.⁴³

In the majority opinion, Justice Anthony Kennedy used the test enunciated in 1963 in *Kennedy v. Mendoza-Martinez*, a case that did not involve sex offenders that held that federal statutes that divested individuals of their citizenship were unconstitutional because they were punitive and did not allow respondents to exercise their rights to due process.⁴⁴ The Court analyzed the Alaska Sex Offender Registration Act in light of five of the seven factors outlined in *Mendoza-Martinez*. The test that the Court used in the Alaska case looked to whether the regulation (1) has been regarded traditionally and historically as a punishment; (2) imposed an affirmative disability or restraint; (3) promoted the traditional aims of punishment; (4) had a rational connection to a nonpunitive purpose; or (5) was more excessive than necessary to meet the nonpunitive purpose.⁴⁵

The Court held, in *Smith*, that in regards to the first factor, that the American judicial system does not treat the dissemination of truthful information as punishment.⁴⁶ Second, the Court held that Alaska's Megan's Law did not impose an affirmative disability or restraint because it did not restrict where or when offenders could relocate.⁴⁷

38. U.S. CONST. amend. XIV, § 1.

39. *Smith v. Doe*, 538 United States 84 (2003); *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003).

40. 538 U.S. at 91. John Doe I and John Doe II were convicted of sexual abuse of a minor. Both were released from prison in 1990 and completed rehabilitative programs for sex offenders.

41. 1994 Alaska Sess. Laws 41.

42. *Smith v. Doe*, 538 U.S. at 89.

43. *Id.* at 96.

44. *Id.* at 97; see *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).

45. *Id.* at 97.

46. 538 U.S. at 98.

47. *Id.* at 101.

It also reasoned that the Act was not a disability to offenders seeking new employment or residency, since registry information would already be in the public domain.⁴⁸ Third, although the state of Alaska conceded that the law could “promote the traditional aims of punishment” by deterring future wrongdoing, the Court said that government programs can serve as a deterrent without being punitive.⁴⁹ Fourth, the Court said the Alaska statute was rationally connected to a nonpunitive purpose—the advancement of public safety.⁵⁰ Finally, the Court determined that Alaska’s Megan’s Law was not more than what was needed to protect the public.⁵¹ The Court reasoned that the state was within its rights to be concerned about the high risk of recidivism among sex offenders as a whole, rather than determine risk on an individual basis.⁵² Further, the Court rejected the argument that the wide dissemination of the information via the Internet was excessive.⁵³ It pointed out that it was a passive method of notification, requiring individuals to seek out the information; and that in light of how mobile our society is, the Alaska Sex Offender Registry could still be of use in other jurisdictions.⁵⁴

The Court endorsed the Internet as a means of carrying out Alaska’s Megan’s Law, stating that “[t]he Internet makes the document search more efficient, cost effective, and convenient for Alaska’s citizenry.”⁵⁵ The Court deemed Alaska’s Megan’s Law a regulatory measure and reversed and remanded the case to the United States Court of Appeals for the Ninth Circuit for consideration of potential due process right violations.⁵⁶ The Ninth Circuit subsequently held that the Act did not violate the men’s due process rights.⁵⁷

48. *Id.*

49. *Smith*, 538 U.S. at 102.

50. *Id.* at 103.

51. *Id.*

52. *Id.* at 104.

53. *Smith*, 538 U.S. at 105.

54. *Id.*

55. *Id.* Justice Kennedy wrote:

The fact that Alaska posts the information on the Internet does not alter our conclusion. It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.

Id. at 99.

56. *Id.* at 106.

57. *Doe v. Tandeske*, 361 F.3d 594 (2004).

