

Registration, Tracking of Sex Offenders Drives Mass Incarceration Numbers and Costs

Loaded on MAY 5, 2017 by Rick Anderson (/news/author/rick-anderson/) published in Prison Legal News May, 2017 (/news/issue/28/5/), page 1

Filed under: Sex Offender Registration (/search/?selected_facets=tags:Sex%20Offender%20Registration), Sex Offenders (Discrimination) (/search/?selected_facets=tags:Sex%20Offenders%20%28Discrimination%29), Sex Offender Residence (/search/?selected_facets=tags:Sex%20Offender%20Residence), Sex Offender Registration and Notification Act (/search/?selected_facets=tags:Sex%20Offender%20Registration%20and%20Notification%20Act). Location: United States of America (/search/?selected_facets=locations:998).

by Rick Anderson

The September 1988 rape and murder of 29-year-old Diane Ballasiotes in Seattle, Washington, followed by the 1989 rape and sexual mutilation of a 7-year-old Tacoma boy, were the seedlings of today's nationwide sex offender registry laws – a 50-state network that tracks over 805,000 registrants and whose usefulness as a crime-prevention tool has been questioned and criticized.

Other cases from that same era – including the widely-reported 1989 kidnapping, sexual assault and murder of 11-year-old Jacob Wetterling in Minnesota, which was solved only late last year – led to a series of 1990-2000 state and federal statutes that established central registries for sex offenders, as well as residency restrictions and civil commitment laws.

Attorneys and advocates for change wonder how many of the nation's more than 805,000 registered sex offenders are in prison or jail on any given day just for violating registration requirements – which are technical violations rather than sex crimes, and did not even exist before 1990. And how much does that, and registry enforcement efforts, add to the rising costs of tracking and monitoring sex offenders? In Palm Beach County, Florida, one officer said 20 deputies are assigned full time to check on sex offenders and confirm their residences.

After a quarter-century, are sexual predator laws and nationwide sex offender registries delivering the benefits they promised? Or have we overreacted to the threat of “stranger danger” with throw-away-the-key excesses, damn the cost?

As even pro-registry crusader Patty Wetterling (Jacob's mother) has said, wondering if things have gone too far: “We've cast such a broad net that we're catching a lot of juveniles who did something stupid or different types of offenders who just screwed up. Should they never be given a chance to turn their lives around?”

Americans generally express belief that the registry system, which has federal oversight, helps to protect them, their families and their children from sexual predators. In reality, however, researchers and officers of the court such as Eric Tennen, a Boston criminal defense attorney who specializes in sexual assault cases, say registries fail to achieve their professed goals.

For starters, according to Tennen, “because of the myth that sex offenders reoffend at very high rates, many people believe that most sex offenses are committed by repeat offenders. In fact, up to 95

percent of all sexual offenses are committed by first time offenders,” who obviously are not required to register until *after* they’re caught.

Research has found that sex offenders have lower average recidivism rates in comparison to other offenders, though they are more likely to commit another sex offense than non-sex offenders (just as drug offenders are more likely to commit another drug-related crime, thieves are more likely to commit more thefts, etc.). According to an often-cited 2003 study published by the Department of Justice that examined recidivism rates of 9,691 sex offenders released from prison, the three-year arrest recidivism rate for sex-related crimes was 5.3 percent while the overall recidivism rate for any crime was 43 percent. As many sex crimes are not reported, however, resulting in incomplete data, recidivism rates for sex offenders are often questioned.

Eli Lehrer – president and co-founder of the R Street Institute, a Washington, D.C. think tank – said that while the registries are intended to track predatory strangers who could reoffend, studies show that roughly 90 percent of sex offenders know their victims. “Random kidnappers, like the man who took Jacob Wetterling, are quite rare,” he explained. By most estimates, about a third of victims are family members of their abusers and most of the rest are victimized by someone their parents know.

Pedophiles, Lehrer noted, seldom kidnap their victims despite suggestions to the contrary in movies and novels. “The Polly Klass Foundation estimates that fewer than 100 children are kidnapped by strangers each year in the manner that Jacob Wetterling was,” Lehrer wrote in a recent study entitled “Rethinking Sex-Offender Registries,” published in the quarterly journal *National Affairs*.

