

# SEX OFFENDERS:

## Flaws in the System & Effective Solutions



**We can do better - Solutions are available - the time is now.**

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## **EXECUTIVE SUMMARY**

This document has been prepared in response to legislation and ordinances currently pending before municipalities and states that address violent crimes against children by creating a proximity barrier.

SOhopeful International, a group committed to helping address the tragedies caused by sex crimes, is providing input to law and policy-makers in an attempt to help identify alternative and more effective ways to prevent sex crimes against children and to deal with the crimes that have already occurred.

The bills before municipalities and states and the current legislative approach to the problem raise some interesting questions. Will imposing proximity and residency restrictions stop future sex crimes against children? Have proximity and residency restrictions been effective in stopping sex crimes against children, or have they just resulted in a lack of successful reintegration of registrants? Has it resulted in reduced levels of crime? Are there other programs or policies that might be more effective and Constitutional than arbitrary proximity and residency restrictions for all offenders?

SOhopeful has been actively seeking effective programs that provide alternative and cost-effective approaches to this complex, difficult problem. This document presents some of those approaches.

The three main points of this document are as follows:

- ≠ The problem of sex crimes in general and sex crimes against children in particular are misunderstood by the public and by many lawmakers.
- ≠ These misunderstandings result in expensive and minimally effective laws, regulations and policies.
- ≠ Alternatives now in use by some States can be applied nationwide that would increase public safety while saving taxpayer dollars.

This document is designed to provide a clearer understanding of the facts to help lawmakers and the public deal with the problem in a more effective and fiscally responsible manner. A brief summary of each of these points is given below.

### **1. THE SEX CRIME PROBLEM IS MISUNDERSTOOD**

Before presenting solutions, it is necessary to address some common misconceptions regarding sex crimes against children. It is because of these misunderstandings about the real nature of sex crimes, victims of sex crimes and sex offenders that Federal and some State governments are spending large sums for ineffective policies that do not increase public safety. One indicator of this lack of effectiveness is the continuance in sex crimes against children despite a huge increase in the number of sex offenders that are incarcerated. Here are some of the common misconceptions.

- ≠# ***Aren't all sex offenders perverted strangers who sneak up and snatch unsuspecting children?*** Although news stories about gruesome crimes lead us to think this, the facts show a different story. Federal and State data show that most sex crimes against children are committed by someone the child knows—either a family member or close associate. Under 10 percent of sex crimes against children are committed by a stranger. Sexual abuse of children is not typically committed by strangers.
- ≠# ***Aren't most of the America's missing children abducted by strangers?*** No, in fact the DOJ statistics show how many missing children were runaways (99% of which return home safely, according to their statistics) and how many were abducted by a family member. They don't list the number abducted by strangers, because the number is so small, as shown in table 3 of the NISMART-2 2002 Bulletin, "National Estimates of Missing Children: An Overview."
- ≠# ***Aren't children who have been abducted by strangers typically murdered?*** A 2002 U.S. Department of Justice study showed that 60% of the children abducted by strangers or slight acquaintances during a 12-month study period *were not killed*. This statistical data relates to all abductions, not specifically regarding sex offenders.
- ≠# ***Aren't all or most sex crimes committed by people formerly convicted of a sex crime (habitual sex offenders)?*** Federal and State crime statistics and data on recidivism (re-arrest) rates for tens of thousands of sex offenders show that 87 to 97% of all convicted sex offenders who have been released do not commit any more sex crimes. Time spans in the studies ranged from 3 to 13 years. The offenders included those who had committed crimes against children, as well as those who had committed crimes against adults. A 1994 U.S. Department of Justice study of recidivism of sex offenders versus other ex-convicts showed that 87% of sex crimes during the study period were committed by someone other than a convicted sex offender.
- ≠# ***Aren't all sex offenders warped or psychologically damaged adults?*** Data from the U.S. Department of Justice, Bureau of Justice Statistics 2000 report, "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics" show that a surprising 40% of reported sex crimes against children are committed by other children (under the age of 18), not by adults. So not all sex offenders are adults.
- ≠# ***Once a sex offender, always a sexual predator.*** There is an important difference between the terms "sex offender" and "sexual predator." According to Grubin and Winegate<sup>1</sup> statistics, apparent sexual predators constitute somewhere between 2.5% and 13% of the population of sex offenders. These predators are likely to commit other sex crimes. The other 87% to 97% of sex offenders are very unlikely to commit any more sex crimes. This shows that not all sex offenders are sexual predators. Only a small percentage of them are. These predators can be identified through existing assessment tools. If these people are not incarcerated or civilly committed,

they should have the highest level of police attention, in order to protect the public. The low-risk sex offenders are a different group with a different risk level and should be treated differently, using programs outlined in this report. This approach will result in significant cost savings without increasing risks to the public.

## **Abuse of the Predator Label.** The stated legislative intent of Megan's Law specifies that the registry will list 'the most violent and predatory sex offenders'; however, people caught up in this situation are most times given the appalling choice only between 25 years to life if you go to trial, or accept a plea bargain. What they are not told, is the plea bargain countless times includes the predator label and registering for life. Unfortunately many times this includes one-crime one-victim, non-violent and no-victim (public exposure that was not even witnessed by anyone) offenders, even those who were never officially charged or convicted of a sex offense and the severity of the sentence and label depends highly on public and judicial attitude of the day.

The misconceptions listed above are common and understandable, given the media coverage of high-profile cases. However, unless lawmakers and policy makers educate themselves on the true situation, they will be hampered by this distorted view of reality and thus they will be prevented from effectively developing workable solutions.

## **2. CURRENT LAWS DO NOT EFFECTIVELY REDUCE SEX CRIMES AGAINST CHILDREN**

Congress recognizes that the current State and Federal legislation is inadequate to address the issue of sex crimes in general and sex crimes against children in particular. This may be one reason why there are currently so many bills before Congress related to this issue. Admirable work has been done, particularly with regard to addressing pornography, Internet pornography, human trafficking, and interstate transportation of minors for sexual purposes. We applaud these efforts.

However, we also recognize that many other current policies and approaches are based on misunderstandings of the wider picture of sex crimes against children. It is for this reason that the some laws are not working as intended, and we recommend that the approach should be modified, rather than just strengthening existing policies or enacting arbitrary and unconstitutional proximity and residency restrictions.

Examples are given below.

### **2.1. Deterrence**

The idea behind deterrence is that sufficiently harsh penalties will discourage people from committing certain acts. This is true if the following assumptions are made about the person considering committing the acts:

1. He knows of the harsh penalties
2. He is mentally capable of controlling his own actions

3. He is mentally capable of evaluating alternatives and of connecting his actions to potential consequences.

This report will demonstrate that, for the vast majority of typical sex offenders, these assumptions are not applicable. This is because the vast majority of sex offenders are first-time offenders who have no knowledge of the severe legal penalties, and the small percentage of repeat sex offenders are addicts and/or mentally deranged that cannot control their own actions and are not capable of connecting their actions to potential consequences. Additional information on this point is presented in Section 4.1.

Because sex crimes are not committed by the types of people originally assumed by lawmakers, the policy of deterrence through the use of expensive mandatory minimum sentences will be completely ineffective in preventing sex crimes against children. Mandatory minimum and zero tolerance has gone horribly wrong with drug laws, i.e., letting out high risk career criminals to place and keep a person in jail that was arrested with a marijuana cigarette. At the same time, this policy will result in a burgeoning prison population, huge incarceration costs, and a great increase in the number of people on welfare and Medicaid. It will also drastically reduce reporting of child sexual abuse. If the goal is to reduce sex crimes against children, mandatory minimum sentences will not only fail, but will waste taxpayer dollars that could be used for far more effective programs, and actually endanger more children.

## **2.2. Registration of Sex Offenders**

The idea behind the National Sex Offender Registry is that law enforcement personnel need to be aware of the presence of dangerous repeat offenders in their jurisdictions. This registry will accomplish that goal, and it is a worthy one.

Yet the use of the registry, as it is currently configured, is based on the underlying misconceptions listed above. As this report will demonstrate, most of these crimes are not committed by habitual offenders, as was originally assumed, but by first-time offenders who are highly unlikely to reoffend. Current proposals before Congress will go a long way toward distinguishing between these two groups, through the use of risk assessments. This approach is a very positive step.

However, some aspects of the registry can have unintended effects. One is the clogging of the registry with the names of people who are not repeat sex offenders, and who are not dangerous to society. Section 4.2 of this report will provide more information about this alarming trend. The presence of low-risk offenders on the registry interferes with law enforcement identification and tracking of high-risk offenders, and may actually increase the level of risk to the public.

Another problem with the registry has to do with Federal law enforcement grants to the States. The linking of Federal funding to the number of names on the registry incentivises the States to add names to the registry. One way this is accomplished is by expanding the definition of sex crime far more than Congress intended, (brushing against someone, urinating in public, skinny dipping, mooning etc., improper perhaps, but should not be, but



are, considered 'sex crimes'). The shocking effect of these expanded definitions will be addressed in Section 4.4.

### **2.3. Community Notification**

Notifying the public about the presence of sex offenders in the community is supposed to alert the public to watch over their children and avoid habitual sex offenders, thus reducing sex crimes against children. Again, it is based on the mistaken assumption that most sex crimes are committed by habitual sex offenders.

Unintended effects of this practice include revealing the identity of victims of intrafamilial abuse, traumatizing family members of low-risk sex offenders, and promoting community unrest and violence. Studies in two states have demonstrated that community notification did not result in a decrease in the number of sex crimes against children.

## **3. WORKABLE SOLUTIONS ARE AVAILABLE**

Solutions based on a clearer understanding of the nature of sex crimes have been developed.

These include:

- ≠ Treatment of high-risk offenders separately from that of low-risk offenders.
- ≠ Civil commitment if needed for high-risk offenders
- ≠ Treatment programs for low-risk offenders and victims
- ≠ Prevention programs for teens and young adults to prevent sex abuse through development of successful coping skills and through understanding of appropriate boundaries

### **3.1 Handle Sex Offenders Based on Risk**

Current proposals before Congress incorporate the concept of risk assessment for identifying high-risk offenders. To effectively deal with sex crimes, these high-risk offenders, once identified, must be treated differently from low risk offenders.

### **3.2 Consider Civil Commitment for High-Risk Offenders**

For the small number of habitual, predatory offenders, risk assessment tools can be applied to identify these individuals. If necessary, civil commitment may be employed to isolate them from the public. This would preclude their commitment of any more crimes.

### **3.3 Rehabilitate Low-Risk Offenders**

For low risk offenders, the City of Tucson, Arizona has a program called RESTORE that is used in cases of sex abuse within a family context. It can also be used for low-risk, first-time non-violent offenders. At this point, the re-offense rate for sex offenders who have completed the RESTORE program is zero percent. In addition, the program has received exceptionally high marks from victims. Can a 100% level of effectiveness be achieved through mandatory minimum sentences? SOhopeful recommends that a nationwide program patterned after RESTORE be used to deal with the majority of sex crimes against juveniles, which are intrafamilial and non-violent.

### **3.4 Use Prevention Programs**

Prevention programs that teach teens in our sex-saturated society about healthy boundaries can help prevent teen-on-teen sexual abuse, and abuse of younger children by teens, which is a growing problem. Programs that teach healthy coping skills to teens and young adults can help prevent future sexual abuse, because intrafamilial sex abuse is often caused by people who are under severe emotional or financial stress and who lack appropriate coping skills.

This report provides information that is intended to assist lawmakers and policy makers in dealing with effective, financially responsible programs for dealing with sex abuse of children.

## INTRODUCTION

This document was written to provide lawmakers and the public with the facts concerning the effectiveness of current programs—both those that deal with sex crimes that have already been committed and those that focus on preventing future sex crimes.

Lawmakers and the public must be well informed about the situation before effective laws and policies can be created. In the case of sex crimes, many myths and misperceptions must be addressed and corrected first.

Part 1 of this document addresses some of the widely held beliefs about sex crimes and sex offenders. After each myth, hard data are presented to refute the myth and to illustrate the true situation.

Part 2 addresses the current and proposed laws and some of their unintended consequences. These consequences affect society through increased costs and/or decreased effectiveness of the laws. They also affect the victims, the sex offenders and their families, and the communities where they live.

Part 3 presents alternative approaches for dealing with the problem of sex crimes. Included are details from State programs that have been developed, tested and found effective.

Four Appendices follow this report. Appendix A shows how Megan's Law is affecting the innocent children and family members of sex offenders. In their own words, they tell how this law is negatively impacting their lives and those of their family members, including their children. Appendix B showcases effective programs for victim support and healing as well as sex offender treatment post-release and programs to help prevent sex crimes. Appendix C illustrates how misapplications of existing laws are resulting in surprising and outrageous miscarriages of justice, (i.e., mislabeling offenders and predators as well as crimes that have nothing to do with 'sex'). As you will see, these misapplications devastate many people's lives and do nothing to protect the public safety. Appendix D includes letters of support from a diverse cross section of professionals.

## PART 1. FACTS ABOUT SEX OFFENSES AND SEX OFFENDERS

We all want to stop sexual abuse of children. To do this effectively, we need to understand the problem, rather than reacting emotionally and blindly. The first step in effectively combating sexual abuse is to deal with our own misconceptions.

This section addresses the most widely held assumptions regarding sex offenders and sex crimes. Each assumption is presented, and the empirical data that support or refute that assumption are given, so the reader can determine if each widely-held assumption is valid or not.

### 1. WHO COMMITS THE SEXUAL ABUSE OF CHILDREN?

Five misconceptions cloud most peoples thinking about the deeply emotional topic of sexual abuse of children. They all have to do with perpetrators of the sexual abuse.

#### 1.1 The Stranger-Danger Myth

The most common perception of the sexual abuser of a child is that of a vicious pedophile who preys on unsuspecting innocent children in a playground and snatches away his victim, who is never to be seen alive again. Tragically, this does happen and it must be stopped, but the facts about sexual abuse of children are very different than is commonly assumed.