The other United States Supreme Court case decided on March 5, 2003, *Connecticut Department of Public Safety v. Doe*, was also brought forth by a convicted sex offender. A Connecticut man claimed that his state's Megan's Law violated his due process rights because he was not afforded a hearing to determine whether he posed a threat to the public before his personal information was released.⁵⁸ He also contended that the law deprived him of a liberty interest because it implied that he was currently dangerous and imposed "extensive and onerous" obligations on him to comply with registration requirements.⁵⁹

In the opinion, the Court distinguished between the two types of due process implied in the Fourteenth Amendment of the United States Constitution—procedural due process and substantive due process.⁶⁰ Procedural due process generally refers to the process by which the government deprives a person of "life, liberty or property." For example, a criminal defendant is guaranteed a trial under due process of law.⁶¹ The concept of substantive due process prohibits the government from infringing upon citizens' "liberty interests," regardless of the process, unless the law is narrowly tailored.⁶² Doe only sought relief under the procedural component of the Fourteenth Amendment, arguing he was entitled to a hearing before his information was released.⁶³

The Court in *Connecticut Department of Public Safety v. Doe* denied Doe's claim for a hearing to determine if he was a danger to society. In the majority opinion, Chief Justice William Rehnquist reasoned that Doe was required to register as a sex offender based on his conviction of a sex offense, not according to his level of danger to society.⁶⁴ Thus, since the level of danger was not relevant to the state's placement of Doe on the registry, any hearing to determine such a factor would be irrelevant and not a violation of his rights to procedural due process. The Court pointed out that a disclaimer on the website warned users that the Department of Public Safety had made no determination in regards to the dangerousness of anyone listed in the registry.⁶⁵

58. Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1 (2003).

59. *Id.* at 6.

60. *Id.* at 7–8.

61. Reno v. Flores, 507 U.S. 292 (1993).

62. "[T]he Fifth and Fourteenth Amendments' guarantee of 'due process of law' to include a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* at 301–02.

63. Conn. Dep't of Pub. Safety v. Doe, 538 U.S. at 8.

64. *Id.* at 4.

65. *Id.* at 8.

As in *Smith v. Doe*, the use of the Internet played a major role in propelling the constitutional challenge in *Connecticut Department of Public Safety v. Doe* to the Supreme Court. Prior to the Court's hearing of the case, the United States Court of Appeals for the Second Circuit had affirmed a district court's decision to place a permanent injunction on the Connecticut Department of Public Safety's sex offender registry website.⁶⁶ The United States Supreme Court overturned the injunction.

Although *ex post facto* and due process are the only challenges to reach the Supreme Court, scholars and lawyers have argued that Megan's Law is constitutionally suspect for other reasons.⁶⁷ Authors have charged that the law constitutes a denial of equal protection under the law,⁶⁸ an invasion of privacy, double jeopardy,⁶⁹ cruel and unusual punishment,⁷⁰ and bills of attainder.⁷¹

In the absence of a federal appellate court opinion declaring the distribution of sex offender information on the Internet unconstitutional, all states, as of publication, allow computer users access to individual profiles of sex offenders.⁷² In contrast, in 1998, only six states had online, searchable sex

66. *Id.* at 4–5.

67. See generally Maureen S. Hobbell, *Balancing the Protection of Children Against the Protection of Constitutional Rights: The Past, Present and Future of Megan's Law*, 42 DUQ. L. REV. 331 (2004) (providing a general overview of the judicial challenges to Megan's Law); Caroline Louise Lewis, *The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act: An Unconstitutional Deprivation of the Right to Privacy and Substantive Due Process*, 31 HARV. C.R.-C.L. L. REV. 89 (1996) (considering the constitutional infringements upon sex offenders imposed by the Jacob Wetterling Act and Megan's Law).

68. No state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

69. "The Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, provides that no person shall 'be subject for the same offense to be twice put in jeopardy of life or limb.'" *Brown v. Ohio*, 432 U.S. 161, 164 (1977). "The underlying idea [of the Double Jeopardy Clause], one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity." *Green v. United States*, 355 U.S. 184, 187 (1957).