“Many of these ‘stranger kidnappings’ involve children who were sitting in the back seats of stolen vehicles or interrupted another crime in progress. Parents wanting to protect their own children should worry much more about their own friends and relatives than random strangers.”

Fifty-three-year-old Danny James Heinrich, who killed Jacob Wetterling, was an exception. But he became the poster boy for child sex predators. His highly-publicized case helped inflame the belief that strangers were the ones children should fear most rather than people they were close to. Further, Heinrich had gotten away with his crime – until he confessed in 2016, almost 27 years later.

On an ill-fated October night in 1989, he appeared out of the darkness, wearing a mask and pointing a gun as three kids passed by on bicycles and scooters.

They were returning from a Sunday night trip to the neighborhood store in St. Joseph, Minnesota, a town of about 7,000 an hour northwest of Minneapolis. Established in the 1800s, the community adopted the name of its gothic Catholic church, whose steeple looms over the central Minnesota countryside.

Jacob Wetterling, his brother and a friend were first told to lie face-down in a ditch, then to turn over, and were asked their ages. The gunman told the brother and friend to start running and not to stop or they’d be shot. He then disappeared into the night with Jacob.

A massive search followed, to no avail. Neither the abductor nor Jacob’s remains were found. Police told the boy’s mother, Patty Wetterling, that they really didn’t know where to start looking for suspects. It would help, they said, if they had a list of local sexual predators to question.

Within two years they did, after Patty led a campaign that resulted in the state legislature passing a

law to register sex offenders in Minnesota.

California had approved the forerunner of such laws in 1947, requiring sex offenders to provide their residential addresses to police. While Patty Wetterling was crusading in Minnesota, Ida Ballasiotes was winding up a campaign in honor of her daughter, seeking similar legislation in Washington state.

“It was the particulars that made Diane Ballasiotes’ death especially disturbing,” reporter Barry Siegel recounted in a 1990 *Los Angeles Times* story. “She’d left her job at a downtown Seattle advertising agency one evening at 5:30 and just disappeared. The missing-person posters her friends nailed everywhere described her as 5 feet-5 inches, 110 pounds, 29 years old, with curly shoulder-length auburn hair. Last seen, the poster said, leaving the 1st and Yesler area of Pioneer Square, heading toward the 3rd and Yesler U-Park garage, dressed in a navy skirt and tennis sweater. A Park Department employee had found the body a week later, while looking for garbage being dumped in another part of town, along Cheasty Boulevard South.”

Her killer, Gene Raymond Kane, Jr., 33, was later caught. He had attacked two other women 13 years previously, did a stretch in prison and was sent to a work release facility in Seattle in 1988. He had been there just two months when he murdered Ballasiotes. Convicted in 1989, he returned to prison with a life sentence. Ballasiotes’ family received a \$260,000 settlement from the Washington Department of Corrections, which had failed to properly monitor Kane while he was on work release.

Diane Ballasiotes’ murder, standing alone, would not have resulted in calls for a new law, Siegel noted. Even when a group called Friends of Diane began staging rallies and circulating petitions, the response by state officials was muted. Then came two more violent sexual assaults.

“First, in December of 1988, a man broke into the apartment of a 23-year-old Pierce County woman, removed a light bulb and lay in wait in her darkened bedroom,” Siegel wrote. “When she returned, he tied her to the bed, raped her and slashed her with a knife. The assailant was Gary Minnix, who’d been charged with four vicious knife-related rapes in 1986 and linked by Seattle police to 22 other such cases.”

But mentally retarded and with an IQ as low as 48, Minnix was incompetent to stand trial. He ended up at Western State Hospital for the mentally ill. Since he was not a convicted criminal, he received weekend furloughs – and was on his sixth weekend leave when he assaulted the woman.

“Then,” Siegel recounted in the *Times*, “five months later, in May of 1989, a 7-year-old boy riding his bike near his Tacoma home was dragged into the nearby woods, raped, choked nearly to death and sexually mutilated. Before leaving him semi-conscious in the dirt, Earl K. Shriner cut off the boy’s penis.”

Shriner had a lengthy record of assaults on children, dating back to his involvement in the murder of a schoolmate when he was 16. Mentally retarded, he had spent his youth in juvenile facilities, schools for the disabled and a mental institution.