**Table 4: Characteristics of Nonfamily Abductions**

Characteristic of Episode	Percent of All Nonfamily Abduction Victims (n = 58,200)	Percent of Stereotypical Kidnapping Victims (n = 115)
<b>Child's location prior to episode</b>		
Own home or yard	5*	16
Other home or yard	18*	3*
Street, car, or other vehicle	32*	40
Park or wooded area	25*	14*
Other public area	14*	n/a†
School or daycare	5*	2*
Store, restaurant, or mall	<1*	8*
Other location	<1*	9*
No information	<1*	8*
<b>Other episode characteristics</b>		
Child was taken or moved	70	95
Child was detained	35*	83

**SOURCE:** US Department of Justice, Office of Justice Programs, (Oct. 2002). NISMART-2, Bulletin. Nonfamily Abducted Children: National Estimates and Characteristics (Pg.9)

\* Estimate is based on too few sample cases to be reliable.  
† n/a = not available.

Most people assume that children are abused only by strangers. Federal data indicate that children are far more likely to be abused by a family member or close associate than by a stranger. The Bureau of Justice Statistics reports that more than 2.9 million cases of child abuse or neglect were reported in 2003. Of these, 906,000 cases were substantiated by governmental agencies. When the public hears the term “child abuse” they often immediately think of sexual abuse, but only 10% of these cases involved sexual abuse. The majority of the cases involved neglect. Of the sexual abuse cases, who committed the abuse? Federal data show that 83.9% of the abuse or neglect was committed by a parent, rather than by a stranger.<sup>2</sup>

Other data in this report reinforce the idea that strangers are not the primary danger. “Among rape victims less than 12 years of age, 90% of the children knew the offender, according to police-recorded incident data.”<sup>3</sup> These data show that the belief that your child is in danger of sexual abuse primarily by a stranger is not a valid assumption.

### **1.2 The Adults-Only Myth**

A second common assumption about sexual abuse of children is the idea that children are sexually abused only by adults. Recent studies have shown otherwise. “Frequently the person who sexually molests a child is also a child. Forty percent of the offenders who sexually assaulted children under age 6 were juveniles (under the age of 18).”<sup>4</sup> These data show that the risk of sexual abuse of children is not just from adults, but also from juveniles that the child already knows.

### **1.3 The Murderer Myth**

A third assumption about sexual crimes against children is that sexually abused children are often (or usually) killed by their abusers. Therefore, we might assume that the numbers of children killed by sexual abusers must be the same as or close to the number of children experiencing sexual abuse. Although all sexual abuse of a child is a tragedy and every murder of a child is terribly tragic, the number of children killed is actually far lower than the public is led to believe. Due to their sensational nature, the incidents involving murder of a child are heavily covered in the media. The saturation media coverage distorts our perception of the frequency of these incidents.

Federal data show that horrific incidents of child abduction and murder by a by stranger are relatively rare. A 2002 U.S. Department of Justice study analyzed cases from 4,000 law enforcement agencies over 12 months. There were an estimated 115 abductions committed by strangers or slight acquaintances.<sup>5</sup>

The 2002 NISMART-2 Bulletin, “National Estimates of Missing Children: An Overview” shows (their Table 3, below) the percentage differences between family and non-family abductions, in the context of “reasons children became missing.”<sup>6</sup>

**Table 3: Reasons Children Became Missing**

Episode Type	Estimated Total*	95% Confidence Interval†	Percent*	Rate per 1,000 Children in U.S. Population (N = 70,172,700)
<b>Caretaker Missing Children (n = 1,315,600)</b>				
Nonfamily abduction‡	33,000§	(2,000–64,000)	3§	0.47§
Family abduction	117,200	(79,000–155,400)	9	1.67
Runaway/throwaway	628,900	(481,000–776,900)	48	8.96
Missing involuntary, lost, or injured	198,300	(124,800–271,800)	15	2.83
Missing benign explanation	374,700	(289,900–459,500)	28	5.34
<b>Reported Missing Children (n = 797,500)</b>				
Nonfamily abduction‡	12,100§	(<100–31,000)	2§	0.17§
Family abduction	56,500	(22,600–90,400)	7	0.81
Runaway/throwaway	357,600	(238,000–477,200)	45	5.10
Missing involuntary, lost, or injured	61,900	(19,700–104,100)	8	0.88
Missing benign explanation	340,500	(256,000–425,000)	43	4.85

**Note:** All estimates are rounded to the nearest 100.

\* Estimates sum to more than the total of 1,315,600, and percents sum to more than 100, because children who had multiple episodes are included in every row that applies to them.

† The 95-percent confidence interval indicates that, if the study were repeated 100 times, 95 of the replications would produce estimates within the ranges noted.

‡ Nonfamily abduction includes stereotypical kidnapping.

§ Estimate is based on an extremely small sample of cases; therefore, its precision and confidence interval are unreliable.

**SOURCE:** US Department of Justice, Office of Justice Programs, (Oct. 2002). NISMART-2, National Estimates of Missing Children: An Overview, Table 3: Reasons Children Became Missing (pg. 6)

This same 2002 NISMART-2 Bulletin noted in its Key Findings:

During the study year, there were an estimated 115 stereotypical kidnappings, defined as abductions perpetrated by a stranger or slight acquaintance and involving a child who was transported 50 or more miles, detained overnight, held for ransom or with the intent to keep the child permanently, or killed. In 40 percent of stereotypical kidnappings, the child was killed, and in another 4 percent, the child was not recovered.

There were an estimated 58,200 child victims of nonfamily abduction, defined more broadly to include all nonfamily perpetrators (friends and acquaintances as well as strangers) and crimes involving lesser amounts of forced movement or detention in addition to the more serious crimes entailed in stereotypical kidnappings.

By way of comparison, Kids and Cars, a Kansas-based safety group, estimates that about 100 children are killed per year in parking lots and driveways when relatives or family friends accidentally back over them.<sup>7</sup> The U.S. Advisory Board on Child Abuse and Neglect

conservatively estimates that 2,000 children under the age of 18 are killed by parents or caretakers each year.<sup>8</sup> These data show that strangers or slight acquaintances tragically killed 46 children in the year surveyed. That is 46 children too many, and it must be stopped. Putting it into perspective however, 2,100 children were killed through accidents and neglect in the same time period. Yet we don't often hear heavy media coverage about these cases. The extensive news coverage of abducted children leads the public to falsely believe that stranger abductions and killings are far more common than accidental deaths, when they are not.

#### **1.4 The Repeat-Offender Myth**

A fourth common misperception about sex crimes and children is that children are abused primarily by formerly convicted sex offenders. The statistics given in Section 2 below will show that 87 to 97% of all sex offenders will not re-offend and that ex-cons who were not sex offenders are far more likely to commit a sexual offense than are convicted sex offenders. So the assumption that all convicted sex offenders pose the greatest danger to children is not valid.

#### **1.5 The Pedophile Myth**

The fifth misperception is that people assume all people (whether labeled a predator or offender) convicted of sexual abuse of children are hard-core pedophiles who are untreatable and who will never stop their pedophilia. (The most abused term with respect to sex offenders: "pedophilia."<sup>9</sup> Pedophilia is a diagnosable psychiatric disorder, a form of mental illness.) Thus all sex offenders can never be trusted to interact freely with society again. People believe that the only way to prevent sexual abuse of children is to incarcerate forever anyone who commits a sex crime against a child. Hard-core pedophiles exist. They do commit sex crimes against children. Hard-core pedophiles are very difficult, or perhaps in some cases impossible to "cure." However, the vast majority of people who commit sex crimes against children are not pedophiles.

### **2 How Often Do Sex Offenders Reoffend?**

Many people firmly believe that all sex offenders are violent psychopaths who are incurable, and will continually re-offend as long as they are out of jail. That is why they believe all sex offenders have to be taken off the streets forever, and closely monitored for life, and prevented from ever living anywhere near children—their own or others.

Surprisingly, the data collected by State and Federal agencies do not support this myth. **In fact, the majority of sex offenders do not go on to re-offend.**<sup>10</sup> That is borne out by a number of reports cited below.

#### **2.1 Recidivism Rates For Other Crimes**

Before presenting the data on recidivism rates for sex offenders, let us first look at the recidivism rates for other crimes. The Bureau of Justice Statistics conducted the largest recidivism study ever conducted in the United States, tracking prisoners from 15 states. This report examined inmates released from state prisons in 1994 found that 67% of them were arrested for at least one serious new crime within the first 3 years after release, and fifty-two

percent of them were re-convicted. The highest rates of recidivism (re-arrest) were for crimes involving stealing: larceny (75%), burglary (74%), robbery (70%), possessing of selling stolen property (77%) and stealing motor vehicles (79%). Trafficking in illegal weapons was also high at 70%. Recidivism for driving under the influence of alcohol or drugs was 51% and homicide was 41%.

In this study, the recidivism rate for rape was 46% and for sexual assault was 41%. Apparently these sex crimes were committed by ex-convicts who had not formerly been convicted of a sex crime, because the same report goes on to say that "within 3 years following their release, 5.3% of sex offenders were re-arrested for another sex crime " and only 2% of the rapists were arrested for another rape within the 3-year study period. Therefore of the 46% of ex-convicts who were re-arrested for rape, 44% must not have been previously convicted of rape, but of some other crime. The study involved 272,111 inmates.<sup>11</sup>

## 2.2 Recidivism Rates for Sex Crimes

Department of Justice's own report states that the recidivism rate of released sex offenders is only either 3.5 or 5 percent. In their report entitled "Recidivism of Sex Offenders Released from Prison in 1994," it states, "Within the first 3 years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime" and "...3.5% (339 of the 9,691) were reconvicted for a sex crime within the 3-year follow-up period." (The conviction rate is less than the arrest rate because, of course, not all arrests lead to convictions.)

**Table A. Comparison of New Sex Crime Arrests for Sex Offenders Versus Non-Sex Offenders**

No. Released	Offenders Paroled	ReArrested for a New Sex Offense	New Sex Offenses Over 3-Years	% of New Sex Offenses	Average per year
9,691	Sex Offenders	5.3%	517	13%	172
262,420	Non-Sex Offenders	1.3%	3,328	87%	1,109
272,211	All Offenders	1.4%	3,845	100%	1,281

**Source:** US Dep't of Justice, "Recidivism of Sex Offenders Released from Prison in 1994." pg-24 Published 11/2003.<sup>12</sup>

In this study, there were 27 times more non-sex offender ex-convicts than there were released sex-offenders. The ex-convicts who were not sex offenders actually committed six times more new sex crimes than did the released sex offenders. This study showed that 87% of new sex crimes were committed by ex-convicts, not by registered sex offenders (USDOJ 2003.)

This study looked at only individuals who have a prior criminal record. When one considers that most sex offenses are committed by those who have no prior criminal record, it is easy



to see that the vast majority of new sex crimes are committed by someone other than a registered sex offender. (USDOJ 1994)

This is not a mistake or a statistical artifact. Other studies show similar trends, with recidivism rates for released convicted sex offenders of from 2.5 to 13.4 percent. Time periods in the studies ranges from 3 to 13 years. Table B below summarizes these data, and excerpts from the actual reports follow the table.

**Table B. Recidivism Rates for Released Sex Offenders**

Recidivism Rate	Time Period (Years)	Number of Sex Offenders in Study	Source
5.3% re-arrested 3.5% re-convicted	3	9,691	Recidivism of Sex Offenders Released from Prison in 1994, U.S. Department of Justice
6%	9	Not given	State of New York Department of Correctional Services [cited in (ORDC 2001, p.11)]
7.7%	3	2,214	Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault, (1997). National Criminal Justice Reference Center, P.O. Box 6000, Rockville, Maryland 20849-6000
2.5%	3	3,138	CJ-193427 (June, 2002), Recidivism of Prisoners Released in 1994 [cited in (ORDC 2001, p.11)]
8%	10	879	Ten-Year Recidivism Follow-Up of 1989 Sex Offender Releases, Office of Policy, Bureau of Planning and Evaluation, 2001, the Ohio Department of Rehabilitation and Correction
4%	12	Not given in citation	Gibbons, Soothill, and Way, [cited in Furby, Weinrott & Blackshaw, 1989]
12%	13	Not given in citation	Gibbons, Soothill, and Way 1980, [cited in Furby, Weinrott & Blackshaw, 1989]
13.4%	Various	28,972	Hanson & Bussiere, 1996.[cited in (ORDC 2001, p.11)]
6%	Not given	Not given in citation	New York Department of Corrections [cited in (ORDC 2001, p.11)]

In *United States v. Mound*, 157 F.3d 1153, 1154, (8th Cir. 1998) (en banc), four dissenting Judges cite Law Review articles citing statistics finding the **recidivism rate of released sex offenders is the second lowest rate of recidivism of all convicted felons**. In *State v. Krueger*, Case No. 76624 (December 19, 2000, Eighth Judicial District of Ohio, unreported), two female Judges reversed a Sexual Predator adjudication, finding the statute is based on a false assumption and in essence, an "old wives tale" of popular beliefs contradicted by empirical data.

By writing the National Criminal Justice Reference Center, P.O. Box 6000, Rockville, Maryland 20849-6000, you can obtain the following reports.

NCJ-163392 (February 7, 1997), Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault, finds the **recidivism rate of 2,214 convicted rapists released from prison was 7.7%** after three years. The only category of crimes with a lower recidivism rate are those persons convicted of murder (6.8%).

NCJ-193427 (June, 2002), Recidivism of Prisoners Released in 1994, finds the recidivism rate of 3,138 **convicted rapists released from prison was 2.5% after three years**. The only category of crimes with a lower recidivism rate are those persons convicted of murder (1.2%).

In April, 2001, the Ohio Department of Rehabilitation and Correction (ODRC) released a report also on the recidivism rate of released sex offenders. In Ten-Year Recidivism Follow-Up of 1989 Sex Offender Releases, Office of Policy, Bureau of Planning and Evaluation, Paul Konicek, Principle Researcher, (available at [www.drc.state.oh.us](http://www.drc.state.oh.us)), the **recidivism rate of 879 sex offenders released from Ohio's prisons in 1989, after ten (10) years, was found to be 8% for new sex offenses**.

The ODRC study finds its results as typical, citing to:

- 1) Gibbons, Soothill, and Way, found in Furby, Weinrott & Blackshaw, 1989. (Twelve year study finding **sex offender recidivism rate of 4%**).
- 2) Gibbons, Soothill, and Way 1980, found in Furby, Weinrott & Blackshaw, 1989. (Thirteen year study finding **sex offenders recidivism rate of 12%**).
- 3) Hanson & Bussiere, 1996. (Mega-analysis of sixty-one sex offender studies with a total of 28,972 sex offenders finding **recidivism rate for new sex offense five years after release was 13.4%**).
- 4) New York Department of Corrections, nine year follow-up study. Finding a **6% rate of recidivism for new sex offenses**.