70. "The Eighth Amendment [which prohibits cruel and unusual punishment] stands as a shield against those practices and punishments which are either inherently cruel or which so offend the moral consensus of this society as to be deemed 'cruel and unusual.'" *South Carolina v. Gathers*, 490 U.S. 805, 821 (1989). The Eighth Amendment of the U.S. Constitution prohibits punishment that is disproportionate to the crime. BLACK'S LAW DICTIONARY 1247 (7th ed. 1999).

71. "A bill of attainder is a legislative act which inflicts punishment without a judicial trial." *Cummings v. Missouri*, 71 U.S. 277, 323 (1867).

72. See *supra* note 3.

offender registries.⁷³ The state agencies charged with maintaining these websites vary from state to state, but generally the state police, departments of public safety, departments of corrections, or other law enforcement agencies are responsible for the registries.⁷⁴ The sites are generally searchable by criteria such as county, city, zip code, or name, and produce profiles of registered sex offenders that often include such things as the offender's photo, address, and the nature of the conviction. Not all of these websites, however, are a result of specific statutory requirements.

IV. State Laws Regarding Internet Notification

While case law and literature focus on constitutional issues involved in providing public information about sex offenders on the Internet, no one has provided a statutory analysis of how all fifty states treat the Internet as a tool for disclosing sex offender information to the public.

The statutory provisions for Internet use and Megan's Law across the nation can be organized into three major categories: (1) statutes that require Internet dissemination, (2) statutes that permit Internet dissemination, and (3) statutes that do not mention the Internet. For those statutes that do address Internet dissemination, the statutory language often specifies six types of data to be disseminated. This data includes (1) the types of offenders listed on the website and five types of "technical information," including (2) registry information updates, (3) website security, (4) user registration requirements, (5) disclaimer requirements, and (6) provisions for publicizing the website.

A. *Mandatory or Discretionary Disclosure*

One important criterion of the sex offender registry statutes is whether information disclosure is required, discretionary, or not mentioned in statutes. Thirty-three states⁷⁵ and the District of Columbia have mandatory statutory language. Of these, two states—Missouri and

73. Devon B. Adams, Summary of State Sex Offender Registries, 2001, Bureau of Justice Statistics Fact Sheet, NCJ-192265 (Mar. 2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssor01.pdf>.

74. *Id.*

75. The states that require the use of the Internet to disclose registry information are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. See ALASKA STAT. § 18.65.087 (2006); ARIZ. REV. STAT. ANN. § 13-3827 (2006); ARK. CODE ANN. § 12-12-909, 913 (2006); CAL. PEN. CODE § 290.46 (2006); COLO. REV. STAT. § 16-22-111 (2006); CONN. GEN. STAT. § 54-258(a)(1) (2006); DEL. CODE ANN. tit. 11, § 4336; DEL. CODE ANN. tit. 11, § 4121 (2006); FLA. STAT. ANN. § 775.21(7)(c) (2006); HAW. REV. STAT. § 846E-3 (2006); 730 ILL. COMP.

Washington—condition their Internet requirement on the availability of funds as opposed to a direct mandate.⁷⁶

Thirteen states have statutory language that merely permits the Internet as tool for releasing information.⁷⁷ While most of these states use words such as “web” or “Internet” to indicate online dissemination, two states—Michigan and South Carolina—use language less direct, permitting the dissemination via “computerized” means.⁷⁸

Finally, two states do not mention the Internet as a vehicle to disseminate sex offender registration information—Louisiana and Nebraska. Despite the omission of a specific statutory mandate, these states still employ the Internet as a tool for releasing sex offender information.