He had previously kidnapped and assaulted two teenagers and was imprisoned 10 years for that crime, Siegel reported. Shriner was denied parole and served his entire sentence. By law the state couldn’t commit a dangerous person who wasn’t mentally ill, so he was released – then later raped and mutilated the little boy in Tacoma, Ryan Hade, who survived the attack.

In July 1989, Ida Ballasiotes' support group, Friends of Diane, and a second organization, the Tennis Shoe Brigade, marched on the state legislature in Olympia, unfurling a list of crimes by sex offenders and demanding new laws to protect women and children.

In response, Governor Booth Gardner, a Democrat, neutralized the debate by appointing a trusted public servant to head a task force review: Republican King County prosecutor Norm Maleng, who had been Gardner's losing opponent in the last gubernatorial race.

Public hearings were held, 150 victims spoke about the need for a new law, and the task force – which included Ida Ballasiotes (who went on to become a five-term Republican state legislator) and Helen Harlow (Ryan Hade's mother) – wrote the nation's first sexual predator registration bill. It was passed into law on July 1, 1990.

The statute increased prison sentences for sex crimes, created a civil commitment procedure to confine offenders in secure treatment centers until they are "cured," allowed police to notify the public when sex offenders were released, expanded treatment for victims and juvenile offenders, and created a central registry – including photographs and fingerprints – of released sex offenders.

Minnesota passed a similar law in 1991, and other states began to follow. In 1994, President Bill Clinton extended sex offender-related restrictions nationwide. He signed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act that would eventually require every state to create registries to track offenders by name, age, addresses and other relevant details. Under subsequent statutes, that data was expanded to include Social Security number, employer's address, vehicle license plate and vehicle description. Much of that information – except Social Security numbers – is accessible by the public via the Internet.

"From now on," Clinton said, "every state in the country will be required by law to tell a community when a dangerous sexual predator enters its midst. We respect people's rights, but today America proclaims there is no greater right than a parent's right to raise a child in safety and love."

Two years later, Megan's Law – named after 7-year-old Megan Kanka, who was raped and murdered in July 1994 by her neighbor, Jesse Timmendequas, a repeat sex offender – was enacted in New Jersey. The statute turned sex offender registry information into public records that any citizen could access to learn if, for example, an offender lived nearby. President Clinton subsequently signed a federal version of the law, extending mandatory registration requirements to all states.

Timmendequas was initially sentenced to death; he is now serving life in prison after New Jersey abolished capital punishment.

Sex offender-related legislation continued to pile up. The Pam Lychner Sex Offender Tracking and Identification Act of 1996 was named for a Houston real estate agent who was the victim of a 1990 attempted rape; her assailant received 20 years but became eligible for early release. Lychner (who would later die in the 1996 explosion of TWA Flight 800 over Long Island) lobbied for longer sentences and stiffer registration rules for sex offenders. The Lychner statute established a national database (the National Sex Offender Registry, or NSOR) to track offenders, oversee and verify their registrations, and improve victim notification procedures.

The 1997 Jacob Wetterling Improvements Act added new amendments that revised the law's

definitions to determine when a convicted sex offender has become a sexually violent predator, and further expanded notification and registration requirements.

After that came the 2000 Campus Sex Crimes Prevention Act, requiring higher education workers and students to notify their institutions if they were registered sex offenders; the 2003 Prosecutorial Remedies and Other Tools to end the Exploitation of Children (PROTECT) Act, which directed the Department of Justice to launch a website linking to all state sex offender registry sites; and the 2006 Adam Walsh Child Protection and Safety Act, also known as the Sex Offender Registration and Notification Act (SORNA).

Named for the 6-year-old son of John Walsh, who was abducted and murdered in Florida in 1981, the law was the result of Walsh's dogged efforts to impose new standards of justice in such cases. Walsh, who later became an anti-crime activist and then a TV personality, helping to capture lawbreakers with his popular show "America's Most Wanted," successfully lobbied for tougher treatment of sex offenders, and the Adam Walsh Act established the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART).

The legislation, signed by President George W. Bush, was intended to close loopholes contained in earlier laws and increase the supervision of sex offenders. "Plain and simple, this legislation, I can say with certainty, will save children's lives," said then-Senator Joe Biden, a sponsor of the bill.