These studies are cited on page 11 of the ODRC report.

At page 15 of the report, the overall findings are summarized. The ODRC finds, "Contrary to the popular idea that sex offenders are repeatedly returning to prison for further sex crimes, in this population a **sex offender recidivating for a new sex offense within 10 years of release was a relatively rare occurrence**." Id. at page 15, 4. [*emphasis mine*]  
([Love](#) 2002)<sup>13</sup>

### 2.3 Alternative Data on Recidivism Rates

These studies show that the recidivism rate, and presumably the re-offense rate of convicted sex offenders is very low, relative to that of other crimes. So why do people believe that all sex offenders continually re-offend? Have there been studies that show a different trend? Yes. The reason for their different results is a difference in methodology. Some of the

studies that showed a high re-offense rate sampled only the most high-risk offenders. That group of sex-offenders is high-risk precisely because they are very likely to re-offend. We will address ways to identify and deal with this dangerous group later in this report. What is important to note here is that the overall population of people categorized as sex offenders do not fall within the high-risk group. If all sex offenders fell within that high-risk group, then the re-offense and recidivism rates for all sex offenders would be very high. The fact that the empirical data collected by both State and Federal governments show low recidivism rates proves that not all sex offenders are high-risk repeat offenders.

Another reason that some reports on sex offender recidivism show higher recidivism rates is that some of the statistics are misleadingly increased by including minor technical violations of parole (such as being late for an appointment, or getting a traffic ticket) or probation in their recidivism statistics. The truest measure of sex offender recidivism is one that includes new sex crime convictions only.<sup>14</sup>

A third reason that some reports on sex offender recidivism (especially among child molesters) show higher recidivism rates than are presented in this report is that they specifically exclude familial cases and focus only on non-familial cases. These types of cases are a small minority of sex offenses, and they are not committed by the typical person classified as a sex offender. Recidivism rates for non-familial cases would be expected to be far higher than for familial cases. However, it is misleading to study the higher-risk group and then claim the same risk level applies to the lower-risk group.

## 2.4 Public Perceptions of Recidivism Rates

The public perception of sex offenders is formed by news coverage of the most heinous of crimes. One reason there are so many sex offenders is because of the expanding the definition of sex crime far more than Congress intended. The public has no knowledge that there is a continuum of sex offenders, from the few ones who make news headlines to the many whose crimes are much more modest, as noted by Grubin and Wingate:<sup>15</sup>

**Public concern about recidivism by sex offenders, however, is in contrast with the relatively low levels of sexual reoffending that are in fact the case.** The tension between public perception of sex offenders representing a high recidivism risk and **the evident reality of statistics that demonstrate relatively low levels of sexual reoffending** is in part influenced by a confusion between frequency and severity of reoffending, in part by the higher risk associated with some offenders, and in part by the nature of sex offending itself where any reoffence may be seen as unacceptable. [*emphasis mine*]

## 3 Who Poses the Greatest Risk?

The preceding section on recidivism showed that 87 to 97 percent of all convicted sex offenders are not re-offending. It also indicated that 3 to 13 percent of convicted sex offenders have re-offended.

Thus, there is a small but important percentage of convicted sex offenders that re-offend. These offenders would be considered the high-risk group.

Fisher and Thornton (1993) observed that there are **'a relatively large number of offenders who offend at a low rate, perhaps even just once, and a smaller number who offend at a relatively high rate'** (p. 108). Amongst this latter group will be men whose reoffences are both frequent and severe.<sup>16</sup> [*emphasis mine*]

Treating all sex offenders as if they fall into the high-risk group is not effective because wastes resources focusing on a large group of relatively harmless people, instead of concentrating resources on a small group of very dangerous people. But how can this high-risk group be identified? Research has been done to identify the people most likely to re-offend. These research findings are discussed below.

### 3.1 Factors Affecting Recidivism Rate

It is important to understand is that there are so many sex offender laws that do not actually pertain to actual 'sex offenses', and there are different kinds of sex offenses and thus different kinds of sex offenders, and their recidivism rates are not all alike. The rates vary with the offender's prior criminal history, the offender's age and sex, the length of time since the person was released from prison, and type of crime committed, and other factors. R. Karl Hanson<sup>17</sup>, a recognized expert in the field of sex offenders, conducted a study showing that:

...most sexual offenders do not re-offend sexually, that first-time sexual offenders are significantly less likely to sexually re-offend than those with previous sexual convictions, and that offenders over the age of 50 are less likely to re-offend than younger offenders. In addition, it was found that the longer offenders remained offence-free in the community the less likely they are to re-offend sexually.

The risk of recidivism is also reflected in the type of crime committed. Factors related to the type of crime include: whether the sex crime was committed against an adult or a child, whether the victim was of the same sex or the opposite sex, whether threats, weapons or violence were used, whether the victim was a family member or not, and whether the victim was known or unknown to the assailant. The type of crime is one of the strongest predictors of the potential of the perpetrator to commit future sex crimes. Data from the Hanson study shows that "rapists, incest offenders, 'girl-victim' child molesters, and 'boy-victim' child molesters recidivate at significantly different rates. ***These results challenge some commonly held beliefs about sexual recidivism and have implications for policies designed to manage the risk posed by convicted sexual offenders.***" [*emphasis mine*]

### 3.2. Types of Sex Offenses and Sex Offenders

Experts agree that there are different types of offenders in the continuum and that they have different characteristics and issues; they also tend to recidivate at different rates. Table C lists the primary categories. Other categories exist, such as pornography production and child prostitute solicitation but they are not listed in this categorization.

**Table C - Primary Categories of Sex Offenders**

Main Category	Subcategory
Rapist	
Child molester	Intra-familial [incest]
	Extra-familial:
	Girl-victim
	Boy-victim
Exposure	
Pornography (viewing)	

These categories are significant because they each have unique issues that do not span the entire continuum. For example, rapists tend to have psychological issues with anger, power and control; their crimes are not usually sexually motivated. Intra-familial offenders tend to offend at times of great stress or family dysfunction; they also tend to have the lowest recidivism rates of all categories. Extra-familial child molesters have greater scope of psychological issues and tend to have deeper-seated sexual deviant tendencies. In that last category, those who molest boys outside the family tend to have the highest recidivism rate of all; they are the 'fixated pedophiles.' It seems they, in general, typically are non-violent, and have a very hard time breaking through their denial to be able to understand that what they have done (although non-violent) is harmful and hurt the child. They are the least contrite and the most likely to reoffend. Table D illustrates this breakdown.

**Table D – Breakdown of Offense Category and Corresponding Reoffense Risk**

Category	Subcategory		Reoffense Risk
Rapist			MEDIUM
Child Molester	Intra-familial		LOWEST
	Extra-familial	Girl-victim	MEDIUM
		Boy-victim	HIGHEST

### 3.3 Risk Assessment

Risk assessment is absolutely critical to protecting the public from dangerous high-risk offenders. Under the proposed legislation S 1096 and H.R.2423, all offenders on the registry must be assessed to determine their level of risk. We very strongly support that provision of the bill. Knowing the risk level of every offender should greatly assist the law enforcement community in monitoring and tracking the highest-risk individuals. It will also let the public know which of the hundreds of sex offenders in their community, they should actually watch out for.

The risk assessment process is also important because it shows the local law enforcement community who they don't have to focus on. If someone is evaluated using standardized criteria and their own history to be a low-risk, what is the public benefit of listing them on the registry with the high-risk offenders? Consider a community with 100 offenders listed on the registry. Based on DOJ statistics on recidivism, somewhere between 3 and 13 of those

names are actually important to track for public safety purposes. The other 87 to 97 just get in the way, and clutter the picture. Their presence dilutes the effectiveness of the registry, confuses the public and wastes taxpayer money.

### **3.3.1 Risk Assessment Programs**

As it is currently written, the risk level requirement in S1096 and HR 2423 is to be determined under procedures established by the State or Tribal authority. Leaving the risk assessment process entirely up to the States could be counterproductive, in that States could develop assessment approaches that are not comparable to one another and that could end up being meaningless on a National level. Suppose, for example, an offender lives in a state with an inaccurate risk assessment program that considers him low-risk. He then moves to a state that has a more effective assessment process would have identified him as high-risk, and he then commits a high-profile crime, it could shake public confidence in the registry. To avoid scenarios like this, it is suggested that Federal guidelines for development of risk assessment be prepared. SOhopeful is prepared to provide information and assistance in this very important process

### **3.3.2 Risk Assessment Criteria**

The overall problem with a risk assessment program is that there currently is no set of standard criteria for determining high-risk offenders that also takes into account the current circumstances and personal variables. Certainly, there are common sense indicators such as criminal history, a history of violence, drug addiction or previous convictions for sexual offenses. These factors should definitely be considered when determining the level of risk for each individual.

One approach to risk assessment uses statistics of group behavior to try to predict the behavior of individuals. These actuarial methods have been proposed and implemented in some areas, however they are totally ineffective at assessing the future behavior of any one individual.

### **3.3.3 Risk Assessment Personnel**

Another recommendation concerning risk assessment programs is the use of trained professionals. Currently in many areas of America, the persons conducting risk assessments or interpreting the data from risk assessment are either police or probation officers. No matter how many hours of training they may be provided, law enforcement professionals just cannot take the place of certified, licensed mental health professionals.

"The most serious problem in determining the dangerousness of a particular offender is the fact that there is no reliable risk checklist, risk assessments may be conducted by untrained persons using a standardized list of risk criteria. In the absence of highly qualified, trained professionals to conduct comprehensive risk assessments, the chance of miscalculated risk is increased."<sup>18</sup>

There must be collaboration and input from the mental health community on standardization of risk assessment methods and criteria, as police and probation officers are coming from

the standpoint of retribution and punishment and will never be qualified to make what is essentially a mental health judgment.

## **PART 2. APPROACHES TO THE PROBLEM**

### ***4 How Do We Manage Sex Offenders?***

The legislation now being considered uses three primary approaches for dealing with the problem of sex crimes in general or sex crimes against children in particular. These approaches are: deterrence through the use of mandatory minimum sentences, registration and tracking of all released sex offenders, and community notification of SOs in the area. Each of these approaches is discussed below.

#### **4.1 Deterrence**

Many of the legal penalties for committing sex crimes are already quite strict. Some argue they are too much so, others argue that they are not strict enough. What purpose do the legal penalties serve and what do they accomplish in reality?

According to Criminal and Juvenile Justice Consortium's 2002 report entitled, "A Research Report: Sex Offense Cases and Plea Negotiation"<sup>19</sup> one prosecutor stated,

"You got notions of retributive justices, that we punish people for certain crimes, and rehabilitative justice, that we sort of try to rehabilitate criminal actions, and the criminal person, so that they can contribute productively to society."

##### **4.1.1 Retributive Justice as a Deterrent to Crime**

Retributive justice is intended not only to punish the perpetrator, but also to act as an effective deterrent to those who have not broken the law in question. It should also act on those who have offended, to discourage from breaking the law again.

Does the retributive justice approach work effectively? The mandatory minimums sentencing scheme enacted to achieve a greater deterrence against drug crimes has backfired and resulted in many citizens incarcerated for disproportionately long sentences, with little public benefit and enormous cost.

Will the same approach work effectively to reduce sex crimes? The obvious argument for mandatory minimums and harsher sentencing for sex offenders is that it would hopefully prevent violent crimes and especially violent crimes against children. The way it would accomplish this is to get the offenders off the streets for as long as possible, and then to strongly motivate them to never offend again. As shown in the recidivism statistics cited in Part I, Recidivism, sex offenders who are going to reoffend are in the minority, and those few who reoffend usually have a severe mental distortion. These people are not affected by consideration of the severe consequences of committing a second offense. Thus the small minority of sex offenders that reoffend are not likely to be deterred by harsh sentences. The

large majority of sex offenders that will not reoffend anyway will not be deterred either, because their likelihood of reoffending is already very low.

Another way that the mandatory minimum sentences might work, is to deter people from ever becoming a sex offender. In this line of reasoning, one imagines a calm, rational person with full knowledge of the severe penalties of sex crimes (even crimes that no one would consider a 'sex' crime; mooning, public urination etc.) carefully considering whether or not he's going to commit a sex crime. That is not how it happens in real life. Most sex crimes are committed by first-time offenders who have no knowledge of the pain they cause the victims or legal nightmare they are about to enter or that "mooning" or urinating in public will land them on the registry if caught. The first-time offenders are not hard-core pedophiles that stalk their victims in the manner of premeditated violent criminals. Instead, they are typically people under severe emotional or mental stress who take advantage of a child well known to them in a crime of opportunity. What they do is wrong; however, it is not necessarily premeditated, and they have little or no knowledge of the already severe sentences. Harsher sentences will do absolutely nothing to deter them.

So if harsher sentences will not deter the first-time offenders due to ignorance, and harsher sentences will not deter habitual offenders due to their deviant mental conditions, what could mandatory minimum sentencing do to stop future sex crimes? At best, it might reduce the number of crimes committed by 3 to 13% of released offenders because they are imprisoned for 30 years to life. It will do nothing at all to stop the vast majority of sex crimes, which are committed by first-time offenders who know their victims but who don't know the law.

#### **4.1.2 Unintended Deterrence of Sex Crime Reporting**

An unintended consequence of the mandatory minimums might be a deterrence that makes the problem worse. If it becomes widely known that a single sexual offense against a child will result in the offender automatically serving 25 years to life in prison, do you suppose a family that wants to remain together will report such an incidence? Using common sense, they would do everything possible to make sure it is never reported. Thus, the child will get no protection or counseling, and the offending adult will get no treatment. We will in effect go back to the dark ages when such things are not talked about.

On the other hand, a wife or teen who wants to get rid of the husband or father, just has to make an accusation, (whether true or not) and it is likely the unwanted male would be out of the house forever. The family would lose its breadwinner, there would be another single parent family struggling to avoid poverty. All the children would become latchkey kids unsupervised every afternoon and all summer while the mother worked. If the mom isn't lucky enough to keep her job, the whole family would go on welfare, at great taxpayer expense. The ongoing incarceration costs for the offender would then be paid for by the taxpayer. Would either of these scenarios increase public safety or protect children from violence? No.