B. *Offenders Subject to Disclosure*

Not all registered sex offenders have to be posted on every state web page. Twenty-five states and the District of Columbia restrict the Internet publication of sex offender information to specific types of offenders.⁷⁹ Several states have established “tier” systems to determine whether information about an individual sex offender will be released: the more likely a sex offender is to commit a sex crime again, the more likely

STAT. 152/115 (2006); IND. CODE ANN. § 36-2-13-5.5 (2006); KY. REV. STAT. ANN. § 17.580 (2006); ME. REV. STAT. ANN. tit. 34-A, § 11221 (2005); MASS. GEN. LAWS ch. 6, § 178D (2006); MINN. STAT. § 244.052 (2006); MO. REV. STAT. § 43.650 (2006); N.J. STAT. ANN. § 2C:7-13 (2006); N.M. STAT. ANN. § 29-11A-5.1 (2006); N.Y. CORRECT. LAW § 168-q (2006); N.C. GEN. STAT. § 14-208.15 (2006); OHIO REV. CODE ANN. § 2950.13 (2006); 42 PA. CONS. STAT. § 9798.1 (2006); R.I. GEN. LAWS § 11-37.1-12 (2006); S.D. CODIFIED LAWS § 22-24B-21 (2006); TENN. CODE ANN. § 40-39-206 (2006); TEX. CRIM. PROC. CODE ANN. 62.005 (2006); UTAH CODE ANN. § 77-27-21.5 (2006); VT. STAT. ANN. tit. 13, § 5411A (2006); VA. CODE ANN. § 9.1-913 (2006); WASH. REV. CODE § 4.24.550 (2006); W. VA. CODE § 15-12-2 (2006); WIS. STAT. § 301.46(5n) (2006); WYO. STAT. ANN. § 7-19-303 (2006).

76. IOWA CODE § 692A.13 (2005), MO. REV. STAT. § 43.650 (2006), WASH. REV. CODE § 4.24.550 (2006).

77. The states that statutorily permit the use of the Internet to disclose registry information are: Alabama, Georgia, Idaho, Kansas, Maryland, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Pennsylvania, and South Carolina. *See* ALA. CODE § 15-20-25 (2006); GA. CODE ANN. § 42-1-12 (2006); IDAHO CODE ANN. § 18-8323 (2006); IOWA CODE § 692A.13 (2005); KAN. STAT. ANN. § 22-4909 (2006); MD. CODE ANN., CRIM. PROC. § 11-717 (2006); MICH. STAT. ANN. § 28.728 (2006); MISS. CODE ANN. § 45-33-49 (2006); MONT. CODE ANN. § 46-23-508 (2005); NEV. REV. STAT. § 179B.250 (2006); N.H. REV. STAT. ANN. § 651-B:7 (2006); N.D. CENT. CODE § 12.1-32-15(13) (2006); OKLA. STAT. tit. 57 § 584 (E) (2005); OR. REV. STAT. § 181.592 (2006); S.C. CODE ANN. § 23-3-490 (2005).

78. MICH. STAT. ANN. § 28.728 (2006); S.C. CODE ANN. § 23-3-490 (2005).

79. The states with statutes that distinguish which sex offenders' registry information must be posted online are: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, Rhode Island, Texas, Vermont, Virginia, Washington, and Wyoming.

it is that he or she will be subject to community notification laws.⁸⁰ Massachusetts, for example, has decided that “level one” offenders are those with a low risk of re-offense, “level two” offenders are those with a moderate risk of re-offense, and “level three” offenders are at a high risk of re-offense.⁸¹ In Massachusetts, only “level three” offenders appear on the state’s website.⁸² Eight states employ Massachusetts’ approach of only releasing information about “level three,” or “high-risk” offenders.⁸³

In comparison to the states that only publicize the highest risk offenders are the fourteen states and the District of Columbia that publicize information about more than one “tier” or a portion of a tier or tiers.⁸⁴ Nevada, for example, allows for the release of information about all offenders except for those in “Tier 1” (offenders with a low risk of recidivism) or those “Tier 2” offenders (moderate risk of recidivism) who have been released from prison for ten years or more.⁸⁵ In Iowa, offenders under twenty years of age convicted of what is commonly known as “statutory rape” are excused from Internet disclosure.⁸⁶

Other states do not limit Internet notification through distinguishing the offenders by tiers. In twenty-one states, Megan’s Law statutes indicate that all sex offenders could be subject to having their personal information made available to the public via the Internet.⁸⁷

V. Technical Aspects

A. *Updating Information*

The frequency of updating information in sex offender registry databases is a concern that thirteen states address in their Megan’s Law

80. In 2006, the Adam Walsh Child Protection and Safety Act codified federal definitions of tiers into three levels. 42 U.S.C.A. § 16911 (2006).