But there was disagreement as to the effect of some of this legislation and, for that matter, dissention among some of the proponents. A 2013 story in the Minneapolis weekly, *City Pages*, written by Jennifer Blyer, recounted a divide that first became apparent during the 1996 signing of Megan's Law.

Among those at the signing ceremony were Megan's parents, Rich and Maureen Kanka; Marc Klaas, the father of Polly Klaas, a 12-year-old California girl who was abducted and murdered in 1993; Patty Wetterling; and John Walsh.

The mood was victorious, until a reporter asked if they thought the law was constitutional. Walsh then stepped forward.

"This is letting parents know that the fox is in the henhouse," he said. "We're sick of seeing these people get all the rights and our children and the parents not getting any rights. Believe me, I've hunted these people for nine years now. They're predators, they prey upon children – that's their business. We deserve to know these people are in our neighborhoods!"

But Patty Wetterling looked dismayed. "She interjected, explaining gently that Megan's Law was the equivalent of warning children about a dog in their neighborhood that's known to bite, and adding that it was not about revenge but ultimately just one piece in a large puzzle whose goal was a safe society," Blyer reported.

Wetterling attended another press conference a few years later for another law – the Adam Walsh Act – that would impose additional regulations on sex offenders, including establishing civil commitment procedures, expanding registration to juvenile offenders as young as 14 and applying registry requirements retroactively.

"By then, sex offender restrictions had mushroomed in a way that was starting to trouble Wetterling," Blyer wrote. "In the years since her son's abduction, she had devoted her life to children's safety. But

the more she learned about the nature of child sexual abuse, the more she felt that these laws simply didn't address the root of the problem, and actually made it worse in ways that were hard for most people to grasp."

When reporters spoke with Wetterling at the press conference, she admitted being troubled about some of the legislation's provisions.

"I do have a little bit of concern about it being retroactive," she said, "and that it's now going to register juveniles."

By 2013, Wetterling had grown weary of the retributive nature of the Adam Walsh Act and similar laws.

"We have an intolerance for sexual violence, which I agree with," she told Blyer. "People want a singular solution, and the solution that's been sold over the years is lock 'em up and throw away the key...."

"I have a tremendous amount of respect for what John and Reve Walsh have done, and I used to sit down with Marc Klaas to have a drink or six. We've undergone a shared experience, and I'm never going to tell a parent the way they're dealing with it is wrong or the way I'm dealing with it is right.

"I just think some of this really angry, punitive stuff is letting the bad guys win. They're building a world that isn't caring and believing in one another. That's not who I am."

Jennifer Wang, writing in the *New York Law School Law Review*, of which she is the publication's former editor, sensed a similar trend as the country's mood shifted towards harsher penalties for sex offenders.

"Since the mid-1970s, anxiety over child sexual abuse has continued to mount to the point where Americans now 'live in a culture of child abuse,'" she wrote, citing various scholarly and media sources. "Due to this upsurge of 'moral panic,' many have argued that sex offender laws have been passed rather hurriedly and, at times, rely insufficiently on empirical evidence. Still, these laws easily garnered the overwhelming support of the public, comprised of citizens who, understandably, hope to protect society's women and children from sex crimes."

Wang added that "Due to an increased and intense media coverage of sex crimes, 'the public came to believe there was an epidemic of sexual offending,' and thus associated sexual offenses with violence and murder. In the 1990s, the public developed a 'renewed awareness and hatred for sex offenders,' evidenced by enactment of extensive new protections targeting pedophiles who prey on children over the Internet."

At the time, some states began pushing for their own hard-line, signature sex offender legislation. In California, for one, Governor Arnold Schwarzenegger signed Chelsea's Law in 2010. Spurred by the San Diego murder of 17-year-old Chelsea King by a convicted sex offender, the statute established a new one-strike, life-without-parole penalty for certain child-sex predators and other penalties for sex crimes committed against minors by use of force, violence, duress, menace or fear.

The law also extended parole periods for registered offenders and added GPS monitoring for those convicted of felony sex crimes involving physical contact with children, along with a prohibition

against loitering in parks where children congregate.