Certainly, every member of this committee, and all public servants want to increase public safety and keep children safe. These bills, S 1086 and S 956, will actually do much more



harm than public good. If there are fewer families getting help for the offender, then there will be many more cases where neither the victim nor the offender gets treatment.

Mandatory minimum sentences have the potential to harm victims further by deterring reporting. The long sentences will be very expensive and will not reduce most cases of sex crimes against children. Despite these drawbacks, this approach could reduce the crimes committed by the small minority of sex offenders who are severely disturbed individuals. That is a worthy goal. Yet will this legislation achieve this in a cost-effective manner? Is there a way to achieve this goal or a better one more effectively?

We believe there is.

## **4.2 Registration**

The Sex Offender Registry (SOR) was originally created as a tool for law enforcement. After becoming Megan's Law, it was made available to the public. All sex offenders are currently required to register their whereabouts regularly with law enforcement officials where they live. The proposed legislation S1086/H.R.2423 expands the reporting requirements and sets up a method to coordinate this information-sharing nationwide. The approach is to enable law enforcement personnel to know which offenders are in their community so they can be more closely monitored. This will enable law enforcement personnel to find likely suspects when a sex crime occurs.

### **4.2.1 Sex Offender Registry Numbers Increasing**

More and more Americans are being accused of sex crimes and more are being convicted (either by a plea of guilty, nolo contendere or withheld adjudication) than ever before. The number of juvenile offenders is also increasing. To effectively address the situation, it is essential to understand what is happening and why. So why are the rates of sex crimes increasing? What is causing this? Is it because there is a growing group of hard-core deviants preying upon society? Is it due to lax law enforcement or penalties that are too lenient? We submit that there are other factors contributing to this situation—some of which are not obvious, but are very influential.

One reason for the rise in “sex crimes” is that the definition of sex crime is being expanded far beyond what Congress intended. This committee has tried very hard to be as specific as possible with respect to defining actions considered sex crimes in their legislation. Unfortunately, states have found that they have a keen interest in broadening the definitions of sex crimes, because they can thereby obtain progressively more Federal funding. [More information on these funding mechanisms are given in Section 4.2.2] As a result, actions now considered sex crimes include many actions that neither we, nor would most Americans, consider to be 'sex crimes.'

### **4.2.2 Federal Law Enforcement Funding Linked to Numbers on Registry**

One of the main unintended consequences of the sex offender registry system is that it has become tied to Federal funding for the states. Essentially, states are required to comply with Federal law regarding the updating and completeness of their registry for all SOs, regardless

of the relative risk level of the individual SOs or length of time since the offense occurred. If they fail to comply, they forfeit 10% to 25% of their Federal Funds through the Byrne Grant funds or Law Enforcement Block Grant (LEBG) monies. This can amount to millions of dollars. Some of this funding is tied to the number of names on the registries. The more names on the registry, the more Federal money received. While this funding approach may make sense in theory, it can create a perverse financial incentive to add names to the list.

Another problem with Federal funding is that is unintentionally creating legal confusion for those trying to comply with SO registration requirements. The way the Byrne grant is written, it requires states to pass new legislation and/or amend existing legislation each year in order to qualify for the funding. This has resulted in changes in reporting requirements for SOs that they may not become aware of in time to comply. Then the SO can be convicted of a probation violation and can be re-incarcerated, at additional taxpayer expense. This has happened in more than one case.

The Byrne-inspired annual changes in State laws result in changes (expansions) in the definitions of sex crimes, which also expands the number convictions and thus the number of names in the registry and thus increases the Federal funding expenses. We do not have direct evidence that this is happening intentionally, however SOhopeful has found a body of evidence that indicates states are expanding the definitions of sex crimes to include actions that Congress and the public would not consider so—actions that Congress would not want to fund incarceration for. Some of these are described in the news articles in Appendix D.

Apparently, some of the States realize that not all of the names they list on the State Sex Offender Registry are actually a risk to public safety. As of now, twenty (20) states post disclaimers on their online registry, such as this one from Michigan:

"The MSP has not considered or assessed the specific risk of re-offense with regard to any individual prior to his or her inclusion on the PSOR and has made no determination that any individual included in the PSOR is currently dangerous."<sup>20</sup>

What this acknowledges is that each state may be posting thousands of people on their sex offender registry only to comply with federal law, and not because they are actually dangerous! Instead of bloating the registry with names that pose no risk, the registry should do what it was intended to do—track people who are actually dangerous. (Note: Since the majority of offenders are incestuous, placing the names and addresses on the registry also place the address and last name of the victim, the child of the offender, placing them in danger and submitted them to public harassment as well. This occurs with devastating consequences to the child victim.)

Even though the current funding program seems logical in this committee chamber, and looks logical on paper, Megan's Law and the Wetterling Act are set up to grant more money to those states that have more people designated as sex offenders. This, through no fault of Congress, has unintentionally created a perverse incentive to bloat the registry with as many people as can be caught in the sex offender net.

#### **4.2.3 Definitions of Sex Crimes in Flux**

What constitutes a “sex crime?” While most rational people can agree that certain actions are, without question, a sexual assault or crime, unfortunately, other actions fall into a 'grey area' that are harder to pin down.

All unwanted sexual advances are wrong, possibly criminal, and have the potential to do psychological harm to the victim. As a society, however, we need to decide whether we wish to count an unwanted touch on the buttocks as an unreported sexual crime. Coming to an agreement on what constitutes a sexual crime will be a difficult task. Setting the bar too low would criminalize social clumsiness and over-state the problem of sexual assault. Setting the bar too high would devalue those victims who, while sustaining no overt signs of trauma, may have truly suffered at the hands of a sexual assailant.<sup>21</sup>

Decades ago, the bar was set too high, and many victims suffered in silence, unable to get the help and protection they so desperately needed. Now the pendulum has swung too far in the other direction. The bar is being set too low. Now social clumsiness, normal human behavior, and common teen promiscuity are resulting in incarceration and devastating damage to the individuals affected. It is also resulting in greatly increased costs for law enforcement, for incarceration, for post-release tracking, for welfare for the dependants of those incarcerated, and for lost tax revenue for those incarcerated. All of these costs are being incurred without any increase in public safety.

What do we mean by setting the bar too low? What kinds of actions are now being defined as sex crimes? Would any on this committee consider applying diaper cream to an infant with a rash to be a sex crime? Should relieving oneself in the woods be considered a sex crime? Would you consider taking a wayward teen by the arm to lecture her to be a sex crime? Are any of these “crimes” worthy of the lifelong stigma of being designated a "sex offender"? How about a mother smiling in a photo with her nursing baby?

While these might seem like extreme examples, they are becoming more common. News articles describing these actual cases are provided in Appendix B of this document. These may also seem like isolated incidents, just oddball misinterpretations of the laws. However, the articles in Appendix B should make it abundantly clear to this committee that these types of cases are far from isolated. In fact only a few were included in Appendix B out of the large amount of material we have collected. The results are not only shocking but also sickening when one begins to realize how the federal guidelines have been abused.

This is only one reason that the rates of sex crimes are increasing. We do not mention it in an attempt to gain leniency on the part of offenders who commit real sex crimes, but to protect innocent people from unjust charges, and to focus attention on the problem of expanding definitions of sex crimes by the states.

Why have the states broadened their definitions of sex crimes like this? It is because of the current configuration of funding programs and their requirements.

#### **4.2.4 Key Words Defined Illogically or Inconsistently**

The definition of a sex crime is muddled, resulting in over-prosecution and over-sentencing. Some of the words being used in misleading ways in recent legislation include:

- ≠ Violent
- ≠ Habitual
- ≠ Predator
- ≠ Pedophile

Did you notice an immediate negative reaction inside you to those words? They connote distasteful images in all of us. However, we cannot let strong emotional reactions cloud sound judgment when crafting the legal definitions of these words. They must be carefully, logically, clearly, and consistently defined if our laws are to be effective and just. The use of each of these words, as it applies to the issue of sex crimes, is addressed below.

##### **4.2.4.1 Definition of and Use of the Term “Violent”**

According to WordNet ® 2.022, the definition of "violent" is: adj.

- 1: acting with or marked by or resulting from great force or energy or emotional intensity;
- 2: effected by force or injury rather than natural causes.

Thus, one would expect that acts involving physical force and/or injury would legally be considered violent, and acts not involving physical force and/or injury would not be considered violent.

However, the term “violent” when used in the definition of the Title 18 is not based on the details of the crime, but on the age of the victim. If the victim is (either 16 and under, or 12 and under), then the crime is considered violent, whether or not any actual violence occurred.

SOhopeful suggests that the definition of “violent” be related to the details of the crime (such as force, weapon, injury inflicted), not to the age of the victim.

##### **4.2.4.2 Definition of and Use of the Term “Habitual”**

The definition of "habitual"<sup>23</sup> adj.

- 1: practicing or acting in some manner by force of custom, habit, or addiction <a habitual drunkard>
- 2: being such a specified number of times or with designated regularity <habitual offenders>
- 3: involved in the practice of a person's usual behavior <her habitual residence>

As the definition implies, a "habitual" offender would logically apply only to someone whose behavior or victimization pattern is known to be ongoing – not a person who has committed a one-time offense. Yet a sex offender can, in some states, be labeled habitual after a single offense.

Legally, however, a sex offender may be labeled “habitual” if a victim says the event happened more than one time, without any corroborating evidence. In the state of Arizona

under the “Hannah Prior,” when a sex offender is labeled habitual, he is then tried and sentenced as if he had been previously convicted for prior sex crimes.

This would not be a bad approach if children never lied about and could not be confused or coerced into making additional allegations involving sexual abuse or molestation. But a number of studies have shown that children do lie, can be confused and coerced about such topics.

Now Congress cannot correct the mistakes that States make in crafting their laws, however Congress can learn from the mistakes of others and avoid them in future legislation. Rather than leaving the definition of the term “habitual” up to the word of the victim, It would make sense if the term “habitual” only referred to an offender who had been convicted of a prior sexual offense or offenses. This is the way the term “habitual criminal” is used, and thus would be consistent with other laws.

#### **4.2.4.3 Definition of and Use of Term “Predator”**

The dictionary definition of “predator”<sup>24</sup> is: n.

- 1: someone who attacks in search of booty;
- 2: any animal that lives by preying on other animals.

Based on this definition, the public assumes that a person deemed a sexual predator would be someone guilty of “staking out” or stalking his or her potential victims and abducting them. Or perhaps one might consider a predator to be someone who developed a relationship with his potential victim for the purpose of victimization in a truly predatory manner. Those assumptions sound logical. However, this is not how the terms “predator” or “predatory” are necessarily used in a legal sense. As a result, a person can be labeled a sexual predator for life even if he or she has never stalked anyone or abducted anyone, or cultivated a relationship with the intent of sexually victimizing anyone.

The definition of “predatory” in current sex crime law is not based on the dictionary definition, which implies stalking or abduction. Instead, the legal definition of predatory is determined based on the age of the victim (i.e., 16 or under), not on the act itself. This is a disservice and is misleading and too often misapplied.

In the bill Congress is to consider (S 1086), an offender is considered a predator if he or she is 4 years older than the victim. If he is less than four years older, then he is not considered a predator.

Granted, an 18 or 19-year-old man who pursues a girl whom he knows is only 14 or 15 and commits what used to be called statutory rape is doing an immoral and illegal act and should be stopped. But should he be labeled a predator, or should he be labeled something more accurate—like a statutory rapist? Does he need to be labeled a sex criminal for life and locked up for 25 years and then tracked permanently afterwards? Will this make the public safer from sex crimes?

If this package of bills passes, almost every action considered a sex crime (except exposure) would be considered "predatory." By misusing and over-applying this term, it will lose any impact that it might have had in the past. If almost everyone is a predator, then no one is a predator. This, too, is a disservice to the public and the victims of heinous crimes.

#### **4.2.4.4 Definition of and Use of the Term "Pedophile"**

Finally, the most abused term with respect to sex offenders: "pedophilia."<sup>25</sup> Pedophilia is a diagnosable psychiatric disorder, a form of mental illness. It is characterized by either intense sexually arousing fantasies, urges, or behaviors involving sexual activity with a **prepubescent** child (typically age 13 or younger). To be considered for this diagnosis, the individual must be at least 16 years old and at least 5 years older than the child. [*emphasis mine*]

That is the medical description of pedophilia. How is the term pedophile used legally? Currently, the word pedophile is used interchangeably with "child molester," which is not only incorrect but also misleading. Pedophiles are what is called "psychosexually regressive" and are attracted almost exclusively to pre-pubescent children. It does not apply to people who are attracted to and who offend against children older than about 13 years. Therefore, a person who offends against a child older than 13 (who is post-pubescent) is, by medical definition, not a pedophile.

Thus pedophiles are one type of sex offender, but not all sex offenders are pedophiles. Pedophiles are child molesters, but not all child molesters are pedophiles. It is not only misleading to disregard this distinction is it ineffective and it is expensive. It is ineffective in that the offenders most likely to re-offend are not given the degree of monitoring necessary to protect the public. It is expensive because resources that should be focused on the high-risk offenders are wasted incarcerating and tracking low-risk offenders.

#### **4.2.5 Age of Consent**

Now we get to the issue of consensual sex, rather than sexual assault and child molestation. At what age is consensual sex legal? Why should this issue matter to Congress? This issue is relevant in a discussion of sex crimes because minors are engaging in consensual sex with other minors with disturbing regularity.<sup>26</sup> Few of those teens (or those teen's parents) realize that they may be committing what their state deems a sex crime, and that the consequences of committing that crime are severe and permanent. As a result, an increasing number of teens and young adults are being placed permanently on sex offender registries for actions that would in the past have been considered unwise, but not criminal.

How will this affect the teens accused of sex crimes? Even after they serve their jail time, their lives will still be affected. Their presence on the registries, and their being labeled as sex offenders, precludes them living in most areas of most cities, being able to engage in numerous occupations, being able to ride on a bus containing children (even a public bus on which a mother with children later boards) and this will adversely affect them for life. This will cost the taxpayers the money to arrest, convict, incarcerate and monitor for life these individuals, and will reduce the ability of these individuals to earn money, thus depriving the

U.S. Treasury of a lifetime of tax revenue. All of this will occur without increasing public safety at all.

Currently, the median age of consent [AOC] within the United States is 16; the Federal age of consent is 18. The issue of comity is pertinent here, and should also be addressed in the current legislation.