81. MASS. GEN. LAWS ch. 6, § 178K (2004).

82. MASS. GEN. LAWS ch. 6, § 178D (2006).

83. The states that limit Internet dissemination to those registrants convicted of the most serious crimes are: Minnesota, Nebraska, New York, North Dakota, Rhode Island, Texas, Vermont, and Wyoming.

84. The states with statutes that call for some or most sex offender registry information to be released via the Internet are: Arizona, Arkansas, California, Colorado, Delaware, Florida, Iowa, Michigan, Nevada, New Hampshire, New Jersey, Oregon, Virginia, and Washington.

85. NEV. REV. STAT. § 179B.250 (2006).

86. IOWA CODE § 692A.13 (2005).

87. The states that do not distinguish among sex offenders for the purposes of Internet dissemination are: Alabama, Connecticut, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, West Virginia, and Wisconsin.

statutes.⁸⁸ More than half of these states⁸⁹ specify a time period by which the databases must be updated, such as every business day,⁹⁰ monthly,⁹¹ or annually.⁹² The remaining states are more vague in their statutes, requiring registry information to be updated as the administering agency “deems necessary,”⁹³ “as appropriate,”⁹⁴ “in a timely manner,”⁹⁵ or on an “ongoing basis.”⁹⁶

B. Data Security

While the currency of the information contained in computerized sex offender registry databases is a concern of several states, the security of that data only has been addressed statutorily by Massachusetts, Nevada, Virginia, and Wisconsin.⁹⁷ The statutes generally use the word “secure” to describe the website requirement, and do not detail what specific measures must be undertaken to ensure that security. Generally speaking, the major security concerns of website operators are to prevent unauthorized access to site information and to prevent outside computer users from gaining access to other computers the site may be connected to.⁹⁸ Website operators may choose to install protective software and hardware to minimize the risk of their sites being compromised.⁹⁹

88. The states that have statutes requiring periodic updates of online sex offender registry databases are: Arizona, California, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Texas, and Virginia.

89. The states that require information updates within a certain time period are: Arizona, Indiana, Delaware, Kentucky, New York, and Virginia.

90. Virginia requires information to be updated “each business day,” VA. CODE ANN. § 9.1-913 (2006); Kentucky statute dictates registry information to be updated every day but Saturday, Sunday, and state holidays, KY. REV. STAT. ANN. § 17.580 (2006).

91. New York requires monthly updates of “Tier 3” online information. N.Y. CORRECT. LAW § 168-q (2006).

92. Arizona and Texas each have statutes that require annual updates to the registry information. ARIZ. REV. STAT. ANN. § 13-3827 (2006), TEX. CRIM. PROC. CODE ANN. § 62.005 (2006).

93. 730 ILL. COMP. STAT. 152/115 (2006).

94. 42 PA. CONS. STAT. § 9798.1 (2006).

95. MINN. STAT. § 244.052 (2006).

96. CAL. PENAL CODE § 290.46 (2006). California’s law mandating a website for sex offender registration contains two unique provisions that are worth noting. First, the law directs the California Department of Justice to translate the web page into “languages other than English” at the department’s discretion. Second, the new law makes it a crime for registered sex offenders in California to enter the website, punishable by up to six months in jail and a \$1,000 fine.