Because Chelsea's Law focused on more violent offenders, the legislation had widespread support. A review found that more than 330 defendants were charged statewide in 2015 under various aspects of the statute, including a former teacher who molested four boys and was sentenced to 125 years.

Ex-state Assemblyman Nathan Fletcher, who authored the law, said 1,025 people had been charged and convicted since 2010 – 38 of whom received prison sentences of 25 years to life. At a press conference announcing the impact of the law, he said he was “pleased to [stand] here and say definitively that it continues to protect children.”

News reports did not mention the cost of the statute and the added expense of long-term penalties imposed on defendants charged under Chelsea's Law. But original budget projections from 2010 estimated the legislation would cost \$1 million to implement, increase to \$9 million to operate by 2020, and within ten more years would reach \$54 million.

Critic and criminal defense attorney Gretchen Von Helms called that a misallocation of funds. “Throwing more laws at this problem is probably just going to cost a lot of money and not work out very well,” she told San Diego's KNSD-TV.

According to Parents for Megan's Law, as of 2016 there were more than 805,000 registered sex offenders in the United States; other nations have their own registry systems, including Canada, Australia and the UK. About a third of U.S. registrants are considered at low risk to reoffend, and roughly 15 percent fall in the category of sexually violent predators. Almost all are male, with an average age of 45 and one sex offense conviction.

The long, relentless registration of sex offenders that effectively began with Ida Ballasiotes' grassroots crusade in Washington state exploded into the public belief that abduction and murder by strangers was emblematic of child sex assaults.

And as Patty Wetterling will tell you, the law named after her son produced a startling result. On November 21, 2016, Danny Heinrich apologized to Patty and her husband, Jerry Wetterling, for molesting and killing their son, even though he was never convicted of those crimes.

Heinrich was actually a suspect early in the initial 1989 investigation, but had maintained his innocence. Patty never let the unsolved case get too far from the public's memory, however, and on the 25th anniversary of Jacob's death, cold case detectives, using modern DNA technology, decided to take another look at Heinrich and other suspects. They found his DNA on a sweatshirt belonging to a boy who was sexually assaulted nine months prior to Jacob's abduction and murder.

After serving a search warrant at Heinrich's home, investigators discovered a collection of child pornography and he was arrested. In August 2016, after continued questioning, he confessed to the earlier sex assault and to killing Jacob. In court, he told the chilling story of the abduction and how his young victim had asked him, “What did I do wrong?”

He ended up shooting Jacob twice in the head, spooked, he said, after a police car – with siren and emergency lights on – passed nearby.

Minnesota prosecutors agreed not to charge him with the murder if he would reveal where Jacob's

remains were buried, which he did. “I am truly sorry for my evil acts that I have done against victims and their family, and the shame I brought on myself and my family,” Heinrich said in court. He was sentenced to 20 years on federal child porn charges; however, once he nears his release date, authorities can petition to have him civilly committed as a sexual predator and held indefinitely.

“There was a little sense of accomplishment, we got answers,” Jerry Wetterling told KSTP-TV, “but it was overridden by this huge sadness, that, okay, this is for real, Jake’s not coming home.”

Nonetheless, the case had helped launch a cottage industry of sex offender registration and tracking that has since grown into a global governmental enterprise: Sex offenders are required to register and report their whereabouts, and in the process reveal their personal information and criminal convictions to anyone who wants to check online registries. The number of registered sex offenders has grown from around 541,000 in 2006 to just over 805,000 a decade later, and will continue to increase as new offenders are added to those already required to register.

In August 2016, Luis C. deBaca, director of the Justice Department’s SMART office, established by the Adam Walsh Act, praised the registry system and his office’s progress on its tenth anniversary.

“We’ve come a long way,” he said, “in meeting the complex challenges of sex offender management and building a comprehensive sex offender registration and notification system.” He described how, as legislation grew from the Jacob Wetterling law to the Adam Walsh Act, “the national standards for sex offender registration and notification were strengthened, and sex offenders were no longer able to evade registration requirements or the consequences of registration violations.”

Even so, it’s still a work in progress, he added. All states have some form of sex offender registries but they’re not uniform nor fully implemented. In fact, as of April 2017, only 17 states had “substantially implemented” SORNA requirements according to the SMART office.