Consider also that currently a 16 year-old would be immediately charged as an adult for consensual sexual activity with a 14 year-old. This 16 year-old would also be charged as an adult if they got in a fight, were caught possessing any illegal drugs, for petty theft or a host of other crimes. However, the same 16-year-old would be considered a victim with respect to consensual sexual activity with a 20 year-old. This situation creates legal confusion and should be addressed in the current legislation.

### **4.3 Community Notification**

The proposed bill S1086/H.R.1086 includes provisions Community Notification. The idea is that community members who live around a sex offender should know who he is and where he lives so they can avoid letting their children walk through his yard on their way to and from school. That sounds good in theory. In practice, community notification may not reduce risk. In some cases, community notification could increase risks.

#### **4.3.1 Public Misperceptions About Purpose for Notification Meetings**

In a Wisconsin study of the affects of Community Notification, some surprising results emerged:

A nearly equal percentage of notification attendees left the meeting feeling more concerned about the sex offender as those who felt less concerned about the offender. The most frequently heard concerns at the meetings were the attendees' fear of being victimized by the offender, the offender's past, and identifying who placed the offender in a particular neighborhood.<sup>27</sup>

And the National Center on Institutions and Alternatives (NICA) quoted Walter Dickey, a University of Wisconsin law professor saying:

... it is "designed to get people to think that it will take repeat offenders off the street, it tricks people into thinking the problem has been solved." The truth is that Community Notification and Registration has been legislated "not because it's good crime control but because it's good politics."<sup>28</sup>

#### **4.3.2 Effect of Notification Meetings on Law Enforcement and Probation Officers**

The Wisconsin study<sup>29</sup> also noted difficulties and concerns of the law enforcement and probation officers.

Notification laws increased the workload of probation and parole officers who monitor sex offenders, especially for high-profile Special Bulletin Notification (SBN) cases that

require more intensive supervision. Agents averaged at least five SBN cases; the total average sex offender caseload was 25 cases. Thus the Community Notification requirements of some laws increased the costs to the community and the stress on the probation and parole officers.

#### **4.3.3 The Leper Treatment**

Here's a typical story of a sex offender after release:

A sex offender has served his time for his crime and is released from jail. He registers with the local authorities, rents an apartment and gets a job, quietly minding his own business and trying to get back on his feet. He carefully complies with the requirements of his release in terms of where he lives and works. Then his name goes out on the Internet, and someone a few blocks or miles away learns of his existence. In a sincere effort to protect the community, this individual prints out and plasters photos of the ex-sex offender all over town. Not surprisingly, the registrant begins being harassed, his employer is anonymously called and threatened, and so the registrant loses his job. The harassment continues until the registrant is driven from his home and becomes homeless. Now he is much harder for law enforcement to track because he has no known address, he has no job, and no means of support. He may even turn to crime in order to eat. Stress of this kind can also lead to or aggravate mental illness, which would cause more risk to the community.

Some well-meaning advocates of law and order have intentionally or unintentionally begun treating registrants as lepers who can never re-enter society. The leper treatment is not uncommon, but it is un-productive. Long-term provocation of registrants could very well set up the very same anxieties, frustrations, depression and despair that may have precipitated their deviant behavior in the first place. This leper treatment could cripple the recovery of many people and irrevocably damage others. This type of treatment does not reduce reoffense rates; it only sets a stage for further irresponsibility.

A 1996 Study by the Washington State Institute for Public Policy found, ***community notification comes with a heavy price - harassment does occur and is not typically prosecuted, even when the effects are serious and not limited to the offender, but perpetrated against the offender's family.***

#### **4.3.4 Harassment Examples**

The survey respondents recalled 33 incidents of harassment since the implementation of the law. Given the total number of notifications (942), harassment incidents followed 3.5 percent of all notifications. The most serious of these incidents ***resulted in a residence being burned down.*** Two others resulted in minor property damage, and in two cases, offenders were physically assaulted. ***Almost half of these incidents extended to family members of the offender,*** usually in the form of verbal threats/warnings. ***None of these harassment incidents have lead to prosecution.*** [emphasis mine]

The following harassment incidents were reported by the jurisdictions surveyed:



- q In July 1993, Snohomish County issued a notification on Joseph Gallardo, which **resulted in the offender's planned residence being burned down.**
- q In the city of Everett, residents of an apartment complex where a sex offender lived picketed the offender's apartment until he moved out.
- q In the cities of Aberdeen and Bellingham, **threatening phone calls were made to sex offenders** following their notifications.
- q In the city of Spokane, protesters rallied in front of a sex offender's house and verbally harassed the offender.
- q In the city of Vancouver, and similarly in Ferry County, flyers were posted by unknown individuals showing the sex offender's picture and detailing his crime.
- q In Clallam County, rocks were thrown at an offender's residence.
- q In Douglas County, a group of protesters held a vigil and **started a small grass fire on the offender's lawn.**
- q In Okanogan County, two offenders were followed and large posters were placed around their living areas stating that they were sex offenders.
- q In Snohomish County, eggs were thrown at an offender's home.
- q In Stevens County, a **juvenile offender was verbally harassed, and malicious mischief to the family's vehicle was reported.** Upon conducting a community meeting, the harassment appeared to slow or stop, and no further incidents were reported.
- q In Whatcom County, the community was notified of a juvenile sex offender. **Other juveniles assaulted the offender at school.**
- q On Vashon Island in King County, an offender was threatened via electronic mail.<sup>30</sup>

Even the Association for Treatment of Sexual Abusers [ATSA] has cautioned about the negative affects on the innocent family members in their position statement on Community Notification.<sup>31</sup>

The federal legislation governing notification addresses the need to protect the identity of sexual abuse victims. Although unlikely in most states, an offender who abused a family member could be assigned to the group of offenders requiring comprehensive community notification. Notification to the community at large **could result in the victim's and/or family's identity being revealed, thus potentially causing further victimization.** Identities of all victims need to be closely guarded. **Families of offenders could be negatively affected when community notification occurs, whether or not the offender returns to the home.**

In some states, the legislation requiring community notification may include juvenile offenders. When considering notification for juveniles, we need to be aware of the developmental stages of the juvenile, the impact of peer pressure on the juvenile offender, as well as **the impact notification will have on developing healthy peer relationships.** [*emphasis mine*]

And in a study in Wisconsin<sup>32</sup> the authors noted more broadly the problems encountered and similar negative consequences.

Findings in Wisconsin included:

The public needs additional information about the purpose of notification meetings, and the limits of notification laws. Nearly one-fifth (18 percent) of the residents attending notification meetings expected the gathering to be a discussion for removal or prevention of the offender from living in the neighborhood.

There is no great difference between recidivism rates in areas with community notification than those with none at all.<sup>33</sup>

#### **4.3.5 Collateral Damage of Megan's Law**

The personal stories in Appendix D will illustrate clearly that harassment, vigilantism and institutionalized discrimination [legal denial of housing and employment] does indeed happen on a regular basis. It will be clear that it does affect the entire family, even and especially children of the registrant. Wives have lost or been denied employment because of relation to a registrant, and families have been evicted. Every day these families live in fear of their lives and in a heightened state of alertness because of their inherent vulnerability. It is a terrible way to live.

One young sex offender hid in an upstairs closet petrified as he heard his family below get seriously pummeled in their own living room. In that incident, the enraged hot heads who had barged in were a father and son team, one of them was a Corrections Officer.<sup>34</sup>

The NCIA<sup>35</sup> goes on to explain how deeply the social isolation and ostracism affect the registrant's family.

Fear and shame are powerful silencers, not only for the recovering sex offenders but for their families who are the totally innocent victims of these new laws. The Safer Society writes, "is it fair to have others stare and gossip about people because they are married to a sexual offender or they are the sister, brother, parent or relative of the offender?" **Community Notification will clearly not only punish offenders but entire families.**

The most telling and heart-wrenching damage is that done to the child-victim. As if the causal abuse was not enough, the child-victim is almost always exposed when their parent's or sibling's name is published online or through active notification and, many times, due to citizen notification.

Unfortunately, as much as this committee has tried to be specific, the child-victim faces the very high possibility of being 'outed' due to having the same last name as the offender. Although there are some states that exclude intrafamilial offenders from state-run websites, counties or municipalities may choose to publish the information, sometimes even showing profiles on local cable access channels.

**The net effect for the child-victim is, to their horror, total exposure to their community and the near complete loss of social support structure.** This occurs when the parents of

their peers do not let the children associate, as if the child-victim is contaminated in some way.

This is the most horrible thing a young person (who has already endured the abuse itself, counseling and separation) could face.

Some other unintended effects on the family include housing discrimination, employment discrimination, picketing, citizen notification, threats, harassment, violence, vigilantism, property damage and actual physical injury.

The families of offenders are totally innocent and law-abiding and yet must endure the worst society can throw at them. They are considered guilty by association and the social stigma and marginalization extends automatically to them. The lifelong infamy that is heaped so glibly at the offender is actually harming the child-victim; they are re-victimized by the very system that was created to protect them.

It is not uncommon for the child-victim to want the family to be reunited. Unfortunately, the experience of going to the police, navigating through the social services system, enduring mental health treatment, and observing his/her mother and siblings being treated as though they are disgusting perverts by virtue of not disowning the offender is so much worse than what the child-victim endured originally. Their family is destroyed; the non-offending parent has been continually berated and degraded for not divorcing the offender or for showing any love to their juvenile offender.

Child-victims are crying themselves to sleep at night, suffering daily and berating themselves for even disclosing the abuse in the first place, and would rather have endured the abuse than the nightmare “cure” offered by the state. This is a terribly sad situation, and one that legislators had no idea would occur. In fact, it's a situation the legislature would never knowingly have created.

The good news is that it can be corrected. Measures can be enacted, and effective and fiscally responsible programs can be implemented to alleviate these unintended consequences heaped upon these child victims and families.

One of the corrective measures is to eliminate the Community Notification requirements for intrafamilial cases entirely.

#### **4.3.6 Community Notification versus Sex Crime Rates**

These impacts might be tolerable if Community Notification was effective in reducing the level of sex crimes against children or adults. So does Community Notification help protect the community from additional sex crimes against children or adults? Studies have shown that they are ineffective in this regard. There is no great difference between recidivism rates in areas with community notification than those with none at all.<sup>36</sup>

Thus Community Notification increases costs, increases greatly the caseload the probation and parole officers and weakens their effectiveness, increases risk to the public, risks

publicly identifying the victim, results in disruption of the community, damages the registrant and his family, and doesn't promote public safety.

Although it is unlikely that the Community Notification provisions will be withdrawn due to political considerations, it is recommended the requirements for additional notification be scaled back, and that the effectiveness of Community Notification programs, in terms of improvements in public safety be monitored.

## **PART 3 SOLUTIONS AND ALTERNATIVES**

### ***5 What Can We Do Differently?***

After reviewing proposed legislation in light of recent scientific studies regarding the actual behavior of SOs, their victims, and the community, SOhopeful has developed some recommendations for improving the effectiveness of anti-sex-crime legislation and offender treatment.

#### **5.1 Assessments**

The first way to improve effectiveness is to measure it. Effectiveness should be measured in four ways:

First, assess effectiveness by tracking the rates of various types of sex crimes against children, and the types of offenders committing them. The rates should decrease overall, and long-term tracking of the various types of crimes and their rates should help identify where to focus further preventative measures.

Second, assess effectiveness by the measuring the progress made in assisting victims in their recovery from the sexual assault, molestation, or abuse. Get feedback from them over the years to find out what helps and what doesn't, and what they think should be done differently.

Third, assess effectiveness by evaluating the risk assessments that are used to determine which sex offenders are high risk and which are not. The risk assessment tools developed by the Federal government or the various states should be tested and evaluated over time to highlight the strengths and weaknesses of the risk assessment tools, so they can be improved over time.

Fourth, the effectiveness of the anti-sex-crime legislation should be assessed by the ability to successfully treat and re-integrate low-risk registrants back into their families and communities safely. These programs should also be periodically assessed and improved upon. This fourth assessment should strive toward an optimal resolution.

## **5.2 Assess the Risk of All Offenders**

We applaud and support the provision in S1086 that requires risk assessment on all offenders. We believe all sex offenders should be classified to identify the highest-risk offenders.

Among the classification factors should be: the offender's age at the time of the offense, the type of victim (same sex or opposite sex, family member or associate, known or unknown to offender), the type(s) of sexual activity, the length of time since the incident occurred, the age of the offender relative to the age of the victim, the occurrences of any other sex crimes and their types, etc., the presence of alcohol or drug addictions, the offender's former work history (steady employment, career criminal, drifter, or professional), any other prior arrests, and other static and dynamic factors shown to affect the risk of re-offense.

Considering both static and dynamic factors will greatly improve the accuracy of the risk assessment. SOhopeful recommends that the results be shared with the registrant and low marks in certain areas would then be given extra focus within the registrant's treatment regimen, with a reassessment periodically that takes into account demonstrated improvements in the areas identified in the previous assessment.

## **5.3 Isolate the High-Risk Offenders**

We believe the highest-risk registrants should be considered for civil commitment. For some sex offenders, prison treatment programs are not sufficient to address their issues prior to release. If they were released without further treatment, they would still pose a significant risk to society. For these offenders, we support the option of civil commitment. We also support the use of long-term civil commitment rather than incarceration for those offenders who are not responsible for their actions and unable to change due to a severe mental illness.

There is currently a strange dichotomy between the assignment of responsibility at the time of trial and sentencing and at the time of pending release. At the time of sentencing, the offender is being held responsible for his actions. He is believed to have acted deliberately. He should be considered sane enough to stand trial. Therefore, he should be capable of being rehabilitated. Yet at the time of his release, the same offender is somehow considered not responsible, unable to control his actions, and therefore incapable of being rehabilitated.

This is a contradiction and should not be legal. Either the offender is responsible for his/her actions and, therefore, rehabilitatable, or they are not responsible for their actions due to an actual mental illness.

If the latter is the case, then bypassing traditional incarceration and placing the individual in civil commitment for the duration of their sentence makes much more sense. After all, we don't incarcerate the insane and expect incarceration to decrease their level of insanity or address their background issues, biological disorders or mental condition. Why should we do so with those sex offenders who have deep-seated psychological problems?

It is worthwhile to note that civil commitment is not a 'slap on the wrist' or otherwise a way for offenders to 'escape punishment' as it is typically much more restrictive and punitive than traditional incarceration.