97. MASS. GEN. LAWS ch. 6, § 178K (2006); NEV. REV. STAT. § 179B.250 (2006); VA. CODE ANN. § 9.1-913 (2006); WIS. STAT. § 301.46(5n) (2006).

98. KEVIN J. CONNOLLY, LAW OF INTERNET SECURITY AND PRIVACY 45 (2004).

99. *Id.*

C. Registration of Information Seekers

In one state, computer users who wish to access sex offender registry information may have to identify themselves. Illinois has a statutory provision in its Megan's Law that allows for website administrators to require computer users to register before accessing information.¹⁰⁰ Illinois allows for the gathering of "biographical information" from users before the users can access information.¹⁰¹ The information gathered can be used to limit access to sex offender information to those offenders who live within a specific distance from the information seeker's address.¹⁰²

D. Website Disclaimers

Some online registries display a warning that an offender's presence in the database is no indication of his or her risk of re-offense, or that it is a crime to use registry information to harass registrants. The United States Supreme Court cases discussed earlier, *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe*, each contained references to warnings that appeared on the sex offender websites in Alaska¹⁰³ and Connecticut.¹⁰⁴ The Alaska site warned users of the criminal penalties for using the site's information to commit a crime.¹⁰⁵ In *Connecticut Department of Public Safety v. Doe*, the Court described the Connecticut registry's warning of misuse of the information on the site, and its disclaimer that indicated that offenders in the registry were there based on their convictions, not levels of dangerousness.¹⁰⁶ A federal law passed in 2006 requires that all state websites eventually display warnings of the penalties for the unlawful use of registry information.¹⁰⁷

Warnings such as those referred to in *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe* are required in the statutory language of eight states and the District of Columbia.¹⁰⁸ Seven of these states require website warnings that the registry information may not

100. 730 ILL. COMP. STAT. 152/115 (2006). Vermont repealed its user registration requirement in 2006. 2006-192 Vt. Adv. Legis. Serv. 29 (Lexis Nexis).

101. 730 ILL. COMP. STAT. 152/115.

102. ILL. COMP. STAT. 730/152-115 (2006).

103. *Smith v. Doe*, 538 U.S. 84, 105 (2003).

104. *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 5 (2003).

105. "The [w]eb site warns that the use of displayed information 'to commit a criminal act against another person is subject to criminal prosecution.'" *Smith v. Doe*, 538 United States at 105.

106. *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. at 5.

107. 42 U.S.C.A. § 16918 (2006).

108. The states that statutorily require warnings or disclaimers on their sites are: Connecticut, Hawaii, Kentucky, Massachusetts, Nevada, Pennsylvania, Utah, and Vermont.

be used to threaten or harass sex offenders.¹⁰⁹ In Nevada, the statute requires website disclaimers to explain how the state organizes sex offenders into different levels, based on their risk to society.¹¹⁰

E. Database Publicity

Finally, website disclaimers and user registration requirements are relevant only after citizens decide to visit sites and seek out information about potential offenders in their area. It takes public awareness of the online resources to ensure that the sites are effective in providing information to the public. Yet, only three states—Connecticut, Georgia, and Louisiana—legislatively direct state agencies to publicize the availability of their online registries.¹¹¹ Connecticut requires the Department of Public Safety to issue notices to all “print and electronic media in the state” about the availability of the sex offender website at least every three months.¹¹² Georgia directs specified agencies to educate school and day care center employees about the site.¹¹³ During its 2004 session, the Louisiana legislature passed a resolution urging the Louisiana State Police to use public service announcements to publicize the online registry.¹¹⁴

VI. Discussion and Conclusion

As befits a federalist system of government, the states all differ in how they incorporate the Internet into the language of their sex offender registration and notification acts. While most states—thirty-three—mandate utilization of the Internet,¹¹⁵ a significant number of states—thirteen—only allow, instead of require, Internet community notification.¹¹⁶ The states also vary in the way they designate which offenders’ information should be displayed on the Internet—twenty-one states allow for the release of information about all offenders,¹¹⁷ while the remaining states

109. The states that statutorily require warnings against using the information to harass offenders are: Connecticut, Hawaii, Kentucky, Massachusetts, Pennsylvania, Utah, and Vermont.