“While not every jurisdiction is SORNA-compliant,” deBaca acknowledged, “many have aspects of the law in place and are on the path to achieving substantial implementation.”

To a degree, **Eli Lehrer, president** of the R Street Institute, agreed. “The registries have, in an important sense, worked: Patty Wetterling’s successful crusade correlated with improvements in public safety.”

There has been a 30 percent drop in reported rapes from 1995 to today, Lehrer noted. And while the U.S. population has grown about 13 percent from 1999 to 2013, the number of child sex abuse cases tumbled from 88,000 to 61,000 during that period.

“While these numbers and any others associated with sex crimes are probably best considered as relative measures since so many sexual offenses go unreported,” Lehrer said, “they reflect a significant drop in the offenses that registries are intended to prevent.”

However, in a study recently completed for *National Affairs*, he took a closer look at sex offender registration and discovered a more nuanced and disturbing story.

His report, entitled “Rethinking Sex-Offender Registries,” concluded that today’s registries don’t work as well as they could, are too inclusive, overly restrictive and end up hurting some of the people they’re intended to help.

“Life on a registry imposes many burdens on those required to take part,” Lehrer wrote. “Individuals included on registries must inform police or other public-safety officials of their places of residence and work. Failure to register in a timely fashion can result in additional felony charges. They must obtain permission to move and, often, to travel. Most have their names posted in publicly accessible Internet databases. A number of states – including Florida, Oklahoma, Tennessee, and Nevada – require some classes of sex offender to have special state ID cards or driver’s licenses identifying them as such.”

Additionally, many jurisdictions forbid sex offenders from living near schools, daycare centers and playgrounds due to residency restrictions, while others are barred from homeless shelters. Positions that bring sex offenders into regular contact with children – nearly all jobs at schools, for example – are also off-limits, he observed.

“In many places, people on registries cannot patronize sexually oriented businesses, own firearms, and even hand out candy on Halloween,” Lehrer noted. Laws to impose other penalties on registered sex offenders – restricting them from visiting parks or barring them from living with their own children – also have widespread public support.

“Indeed, it appears that no proposed sex-offender registration law has ever failed a free-standing, regular-order floor vote in any state legislature. No state that has passed a sex-offender registration law has ever repealed it, and no law has ever been weakened in a substantial way – even when stories emerge of serious consequences for former offenders.”

In California, for example, 20 percent of sex offenders have no place to live as a result of residency restrictions – a fact that evokes little public sympathy or calls for reform, despite the fact that forcing sex offenders into homelessness makes them more difficult to monitor and less likely to successfully reintegrate into society, putting them at increased risk of recidivism.

In short, Lehrer wrote, “few new public policies have become so widespread so quickly or attracted such unanimous support from across the political spectrum. The reason for this is obvious: All parents are horrified by the thought of their children being snatched from them and sexually abused. Sexually oriented crimes committed against children are, for deep-seated cultural and perhaps innately human reasons, considered particularly grave violations of human dignity.”

Unfortunately, “virtually no well-controlled study shows *any* quantifiable benefit from the practice of notifying communities of sex offenders living in their midst,” Lehrer concluded.

There are several reasons for that finding. For one, most child sex offenses do not involve strangers but rather family members or friends or associates; that is, the danger is usually not from outsiders – registered sex offenders who live nearby – but from within families and their social circles. Additionally, registries give people a false sense of security; they identify *known* sex offenders who are required to register, but not other offenders who have not yet been convicted of a sex crime and are thus unknown.

Many registries are also riddled with errors, and include listings for sex offenders who no longer live in the state or are incarcerated or deceased.

And, of course, not all sex offenders are equally dangerous. The catch-all nature of registries mean

they include numerous offenders who pose no threat to children, or to anyone else – such as people convicted of statutory rape for having consensual sex with an underage girlfriend, or who have patronized prostitutes, or been convicted of indecent exposure or other crimes that do not involve physical contact. In some cases, juveniles who send nude pictures of themselves to their friends – sexting – are being charged with production and distribution of child pornography.

Additionally, registries put sex offenders at risk of vigilante justice, since people who want to harass or harm them can easily obtain their residential addresses, photos and other personal information through online registries. There are numerous examples where sex offenders have been assaulted or killed, or their homes vandalized or torched. In some cases, innocent victims are targeted under the mistaken belief they are sex offenders; for example, because they live at an address where a sex offender previously resided and the registry has not been updated.