#### **5.4 Treat Low-Risk Offenders for Rehabilitation**

We believe that attempts should be made to treat the low-risk offenders and to re-introduce them to society through successful programs such as Arizona's RESTORE program. Appendix C details this and other helpful programs now operating on State levels.

SOhopeful International has found that of all the monies set aside in the Federal grants available through the Office of Justice Programs, only nine (9) states applied for monies for rehabilitation and treatment, however, all states received for monies for apprehension, prosecution and registration of sex offenders. This clearly shows that more money is being spent by the states on the 'back end' of this issue, i.e., more money for harm rather than remedy. It also shows that the states are more interested in punishing the offenders rather than actually protecting the public by preventing further offenses.

SOhopeful believes that long-term solutions must include treatment programs.

In any situation in which an intrafamilial offense has occurred, the optimal resolution is one in which the offender takes responsibility, dutifully accepts his/her legal punishment, actively and fully participates in his/her treatment, makes amends where possible, and reintegrates back into the family (where applicable and in the best interest of the victim, the family and society as a whole) and reintegrates into society as a law-abiding, contributing member of the community, never offending again.

Considering that most sexual offenses against children occur within the family or zone of association and that these are the majority of sex offenders, optimal resolution can apply to a large amount of registrants.

#### **5.5 Clean Up the Sex Offender Registry**

We need to clean up the Sex Offender registry. It was designed to alert citizens of the presence of the few dangerous, deviant, predatory, repeat offender pedophiles that might live nearby. This was so that parents could monitor their children and their activities more closely, and thus help prevent them from becoming a sad statistic.

The registry is not functioning as intended. Instead of helping parents, it is terrifying them. Imagine going on the registry and discovering that 50 sex offenders live within 10 miles of your home. It just makes parents feel paranoid and helpless, because with that many of what they think are predatory pedophiles around, what can a responsible parent do but keep their children inside all the time watching TV and playing video games, instead of letting them run and play outside like normal children?

The reason so many names appear on the registry is that it is not a list of high-risk offenders, but of all offenders. The registry is now clogged to the point of uselessness due

to the tens of thousands of non-dangerous, one-time offenders who are highly unlikely to ever offend again. The dangerous high-risk offenders are like a needle in a haystack, nearly impossible for law enforcement to track. The public has no way of determining who is dangerous and who is not, so they assume that everyone on the registry is dangerous.

This results in vigilante-like actions by well-meaning, frightened citizens to drive everyone on the registry out of town, to somewhere else, anywhere else. This ends up tragically as homelessness for many first-time offender registrants and their families, or homelessness for the registrant and poverty and welfare for the family, and unnecessary, ongoing entitlement expenses for the taxpayers.

We recommend that the registry list only the high-risk sex offenders who for some reason are not civilly committed or are transitioning back into the community post release from civil commitment, and provide details about when their crimes were committed, and against whether boys or girls, and the ages of their previous victims. This will give parents and concerned citizens enough information to better protect their children. It will save a great deal of law enforcement time and expense to have to track only the offenders most likely to recommit, and will be far, far more effective in protecting public safety than the current system.

## **5.6 Fund Proposed Programs**

Funding for these proposed programs can be in the form of grants through the Department of Justice, the Center for Disease Control or even the Byrne Formula/JAG grants. States can still retain the same level of funding, while still focusing on the violent, habitual or predatory offenders.

We recognize that a significant funding structure has both rewarded and restrained states from implementing viable alternatives to the "back end" approach, mainly focusing on apprehension, prosecution and incarceration of offenders and creating a significant administrative burden of monitoring and tracking 100% of offenders.

SOhopeful International recommends that funding currently allocated within the Byrne Formula/JAG funding be reallocated to allow implementation of the effective and fiscally responsible alternatives listed in this section. Individual states will be resistant to altering their public policy and approach to containment and management of offenders unless they are guaranteed to receive a comparable amount of funding.

Funding the programs listed below and others, possibly administered through a venue such as an Office of Offender Assistance, would greatly impact the nation positively in a number of ways:

- ≠ Strengthening families – breaks the cycle of abuse, incarceration, teen pregnancy and drug abuse;
- ≠ Strengthening communities – keeping families together increases tax base, lowers crime, fosters a greater bond and feeling of responsibility and interconnectedness;

- ## Educating the public – teens and parents who are mutually aware and educated on the AOC and corresponding lifelong legal and social consequences will foster dialog within families and lead to changing risky teen sexual behaviors; and
- ## Providing education to youths on appropriate boundaries and healthy psychosexual development will prevent abuse and prevent those youths with potentially unhealthy development of deviant thoughts/desires from becoming entrenched and enmeshed in patterns that may lead to abuse. Further, employing a means of educating these youths on healthy physical and emotional boundaries, social skills, self-worth and other critical life skills can contribute to further reduction of abuse and crime rates in general.

These programs outlined in Section 5.7 focus on the "front end" of the sexual abuse issue; they are pro-active and preventive measures and will greatly contribute to safer communities and more educated citizens and will save many the experiences of offending and being victimized. All of these measures will benefit the nation in the greatest of ways.

### **5.6 Conduct Proactive Prevention Programs for Young Teens**

We believe a great deal more effort must be done to prevent future sexual abuse of children. We applaud and support Congress's attempts to control pornography and Internet manipulation of children. Making pornography unprofitable to make or use will go a long way toward reducing all types of sex crimes. However, the rising numbers of sex crimes committed against children by minors points out that we need to be pro-active in reaching young people with the message that exploiting young people is not acceptable. We need to educate them on what is and what is not normal behavior and who to talk to if you have inappropriate thoughts or feelings. We need to create a support network to prevent abuse, not to just treat it.

If implemented along with the other recommendations concerning risk assessment and registration, this would go far to eliminate the overburden on law enforcement and allow our officers to focus on those who truly pose a risk to the public, as well as those who pose less risk and are transitioning back into the community. This will significantly increase public safety and benefit our entire society by strengthening families and forging stronger community ties and involvement.

There are, however, offenders who have committed violent and egregious crimes, to which optimal resolution cannot apply. This also includes those who create, sell/trade or possess pornographic images of pre-pubescent children. For those offenders, other options must be pursued.

The most positive news about the issue of sexual crimes is that there are effective, viable and fiscally responsible alternative options for low-risk offenders, who far outnumber the high-risk ones.

SOhopeful does not advocate the alternatives in this section be applied to violent, repeat or mentally deranged registrants, such as ones who have been recently highlighted in the news (Duncan, Couey, Avila). Persons who injure, maim, or murder a child must be dealt with in



the harshest possible terms. Persons who produce, purvey or possess child pornography (not those of "questionable age" but those depicting clearly prepubescent children) especially of a violent or sadistic nature must also face and receive serious sentences and treatment.

It is very important to note that individuals such as those mentioned above are not deterred by even the harshest sentences. They will not be deterred by serious, even capital punishment as evidenced by the actions of Joseph Duncan III. Therefore sentencing structures must target those individuals who are the majority of offenders and be flexible to accommodate circumstances and individual factors, especially taking into account what is in the best interest of the victim in the long term.

## **5.7 Proposed Alternative Programs**

### **5.7.1 RESTORE--Restorative Justice**

Considering that the majority of child sexual abuse occurs within the family, and considering that most often the child-victim does want the family to stay together, Restorative Justice is a viable option for this situation, as well as other non-violent, one-time offenders.

The **RESTORE** program in Tucson, Arizona is a fantastic example of a facility that uses the restorative justice model in cooperation with the local police and district attorney and is victim-driven.

**RESTORE** only accepts non-violent offenses as cases and the program is divided into four parts. It incorporates psychological assessment, therapy, a probation and a meeting attended by the offender and victim (if they wish) wherein the victim's impact statement is read, the offender reads his/her reparation statement and an evaluation is made.

The program is supervised during all phases by the Community Accountability and Reintegration Board, and if, at any time, the offender fails to meet the conditions or obligations set forth, he/she is immediately terminated and the case is immediately handled through the court system.

The **RESTORE** program has received exceptionally high marks from victims who have participated. They have repeatedly indicated that it was cathartic, and they felt a positive sense of closure by participating and could now "go on" with their lives. The reoffense rate for those offenders who have participated thus far is 0%.

**RESTORE** is specifically set up to be easily replicated across the country; it was funded by a grant from the CDC, which has recently ended. It would be a much better use of taxpayer's money to fund this program across the country. (See Appendix B)

### **5.7.2 Juvenile Hotline and Appropriate Boundaries Program**

Many adult offenders who sexually abused a child that have spoken with SOhopeful International have told us that they started having inappropriate thoughts and desires in early puberty. However, there was no venue to discuss what are appropriate, healthy

boundaries or age-appropriate sexuality. If there had been some way to steer them from the inappropriate thoughts/desires towards a healthy sexuality, some intervention to teach them appropriate boundaries and healthy ways of relating, they may never have committed a sex crime.

Given that sexual attraction to children typically arises first in adolescence, this may be the most appropriate time to begin this type of preventive instruction. Helfer (1982) and Holmes (1987) both describe programs directed at teens that have as one of their goals reduction of the likelihood that the teens will become sexual abusers.<sup>37</sup>

We understand that a venue needs to be created for this age group for them to ask the questions they are not able to ask in a public school sex education class or ask their parents. It is imperative for these young people to get accurate information, as many times their information is provided from the different media.<sup>38</sup> If left unchecked, inappropriate thoughts and desires become a pattern ingrained into their personality and identity.

There is currently a website called "Iwannaknow" put out by the American Social Health Association<sup>39</sup> that is supposed to be a venue for juveniles to find out answers to their questions, but it doesn't go far enough. It is not interactive and does not address appropriate boundaries or healthy behavior. There is also no mechanism to answer individual questions.

It is necessary for juveniles to have a live person to talk to, to answer their questions without fear of rejection, judgment or reporting. The reporting threshold would necessarily be lowered for juveniles but strictly defined to accommodate local and federal laws. The program would be structured and implemented in a way that if the caller had moved from having inappropriate thoughts/desires to acting on them, he/she would be ushered into a counseling program.

Under the existing system, the most minor act can be deemed sexually aggressive behavior and criminal charges can be made, many times with the youth being processed and sentenced through adult court. Within this program, unless the action was violent or used force, the counseling program would be utilized as a diversion, much the same way drug court is used today – to divert the offender to a treatment program. If the juvenile offender violates the program, their court case resumes and they are formally charged.

Incorporating the restorative justice model outlined above, the counseling program would have multiple parts:

Wayward Juvenile:

- ## X day camp highlighting boundaries, healthy expression and interacting with others in a non-sexual way
- ## Individual counseling for X months, weekly as maintenance
- ## Referral to drug/substance abuse program(s), if applicable

Juvenile victim:

- ## Individual counseling to discuss affects of the offense, learn healthy boundaries

- ≠ X day camp highlighting appropriate boundaries, healthy expression, building trust with peers, and interacting with others in a non-sexual way
- ≠ Referral to drug/substance abuse program(s), if applicable

Family unit:

- ≠ Parental counseling highlighting appropriate physical boundaries and age-appropriate behaviors, setting limits and following through
- ≠ Referral to drug/substance abuse program(s), if applicable
- ≠ Family counseling to address background issues

**5.7.3 Healthy Boundaries Program**

This program will work with youth to identify, clarify and develop healthy and appropriate boundaries in interpersonal relations and relationships. This includes emotional and physical as well as healthy sexual boundaries.

Juveniles will engage in fun and positive exercises that encourage sharing, teamwork, trust building and empathy. The end result will be healthier boundaries in a number of different areas of their lives.

Rob & Deb Longo's program "***New Hope for Youth***" is an example of a positive program. It contains the following critical steps and life and coping skills necessary to healthy relationships and productive citizens.

- Teambuilding
- Trust
- Touch (non-sexual)
  
- Self-expression
- Self-exploration
- Self-disclosure
  
- Self-awareness
- Inter- and intra-personal skills
- Self esteem
  
- Identification/recognition of feelings
- Empathy
  
- Anger management
- Assertiveness
  
- Values clarification/personal beliefs: healthy boundaries
  
- Peer relations
- Social competencies

- Social skills
- Circle of Intimacy

#### **5.7.4 Parents and Teens Education Outreach**

One of the big problems with teens being sexually active is that most teens are completely unaware of the age of consent laws. Likewise their parents are largely unaware of the laws or of the lifelong consequences of breaking them.

An educational outreach program in the form of a one-night presentation outlining the following would significantly improve understanding and lead to frank discussions within the family on appropriate and legal behavior and boundaries and change perceptions of both parents and teens.

- q Age of consent laws in the state
  - ✧ Covered behaviors
  - ✧ Non-covered behaviors
  - ✧ Legal consequences for engaging in covered behaviors
    - Prison/jail time, permanent criminal record
    - Mandatory sex offender treatment
    - Mandatory sex offender registration
    - Potential community notification
  - ✧ Parental responsibilities
    - Mandatory reporting of covered behaviors
    - Potential legal consequences for permitting covered behaviors
- q What the social consequences are for engaging in covered behaviors
  - ✧ Loss of friends and social support system
  - ✧ Loss of self-worth and positive identity
  - ✧ Severe limitations on movement
  - ✧ Severe limitations on dating/socializing opportunities
- q Life as a registered sex offender
  - ✧ Loss of community standing, good name
  - ✧ Discrimination in housing and employment
  - ✧ Significant restrictions on movement and association
  - ✧ High probability of changing laws and further restrictions and obligations

This presentation could be easily adapted for each state's AOC laws and corresponding legal punishments, corrections systems, and registry and community notification laws.

#### **5.8 Summary**

The current policy towards managing and tracking sex offenders is flawed, but it can be corrected.

Recommended corrections include:

- ⌘ Identify and manage high-risk offenders effectively through mandatory assessment and long-term civil commitment where warranted.
- ⌘ Manage low-risk offenders through shorter-term incarceration and proven treatment programs for both the offender (and the offender's family if the crime was intrafamilial), or restorative justice programs such as **RESTORE**
- ⌘ Educate young people about what is and what is not normal and legal sexual behavior, and provide a source of early intervention for young people with potential problems in this area.