110. NEV. REV. STAT. § 179B.250 (2006).

111. CONN. GEN. STAT. § 54-258(a)(1) (2006), GA. CODE ANN. § 42-1-12 (2006).

112. “Not less than once per calendar quarter, the Department of Public Safety shall issue notices to all print and electronic media in the state regarding the availability and means of accessing the registry.” CONN. GEN. STAT. § 54-258(a)(1) (2006).

113. GA. CODE ANN. § 42-1-12 (2006).

114. The resolution urges the Louisiana State Police “to increase public awareness of the existence of Louisiana’s Sex Offender Registry through the use of public service announcements, including but not limited to providing information on how to access and search the database.” H.R. Con. Res. 32, 2004 Leg., Reg. Sess. (La. 2004).

115. See Adams, *supra* note 73.

116. See statutes cited *supra* note 75.

117. See discussion *supra* note 87.

limit public disclosure to offenders convicted of certain crimes or who may have a high risk of repeating their crimes.

When it comes to the states' role in legislating more logistical aspects of Internet registries, such as the how often registry information is updated, site security, user registration, site warnings, and website publicity, states tend to leave those details to the discretion of the administering agency. Only thirteen states have legislated a requirement for updating registry information;¹¹⁸ four states require site security;¹¹⁹ user registration is a statutory provision in the sex offender registration act of one state;¹²⁰ site disclaimers are legislatively mandated in eight states and the District of Columbia;¹²¹ and finally, in three states, publicity for sites is spelled out in the legislation.¹²²

While a statutory analysis reveals that states generally allow administering agencies to define the details of sex offender registries, the fact that forty-eight state legislatures and the District of Columbia require or allow the Internet to be used as a tool to release public information lends itself to the conclusion that state lawmakers generally value the Internet as a tool to disseminate important information to the public. And, although Congress adopted the PROTECT Act's mandate that all states produce a sex offender registry website,¹²³ a majority of states already had searchable sex offender sites in 2001, two years prior to the legislation's enactment.¹²⁴ The move to make sex offender registry information available online was not merely a reaction to potential cuts in federal funding, but an effort that most states undertook years before the federal mandate.

The 2006 Adam Walsh Act specified some aspects of state sites, such as disclaimers and mandatory exemptions. But most states had already legislated or otherwise implemented these elements prior to the passage of the law. And until the 2009 deadline, it remains to be seen how much of an effect the federal law will have on state legislation. While the federal government has issued legislative guidance on how registries should be released online, the states have largely developed the standards for these websites on their own.

118. See discussion *supra* note 88.

119. See statutes cited *supra* note 97.

120. 730 ILL. COMP. STAT. 152/115 (2006).

121. See discussion *supra* note 108.

122. States that legislate database publicity are Connecticut, Georgia, and Louisiana.

123. The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, Pub. L. No. 108-21, § 604, 117 Stat. 650 (2003).

124. Devon B. Adams, *Summary of State Sex Offender Registries, 2001*, Bureau of Justice Statistics Fact Sheet, NCJ-192265 (Mar. 2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssor01.pdf>.

While it is clear from the statutory analysis that states value the Internet as a way to release important information about the safety of children, it is unclear whether Internet notification is effective for several reasons. First, the Internet notification method is a passive means of dispersal, requiring individuals to learn of the availability of the information, obtain access to a computer, and then seek out pertinent information. To increase access to these registries, states should follow the lead of Connecticut, Georgia, and Louisiana in legislating measures to increase awareness of online sex offender registry databases. Legislating publicity for online sex offender registries is a first step in making sure that the convenience of online registries is accompanied by their effective use.