Further, studies of sex offender registries indicate that neighborhoods are negatively affected in the form of lower real-estate values – as much as four percent lower when the public becomes aware an offender is living in their community.

Then there is the price tag for taxpayers. States have been wrestling with implementation of SORNA for around a decade, with some choosing to go all in while others look for wiggle room to avoid the substantial costs of compliance.

Funding issues have led to the fractured implementation process. Government figures pegged SORNA implementation launch costs in California, for example, at \$66 million. In Texas the price tag was projected to top \$44 million initially, and in New York it was more than \$35 million. Nationwide, launch expenses alone add up to an estimated \$550 million – not including ongoing compliance costs.

The total cost of establishing sex offender registries, tracking offenders and enforcing registry violations is unknown, but obviously substantial.

Jennifer Wang, in a 2014 survey of the SORNA statute, said the law requires significant new spending, including the cost of additional personnel as well as new software installation and maintenance. Then there are the added expenses of more jail and prison space for offenders who violate registry requirements, increased court and administrative costs, and additional law enforcement spending.

Consequently, many states found it was cheaper not to implement the law and instead take a comparably small statutory penalty through the loss of certain federal funds due to non-compliance.

“Notably,” said Wang, “in every state, the first year costs of SORNA implementation outweigh the cost of losing ten percent of the state’s Byrne funding,” which are justice-assistance grants given to states by the Department of Justice. “In California, the Sex Offender Management Board recommended that the state legislature, governor, and citizens elect not to comply with the [Adam Walsh Act], emphasizing the ‘substantial’ and ‘unreimbursed’ costs associated with the law,” she wrote.

Additionally, Wang learned the SORNA program itself is underfunded, and Congress has failed to allocate consistent funding to underwrite the significant compliance costs incurred by state and local governments. State lawmakers frequently refer to SORNA as an “unfunded mandate,” and describe a “disturbing disconnect” with respect to withholding Byrne grant funds, which support services that

would help states meet federal requirements for sex offender registries.

A June 2016 report in the *Journal of Sociology & Social Welfare* addressed the fiscal considerations of registration about which, the authors said, “law enforcement agents and others have expressed concerns” due to cost and workforce demands.

“Resources spent on policies that overextend their reach while failing to enhance public safety take funding away from other rehabilitation and reintegration programs as well as from victim services and prevention initiatives,” the study found. The report recommended a “paradigm shift toward empirically-based sex offender management systems which could prove more cost-efficient than current policies.”

The Justice Policy Institute (JPI), a D.C.-based think tank that specializes in criminal justice reform, found that most of the federal resources available to states would be devoted to the administrative maintenance of the registry and to notification, rather than targeting known dangerous sex offenders. “Registries and notification have not been proven to protect communities from sexual offenses,” a JPI study found, “and may even distract from more effective approaches.”

Researcher Eli Lehrer said that while there are anecdotal examples of community notification helping to catch individual sexual predators, “it’s not clear that any sex offender who re-offended has ever been caught by neighbors solely because of public notification of his presence. In other words, the biggest quantifiable cost of sex-offender notification [lowering property values] appears to be borne by the neighbors it is intended to help, with no measurable improvement in public safety.”

Some states require registration for those convicted of prostitution-related offenses or urinating in public. Teens convicted of having consensual sex with other teens must register in 29 states, and 40 states require juvenile offenders to register. Nicole Pittman, director of the Center on Youth Registration Reform, a project of Impact Justice, a California-based research organization, has cited examples of juveniles being placed on registries for minor offenses ranging from indecent exposure to “playing doctor.”

Conversely, Lehrer pointed to Phillip Garrido, a sex offender who kidnapped and held Jaycee Dugard in his backyard for 18 years and sexually abused her repeatedly, as an example of someone the system allowed to slip through the cracks.

“He was on a sex-offender registry for prior incidents of molestation and kidnapping. His home was visited by parole officers and social workers numerous times. But, overtaxed by the need to monitor California’s more than 83,000 registered sex offenders, officials never performed the thorough search of his house that would have located Dugard,” Lehrer wrote.