Focusing on these approaches to the problem of sex crimes involving children can accomplish the following goals:

1. Increase public safety

- ⌘ Focus law enforcement resources on high-risk offenders
- ⌘ Prosecute violent and repeat offenders to the fullest extent of the law
- ⌘ Isolate high-risk offenders from the public through civil commitment rather than prison
- ⌘ Focus probation/parole on high-risk offenders if they transition into society

2. Support communities and families, including the victim's family

- ⌘ Hold first-time offenders accountable in a more meaningful and effective way, achieving effective deterrence.
- ⌘ Break the cycle of incarceration by keeping families together, contributing to healthier, stronger and intact family units.
- ⌘ Provide true healing for victims of intrafamilial abuse by allowing re-establishment of healthy relationships if desired.

3. Prevent future abuse

- ⌘ Continue educating the public on what constitutes abuse.
- ⌘ Educate the public and teens on the age of consent laws to avoid turning teen romance into sex crimes.
- ⌘ Educate the public and teens on what is and is not appropriate and provide early-intervention counseling and treatment to avoid juvenile-on-juvenile abuse.
- ⌘ Providing a venue and point of intervention to pubescent kids, preventing abuse and promoting healthy boundaries and interpersonal skills.

4. Address the issue of sex crimes using sound fiscal management

- ⌘ Reduce the number of long-term incarcerations (and the costs thereof) by using long-term incarceration or civil commitment only for the high-risk offenders.
- ⌘ Reduce the length of incarcerations for low-risk offenders, and thus reduce incarceration costs.
- ⌘ Use effective treatment programs to support return of low-risk offenders to society, thus reducing welfare and Medicaid costs for their families, and reducing homelessness among former offenders.
- ⌘ Fund programs oriented towards prevention and education, which are far more cost-effective in the short and long run. Compared to the cost of incarceration for one

year, restorative justice programs save money by keeping families together and breaking the cycle of incarceration.

5. Preserve the tax base

- ## Focus on enabling employment for the ex-offenders so they can support their families, promote stronger communities, and become taxpayers again.
- ## Prevent minors from becoming abusers through early-intervention programs, so that they avoid becoming mentally damaged people who must be supported in prisons or hospitals, but instead develop into healthy, working, tax-paying, contributing adults.

## ENDNOTES

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<sup>1</sup> Grubin, D. & Wingate, S. (1996). Criminal Behaviour and Mental Health, 6, 349-359 Whurr Publishers Ltd. Pages 349 – 357 (Pg. 1)

<sup>2</sup> US Department of Health and Human Services, Administration on Children, Youth and Families. (2005). Child Maltreatment 2003 (Washington DC: USGPO, Online Summary: <http://www.acf.hhs.gov/programs/cb/publications/cm03/index.htm>)

<sup>3</sup> US Bureau of Justice Statistics, Sex Offenders and Offenses, January through February 1997. NCJ163392

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<sup>5</sup> US Department of Justice, Office of Justice Programs, (Oct. 2002). NISMART-2, Bulletin. Nonfamily Abducted Children: National Estimates and Characteristics (pg.2)

<sup>6</sup> US Department of Justice, Office of Justice Programs, (Oct. 2002). NISMART-2, Bulletin. National Estimates of Missing Children: An Overview, Table 3: Reasons Children Became Missing (pg. 6)

<sup>7</sup> Fennell, J. excerpt from Kids and Cars <http://www.kidsandcars.org/>

<sup>8</sup> U.S. Advisory Board on Child Abuse and Neglect (1995). A Nation's Shame: Fatal Child Abuse and Neglect in the US. US Department of Health and Human Services

<sup>9</sup> Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR (Text Revision), 302.2 "Pedophilia" Symptoms

<sup>10</sup> Harris, Andrew J. R. and Hanson, R. Karl, (2004). Sex Offender Recidivism: A Simple Question (2004-03) Public Safety and Emergency Preparedness Canada (ISBN 0-662-37095-3) (pg 11)

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<sup>13</sup> Love, J. (2002). Why "Megan's" Laws Are Unconstitutional. Prisoner Life.com.

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[http://www.prisonerlife.com/page\\_writings2.cfm?writingsID=156&WebpageID=52&MemberID=2494](http://www.prisonerlife.com/page_writings2.cfm?writingsID=156&WebpageID=52&MemberID=2494) (accessed May 2005)

<sup>14</sup> Harris, A., and Hanson, R. K. (2004). Sex Offender Recidivism: A Simple Question (2004-03) Public Safety and Emergency Preparedness Canada (ISBN 0-662-37095-3) (pg 1)

<sup>15</sup> Id.1

<sup>16</sup> Id.1

<sup>17</sup> Id.13

<sup>18</sup> National Center on Institutions and Alternatives (NCIA) Research Volunteers. (1996). Community Notification And Setting The Record Straight On Recidivism

<sup>19</sup> A Research Report: Sex Offense Cases and Plea Negotiation. (2002). Criminal and Juvenile Justice Consortium

<sup>20</sup> Michigan State Sex Offender Registry. <http://www.mipsor.state.mi.us/> (accessed 8/11/2005)

<sup>21</sup> Id. 13

<sup>22</sup> *WordNet*® 2.0<sup>22</sup>, © 2003 Princeton University

<sup>23</sup> Merriam-Webster's Dictionary of Law, © 1996 Merriam-Webster, Inc

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<sup>26</sup> Ponton, L. (2000). The Sex Lives of Teenagers: Revealing the Secret World of Adolescent Boys and Girls. New York, NY: Dutton (pg 2)

<sup>27</sup> Zevitz, R. and Farkas, Mary Ann. (2000). Sex Offender Community Notification: Assessing the Impact in Wisconsin. Research in Brief, National Institute of Justice

<sup>28</sup> *Id.* 26 (pg. 21)

<sup>29</sup> *Id.* 26

<sup>30</sup> Matson, S. with Lieb, R. (1996). COMMUNITY NOTIFICATION IN WASHINGTON STATE: 1996 Survey of Law Enforcement. Washington Institute for Public Policy (15)

<sup>31</sup> Community Notification Position Statement (1996). Association for the Treatment of Sexual Abusers. <http://www.atsa.com/ppnotify.html>.

<sup>32</sup> *Id.* 28



<sup>33</sup> Shram, D. and Milloy, C. (1995). Community Notification: A Study of Offender Characteristics and Recidivism. Urban Policy Institute for Washington State Institute for Public Policy.

<sup>34</sup> Id. 32 (p. 16)

<sup>35</sup> Id. 32 (p. 18)

<sup>36</sup> Id. 36

<sup>37</sup> Krivacska. J. (1989) Primary Prevention of Child Sexual Abuse. IPT Journal Volume 1, Number 4

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## ***TESTIMONIALS FROM VICTIMS & FAMILIES***

### ***COLLATERAL DAMAGE – Redacted Version***

This Appendix contains personal accounts of experiences of the families and children of registrants, particularly with respect to housing, employment and violence, vigilantism, ostracism and social isolation.

These personal testimonials were submitted to SOhopeful International on the condition that the authors' identity and personal information remain confidential, that is, the only persons to view the unredacted versions would be those authorized by the authors.

Therefore this Appendix has been redacted to protect their privacy and honor our promise.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

FROM A FAMILY THAT HAS EXPERIENCED INCEST ABUSE:  
(Our concerns about establishing a National Sex Offenders Registry)

My husband and I are very concerned about legislation that is being introduced to establish a National Sex Offenders Registry. This sex offenders registry will also be available for public access through the Internet. Our concerns about current legislation is that those making the laws **might not know the negative effect Internet sex offenders registries have on incest victims**. For this reason, we are writing this letter hoping that our concern for our daughter, who was a victim of incest, will be understood and considered by those that are writing the guidelines (law) for a National Internet registry for sex offenders.

In 1996, my husband and I took our son and daughter to our local police when we came upon an incest situation between our eighteen year old son and our twelve year old daughter. Our son, at the time, plead “no contest” to a felony in order to keep his sister from going through the anguish of testifying on the stand. Our son was granted probation through penal code 1203.066. This type of probation can be granted to sex offenders, in California, if the victim is a relative and if probation is in the best interest of the victim. At the time of his conviction, our son was also told he would have to register as a sex offender for life.

Our son and daughter, having both been identified learning disabled when young, have made great progress towards their life goals. Our son, now age twenty-seven, is an honor student at The Masters College in \_\_\_\_\_, California and is majoring in Biblical Languages. Our daughter, now age twenty-one, has graduated from high school where she was active in color guard. She is working currently with the state rehabilitation towards career goals in early child development. They are both good citizens and are respected by their peers and others. Our son admits what he did was wrong and now has a healthy relationship with his sister and with all our family.

Our daughter loves her brother and her family. **She cannot understand why others need to know about her brother since he is not a threat to others**. He is not a repeat offender. He has not hurt anyone in the general public. He also has completed successful counseling.

**Our daughter feels that the disclosure of her brother's name and address would compel her, if necessary, to tell others about what happened. (One could say that our daughter need not disclose any information since no information is given about the victims on sex offender registries.)** However, our daughter feels that telling the truth about what happened might be the only way to stop others from judging our family. Perhaps, others would then not fear her brother knowing the offense had been committed within the family unit and counseling had been given as well

Last year, our daughter experienced much anxiety when she heard on the news that California's Sex Offender Registry would soon be available for the public to view on the Internet. She was very much concerned that the posting of all sex offenders, including incest offenders, might have a negative effect on our family. **She was afraid our family would be locked up differently by others, including her friends, that would not understand or know what our family had been through.**

Our daughter, being as concerned as she was last year, even talked to her therapist about the up and coming registry posting on the Internet. She asked her therapist if there was anything she herself could do in regard to the possibility of her brother's information being posted on the

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Internet. She was very frightened knowing that some of her friends might see his name and ask her about it. She also felt that those that supported an intent sex offenders registry, which also listed incest offenders, did not understand the anxiety she was feeling as a victim as well.

Then later last year, our son was sent an application for exclusion from the California Sex Offender Registry that was to be posted on the Internet. The application for exclusion had been sent from the state to sex offenders that had been granted probation through penal code 1203,066. (incest offenders)

The Internet Sex Offenders Registry exclusion application process allowed our State Attorney General to review our son's criminal file and the circumstances of the crime that he had committed in 1996. The State Attorney General could then decide if our son would be eligible to be excluded from the Internet posting of sex offenders in California. ( \*An approved applicant would still have their information listed on the required official California Sex Offenders Registry that could be viewed by the public at the local police facilities.)

Our daughter and our family were very relieved that our son's application for exclusion from the California's Internet Sex offenders Registry was approved by our State Attorney General. We are grateful that our state had the wisdom to know and the took the time to consider how devastating it would be for victims of incest abuse if incest offenders information were put on the Internet web site for the public to see.

Today we are a family that was able to stop the abuse and heel because we reached out for help. My husband and I, on that evening in 1996, only knew we needed to do what was right and what would help both our son as well as our daughter. We did not know then the extent of the abuse. We didn't know then how it had affected our daughter emotionally and if she would be scared for life. We did not know if our son had tendencies to abuse someone again as well. These questions and concerns needed to be answered. By turning our son in we knew they could be answered and dealt with as well. We felt we were right, we had done the best thing possible for both our loved ones then.

In 1996 when we turned our son into the police, we never dreamed our daughter, who was the victim, might years later face the possibly of **feeling victimized again. This is how she feels knowing her brother's information could be available on the Internet.** Now knowing what she is feeling, and seeing her concerns, we have rethought much about what is best when incest happens in a family. **Therefore, if we could do over what we have been though, we would honestly say that turning our son in was not in the best interest for our daughter.** We can justify turning our son in, he did what was wrong and needed to be punished and helped. **However, how can we justify making our daughter feel victimized again? Her fear outweighs the need to have our son punished. Also, her present fear of exposure is something she might have to face now the rest of her life due to ever changing mandates (legislation) that continues to be put on all sex offenders.**

Our family's concern with a National Sex Offenders Internet Registry, which would include posting of incest offenders information, might be the same concern of other families that have also turned in their own loved ones in hope of helping and healing the victim and the accuser as well. The main goal of counseling, when incest exist in a family unit, is to help the victim and the family. Getting help early on for incest victims is vital for all victims of incest abuse. **We strongly feel that the posting of information on incest offenders on the Internet could force families of**

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

incest to less likely turn in loved ones or to testify against a loved one accused of incest abuse. Families that experience incest abuse might just look away and not except the importance of counseling and rehabilitation. Not only might some families find themselves wanting to protect the abuser, which is totally wrong, but families might then want to also protect the victim which might later feel compelled to disclose they were a victim of incest.

A National Sex Offenders Registry, which included information on incest offenders, could also have long term on our society as well. Incest should and must be stopped within families. As in our case, most often it is the family that must do whatever they can to stop family incest. Most incest cases are discovered and report from family members themselves, sometimes including the victims at a much later age. **If family incest is reported or discovered less often, then we have generated not less but more victims of incest abuse.**

In closing, as you meet to establish guidelines for a National Sex Offenders Registry we ask that you consider our family's concerns for the victims of family incest. One would hope that you also talk to professional counselors who have had success with family units of incest abuse. See what the professional feel as well in regard to the victims and a public (Internet) Sex Offenders Registry. Also, perhaps asking other states, that have Internet sites up, what their policies are to notifying the public on incest offenders. Please, do not let down the victims of incest abuse as you meet to develop guidelines for a National Sex Offenders Registry.

Sincerely,  
NAME WITHHELD UPON REQUEST  
Los Angeles County, California

PS. Attached you will find two pages of a letter our daughter insisted she also wanted to include. Please excuse her spelling. We did not offer any assistance to her in writing her letter either. She is identified learning disabled, in the area of visual processing, and spelling is very difficult for her.



## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

I am writing this letter because I am very worried about a National sex offender registry. My brother's name could be on it. My brother goes to college and is getting good grades and tries very hard to do good. He is not like he was 8 years ago. I am proud of him.

Last year California was going to put a list on the internet up. I was very worried about his name being on it. I find out later his name and information was not going to be on this list on the internet. I was glad.

I am afraid now with this National list he may be put on. I know this goes on National for anyone to go look at. I know if my brother's name is put on a national list people will think it was with someone else and will hate our family or my brother living in our house. Also not many people have same last name as me.

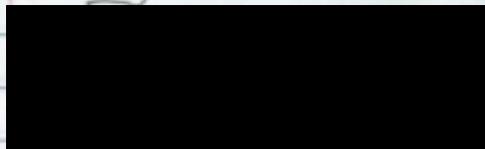
**TESTIMONIALS FROM VICTIMS & FAMILIES**

**COLLATERAL DAMAGE – Redacted Version**

I really don't want people to ask me why my brother's name is on the internet. If I have to I will tell them what happened so they will not think bad about our family.