Another important factor in the efficacy of online sex offender registries is the accuracy of the information contained therein. Inaccuracies in sex offender registries can stem from the failure of administering agencies to update information. One way to help safeguard against inaccurate registries would be to legislatively mandate consistent updating of registries, something that only thirteen states do. Registry inaccuracies can also stem from the inclusion of only certain tiers of sex offenders, as most states do. The results of these two types of inaccuracies can result in a “false sense of security” for the public.

The concept that online registries can lead to a false sense of security was echoed by a 2004 survey conducted by New Jersey-based “Parents for Megan’s Law.” The results of the survey by the watchdog agency for the programs indicated that relying on state Internet registries could be risky because not all offenders are listed in many registries in accordance with states’ “tier” systems.¹²⁵

In 1999, University of Memphis researchers conducted a survey of psychologists, social workers, and counselors who treat sex offenders.¹²⁶ The study revealed that nearly seventy percent of those surveyed felt that Internet sex offender registries create a false sense of security.¹²⁷ The authors presented possible reasons for this false sense of security such as the fact that not all offenders are included on every site, sex offenders may move often, not all sex offenders comply with their

125. Press Release, Parents for Megan’s Law, National Megan’s Law Report Card: States Failing to Make the Grade (Oct. 18, 2004) (on file with author).

126. Alvin Malesky & Jeanmarie Keim, *Mental Health Professionals’ Perspectives on Sex Offender Registry Web Sites*, 13 *SEXUAL ABUSE: A JOURNAL OF RESEARCH & TREATMENT* 53, 58 (2001); see also Peter Finn, *Sex Offender Community Notification*, National Institute of Justice, NCJ-162364 (1997), available at <http://www.gpoaccess.gov>.

127. See sources cited *supra* note 126.

registration requirements, and those who have committed sex crimes against children but were never caught will not be included in the registry.¹²⁸ The same group of respondents was even more unconvinced of the effectiveness of registry sites, with over eighty percent stating that they did not think the sites would result in a decrease in the incidences of child sexual abuse.¹²⁹ Little research has been done to examine the effects of online registries on recidivism rates.¹³⁰

Some researchers have also found that Internet registries can have discouraging effects on offenders, which may in turn result in harm to children. Studies indicate that sex offender registry websites can encourage offenders to avoid registering¹³¹ and undermine their efforts at rehabilitation.¹³² A Florida incident highlights the devastating effects registries can have on offenders. In this instance, a convicted sex offender's profile was printed from the Internet registry and posted around his neighborhood with the words "Child Rapist" printed underneath. The sex offender committed suicide days after the fliers were displayed. The man, convicted fourteen years earlier of child molestation in another state, was found with one of the signs by his body.¹³³

Attempting to ensure that stories like those of the laws' namesake, Megan Kanka, do not happen again is the honorable intent of sex offender registration and community notification laws. However, site publicity and accuracy of Internet sex offender registries are vital in ensuring that online registries are effective. The results of this fifty state analysis show that few states have taken steps to encourage site publicity and accuracy. Legislatures should view online registries not only as a convenient and cost-effective way to release important information, but should also ensure that steps are taken to make sure the registries work.

128. See sources cited *supra* note 126.

129. See sources cited *supra* note 126.

130. See sources cited *supra* note 126.

131. See Roxanne Lieb & Scott Matson, *Community Notification in Washington State: 1996 Survey of Law Enforcement*, Washington State Institute for Public Policy, No. 96-11-1101 (Nov. 1996) available at <http://www.wsipp.wa.gov/pub.asp?docid=96-11-1101>.

132. See Malesky & Keim, *supra* note 126; Susan R. Paisner, *Exposed: Online Registries of Sex Offenders May Do More Harm Than Good*, WASH. POST, Feb. 21, 1999, at B01.

133. *Convicted Sex Offender Commits Suicide over Neighborhood Signs*, ASSOCIATED PRESS, Apr. 22, 2005, available at <http://www.starbanner.com>.