Ending sex offender registries would be unwise and unpopular, he stated, but policymakers need to make “sensible improvements,” such as exempting low-risk offenders and most juveniles from registration requirements.

Rachel Marshall, a public defender in Oakland, California, said her clients would rather go to jail than have to register as sex offenders. In a July 5, 2016 article published on Vox.com, she wrote: “When I first became a public defender, I believed the worst punishment that my clients would face would be time in jail. Since then, I’ve learned that incarceration is not the only – and perhaps not the worst –

punishment the criminal justice system can impose. The registration requirements imposed on those convicted of sex offenses are unfairly harsh and punitive, though few recognize them as such.”

That was likely welcome news for victims of sex crimes, as was a 2003 U.S. Supreme Court decision that held registration laws were not punitive measures but rather administrative methods to protect public safety. The landmark case, *Smith v. Doe*, 538 U.S. 84 (2003), was based on a challenge to Alaska’s sex offender registry law. The Court voted 6 to 3 in holding that the law passed constitutional muster. Justice John P. Stevens, who wrote the dissent, argued that registries “constitute a severe deprivation of the offender’s liberty.”

But does the public understand, Marshall asked, that “our current sex offender registration laws apply an unbending and inhumane one-size-fits-all approach that does not prevent future sex crimes and in fact makes us all less safe?”

No one disputes that violent crimes such as rape, child molestation and sexual assault are serious and should be the focus of registries. But, Marshall said, “there are also offenses like peeing in public, which can qualify as indecent exposure. Similarly, grabbing someone’s butt or masturbating in one’s own car also qualify as sex registerable offenses, even though they are punishable as misdemeanors. We may not want to legalize those behaviors, but forcing someone to be labeled a sex offender for life over a misdemeanor that is only punishable at its maximum by six months in county jail is excessive.”

Other systemic flaws, she wrote, include harsh penalties for failure to comply with registration requirements. “Failing to register is itself a crime – frequently a felony – meaning the punishment for failing to register can be more severe than the punishment for the actual offense. In Georgia, for example, failing to register is a felony carrying a sentence anywhere from a year to 30 years in prison. Yet the registration laws are notoriously complex in ways that make compliance all but impossible for many who are required to register.”

As far back as 2007, a year after the Adam Walsh Act became law, a Human Rights Watch report found that registries do not prevent sex offenders from committing future sex-related crimes, and that the best way to prevent crimes – particularly sex crimes – is to promote stability and security for past offenders, Marshall noted.

Worse yet, “Ripping that all away by incarcerating them for failing to register only leaves the public at risk,” she concluded, something that even prosecutors are beginning to understand.

In 2016, a California bill to expand residency restrictions for sex offenders was defeated after a group that included the Alameda County District Attorney and the state Attorney General’s office opposed it, arguing that such restrictions “actually increase the risk of sexual recidivism.”

“We know that the proven methods of protecting public safety involve moving away from monitoring and shaming those who have committed past offenses, and focusing on ways to prevent sex crimes on the front-end, and on meaningful reentry programs that assist people coming out of prison to get jobs, housing, and support,” Marshall said. “They may not provide the quick-fix satisfaction that politicians love to sell – but they are the only thing proven to work.”

The recent study in the *Journal of Sociology & Social Welfare* – authored by three scholars, Jill Levenson, Melissa Grady and George Leibowitz – is regularly cited by critics as offering sensible

solutions to needed registry reforms. As they observed in a synopsis of their findings, “Sex offender registries, though popular, bring with them enormous fiscal costs and unintended consequences for offenders and communities.”

Improvements to registries, they argued, would “mediate the stigma resulting from the sex offender label and reduce barriers to offender reintegration.” Consequently, they urged the implementation of five broad reforms: Juveniles should not be subjected to sex offender registration; registration durations should be guided by risk assessment research; procedures for relief and removal from registries should be available; discretion should be returned to judges; and sex offender residency restrictions should be abolished.

While crimes such as rape and child sexual abuse are terrible, policymakers are slowly starting to realize that imposing registration requirements on all sex offenders, often regardless of the severity of their crimes or mitigating factors, is a terrible – and costly – response that may in fact create more problems than it solves.

Special thanks to Melissa Abbott, who assisted in providing research for this article.