When it happened he had to move away now he is living here with me and my parents. He has no other place to live since he is in school. I feel bad for him but I am afraid others will not understand what happened with me and him.

Thank you for your time and please consider what I am concerned about. Also, I am sorry about the spelling mistakes. I am hearing-impaired and spelling is very hard for me.



Los Angeles County  
California

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Dear Representatives of the People:

As citizens of a Democratic society, we all expect our inalienable rights to be honored. My parents taught me if we educate ourselves, work hard and treat others as we wish to be treated, we can accomplish anything. Unfortunately, this is no longer the case for certain individuals.

I grew up believing this country was the best in the world; that our justice system set an example for other nations. For the past 15 years, I've worked as a compassionate caregiver, an RN, with the desire to give back to the country I dearly love. I set my sights to make a difference. Yet, over the past 4 years, I have become extremely disillusioned about our so called democracy.

I am the wife of a non-violent sex-offender and we have two loving children. We are one of the 35 thousand sex offender families living in Florida. Because we are guilty by association, our civil liberties have been systematically desecrated. As a family, we no longer have rights to privacy and my children's pursuit of happiness has been stripped away. This is unbelievable!

This summer, as we enter another hurricane season in Florida, I will help the needy, as I always have. Yet, despite my unconditional giving to society, they have a right to invade my privacy and ruin my children's expectation of childhood happiness. For the past 2 1/2 years, until their father, whom they love dearly, was re-united with us, we sang "The Sun will Come Out Tomorrow," and held onto the faith that peace and love will once again be part of our lives. We expected to put the past behind us and begin to rebuild a future as a family.

Unfortunately, because of Florida's Sex Offender (SO) registry, this has not happened. We live in the shadow of fear ever since a neighborhood parent took it upon herself to copy information from the registry and hand it out during dismissal time at my children's school. This had the effect of a bomb detonating. Luckily, the Principal and school truant office stopped her, but not before the ripple effect of hysteria touched our entire community.

My nine year old son, who had play dates every day, no longer has one child to play with. Was this the goal of the legislators? This mother, who I don't even know (if she knew us enough to pass judgment, she would have faith that we are a decent family), has continued to pursue us and we have received visits from the Sheriffs office twice, the Division of Family service twice and most recently, she had an article posted in our community newsletter about the presence of my husband in the neighborhood. How can one woman have the right to cause my family so much harm?

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

How is it that our legislators, empowered with the duty to uphold the rights of all citizens, can cause harm to my family and others in our situation with such blatant disregard for our Civil Rights? Did they really intend to give a woman like this the tools to legally trample my basic rights as an American? My children and I have NEVER caused harm to another human being. Why do we NOT deserve the rights of every other family, including the families of other ex-felons (drunk drivers, burglars, drug dealers, etc.)? It is socially unconscionable to envision the methodological persecution and loss of freedom as once effected the American Indians, the Blacks and Jews.

Unfortunately, hysteria surrounding sex crimes are resultant from misconceptions over inaccurate data regarding recidivism rates and success of treatment for sex offenders. Various published state Department of Corrections (DOC) studies compare recidivism rates for sex offenders to the rates of other crimes. Many would be shocked at the truth that sex offenders have one of the lowest recidivism rates. In fact, a new report from Kentucky DOC, summarized below, show recidivism rates for treated sex offenders to be about 8%.

Sex offenses:	<b>8.5%</b>
Violent offenses:	29%
Drug offenses:	28.7%
Weapon offenses:	34.8%
Property crimes:	29.9%
Other offenses:	19.8%

Contrary to popular belief, sex offenders have in fact, the lowest recidivism rates in study after study. In addition, a little known, yet important fact is, like my husband, 90% of sex offender crimes involve incest. Literature states that these offenders do not stray from familial grounds. What does this say? They are NO threat to others in the community and in most cases do not need to appear on the registry. It is appalling to see that the most educated country in the world has the most archaic laws grown out of emotionalism and hysteria from a few sad incidents. These laws do not reflect the true statistics. It is no wonder people are afraid; they do not have the facts.

If they knew the truth, would my neighbors be afraid of my husband? Would they fear the man who committed a non-violent act, sought help as an abused victim himself, readily confessed to what he did, demonstrated extreme remorse and was incarcerated for 2 1/2 years away from his own children and continued to receive counseling and is considered no risk to re-offend? Yet his picture and my address are in the Florida Sex offender registry.



## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Unfortunately, as a result of misconceptions prompting the registry, my children, ages 9 and 12, were forced to choose between living with the father whom they love and need or being lepers of society. We proudly chose to stick together as a family and fight this unjust insanity.

In theory, the SO registry is designed to do a good thing. However, in reality, logic speaks to the reasonable man, that if a Predator wants to abduct a child, he will accomplish this; at the local mall or even from a playground the next town over. Having his address, unless he has 24 hour surveillance, helps no one. Not one study has proven the efficacy of the sex offender registry in saving the lives of children. It merely serves as a basis for a false sense of security and serves to stretch thin already short staffed law enforcement personnel. A better utilization of these scarce resources may be to identify those truly at risk and concentrate on monitoring them. In my county there are 8 Deputy Sheriffs on a special task force to monitor 800 sex offenders, of which 35 are Predators!! It is quite ludicrous to expect these 8 officers to monitor 800 persons effectively, when they would be best served monitoring the 35 Predators instead. Yet these same Sheriffs have come to my house twice at the request of this lunatic woman who can't believe that a sex offender lives in her neighborhood.

Instead of focusing fear on non-violent sex offenders, our community should fear the perpetrators of gang warfare, drug crimes, drunk drivers, and other felons who maim or kill one hundred thousand children a year. The public should insist upon these persons appearing on a registry, rather than persons like my husband - the gentle, loving and devoted father of my children who wishes nothing more than to give his children the chance to grow up with their Civil Rights intact.

As parents, we are ALL responsible for protecting our children. Yet, this should not be done at the expense of the children and families of the 550,000 registered sex offenders across the US. This punitive legislation only incites vigilantism and hardship and jeopardizes happiness of the innocent children in direct opposition to the promise our Constitution cries to uphold.

Childhood sexual abuse has become an epidemic of unimagined proportions and our current laws are ineffective in stemming the perpetuation of these crimes. In order to save our families of incest from the "death sentence" it forces, it may be prudent to promote proactive measures to solve these problems. Restorative justice and interventional, preventative counseling such as used for the drug offenders, and anger addicts makes more sense than incarceration for non-violent offenders seeking help.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Terminally tearing a family apart with incarceration should be the last sanction for those asking for help and wanting to work together with their families and heal through understanding, forgiveness and love. We need to find solutions to break the cycle!!

Please understand that I am not alone. I belong to a group of sex offender families across the country that faces the same challenges. They each fight their own battle, with the common goal to protect children. We, together, propose clear, precise community notification based upon accurate recidivism rates and level of threat. If the above cannot be accomplished, we request legislators to answer the question as to why all other crimes, with proven higher recidivism rates, and greater potential to harm children, are not listed on their own registry.

I cannot imagine myself or my children continuing to live under the shadow of the sex offender stigma. Let our country stand up and fight for the safety and civil rights of all children by enacting well informed and proactive legislation. We can provide a safer society for our children and protect their Civil Rights at the same time!

I entrust in you to question the social consciousness of these legislative acts and have faith in your tenacity to do the right thing. Please think out of the box to see a proactive stance on these issues as the only way to approach this American crisis. This alone will allow my children to develop the idealism I once had for this country. My children are gifted, honor students who have a bright future and a lot to offer this society. Please give them the freedom of each and every other person and allow them to pursue their own American dream with their Civil Rights intact. Remove non-violent low risk sex offenders from the registry. The State of New Jersey has an excellent example of a well reasoned proactive approach to sex offender registries.

I thank you for your time and attention. Please act soon.  
Brevard County, FL  
NAME WITHHELD UPON REQUEST

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Here is our family story. Two years ago, on a Saturday afternoon, July 27, 2002, my 5 yr old daughter came up to me while I was gardening in the front yard. I had just arrived back home with some flowers and was anxious to get them planted. She said her brother put his \_\_\_\_\_ in her \_\_\_\_\_. I felt the world turn literally upside down for me at that moment and immediately went in, shaking, numb, ready to pass out, to my husband who was sleeping upstairs. I told him what she'd told me and he, startled, went immediately and found my son and questioned him.

My son was 12 at the time, almost 13. As you know, we were DEVASTATED. I scoured the internet all weekend, grieving, knowing that if I got therapy for all of us, the therapist would HAVE to BY LAW, report the incident to the local police dept. (in this case, the county sheriff's dept.).

I had a very close friend at the time, who had raised 2 boys into their 20's and I called her, all the while knowing her husband was a law enforcement officer. Little did I know, that her husband would eavesdrop on our conversation that weekend, because, of all things, he suspected her of having an affair behind his back.

Two days later, on that fateful Monday morning, I received a call from a frantic and sobbing girlfriend, who couldn't speak, who could only sob. Then her law enforcement husband got on the phone and threatened me to call and turn my son in or he'd have an officer come by. I was in hysterics, begging, begging, him not to do what he was doing.

As a matter of fact, I had already called a therapist I'd met with months before for myself for some job-related anxiety issues, and she gave me the name of a therapist who could deal with sexual assault. I already knew, from the information all over the internet, that my son had to be turned in to authorities due to the differences in age, the non-consent and because (in my own mind) the disgusting and unnatural act of incest.

The friend's husband wouldn't let me off the phone until I promised I'd call the sheriff's dept and turn in my son. After hysterically calling my husband, and then receiving the call from the therapist I'd paged, I called our county's social services dept. and told them what had happened. They calmed my fears that the police wouldn't show up on my doorstep and cart my 12-yr. old son away in shackles to some cell to be molested himself. In fact, the Director of Social Services for the county assured me that if ANY officer came to our door, we were to call her.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

However, at midnight or a few minutes after on that same fateful day, 7/30/02, an officer **banged** on the door to our house, and when we let him in and he was INSISTENT that we fill out the report at that moment. He checked our general vicinity of our house as if we were common criminals or harbouring a notorious murderer. He was rude, insistent, and when we said he should call the Dir. of Soc. Svcs., he did, to the Director's shock and her anger - at the officer. Apparently, Soc. Svc. and the Sheriff's Dept. were not on the same page as far as these types of occurrences.

My son confessed three days later, to several incidences with my daughter, even though he could look us in the eye and LIE completely, calmly, efficiently. We were shattered, but were assured that hardly no one who committed this type of offense was ever going to admit to it unless under extreme pressure. That pressure was the county sheriff's dept. detective who interviewed our son and finally got the truth out of him.

To make a long story short, we had our daughter, our son, ourselves, in therapy, as quickly as we could, which was 2-3 weeks later. We provided safety plans, offered our house open to any inspection for Soc. Svcs. to check to see if we were adhering to all Safety Plans to keep the two children separated. We jumped through IMMEDIATE hoops and because of it, our son was even allowed to stay in the home - the same home of his sister - whom he'd offended. We were told we were very fortunate and it was very rare to have that happen. It was our quick action to report the incident and FOLLOW THE LAW in reporting the incident to authorities.

It's been 2 years now - I know, I know, only a drop in the bucket for so many of you out there who have undergone so many years of persecution, I can't imagine how you are going on.....

But for us in that 2 yrs, fortunately, our 7 yr old completed her sex assault victim's therapy in a little less than 1 yr, and our son is in "aftercare", which occurs just after successful termination from group therapy. We are the fortunate ones. We only spent about \$15,000 in this whole ordeal with \$6,000 lawyer's fees that did is NO GOOD - we did more research and did more good for our son than that LEECH of a lawyer ever did. That didn't could restitution, therapy fees for our son, therapy for us as a family, PAXIL for me, as the mom, to keep my composure and sanity, and a loss of income of about \$18,000 due to my having to go part time to cart kids to therapists, court dates, pick the son up from school due to him being unable to be left alone without an UNKNOWN SUPERVISOR (You know, a known supervisor, is someone who knows exactly what the sex offender has done).



## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

When my son graduates from his therapy and his probation, as you all know, that's not the end of it. Though he was immature at 12 sexually, and he did these heinous acts, he is still held to accountability. We were very, very lucky, because, when the CENTRAL SEX OFFENDER REGISTRY came knocking at our door like the Grimm Reaper, we were able, by our "quick action and quick reporting to authorities" able to get our son taken off the Central Registry at 20 - one of the most generous acts taken by our imperial state atty genl, according to his representation at our hearing.

You know what sex offender registries do more than we do at this time with a 14 yr old. We are just beginning to understand that our son will have to register as a sex offender for the 2 yrs he's in college. And you know the results of having to register - the persecution, the quiet, suffocating shame and fear of being discovered, let alone being retaliated against if discovered. AND THIS IS ALL AFTER MY SON IS OUT OF PROBATION!!!! HE WOULD'VE SERVED HIS PUNISHMENT AND SUCCESSFULLY COMPLETED HIS GRUELLY THERAPY!!!!!!

So definitely are his civil rights gone, that I am ready to fight for this horrible, horrible wrong.

Already, by age 14, my son has been denied the ability to stay in his original school (a private, Christian school), when this happened. He's been shunned by the high school he SO wanted to attend (even though his straight A grades, his exemplary behavior vouched for by the principal of his middle school as WELL AS HIS SEX THERAPIST!!!!)

Yes, we received a very flippant call from the principal of the high school my son so wanted to attend. The principal's only words were "MY COUNSEL had to get back to me and we've decided YOUR SON WOULD NOT BE ALLOWED AT OUR SCHOOL THIS YEAR"

As you know, those words, tore through a mother's heart. I asked, just for my son's sake, "so what if he should want to attend next yr and he's off Probation?" The response by the Principal was "Well... if he's doing better....then maybe..." I blasted back, "he's already doing better!" He's never reoffended, he's never been in any trouble since the first offenses!" I also admitted that he has his own position to attend to, but that "I'd see if my son even wanted to have anything to do with his high school next year anyway." I know I was burning bridges, but for my son's sake, I had to make my point sting.

You know the discrimination....it's all too familiar.... and I'm humbled telling you my short story, knowing there are so many of you out there who have paid your time for so much longer, in therapy, mending your families, your hearts, shaming

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

yourselves over and over and over again, and still, it's not good enough for the POWERS that hold the key to your/our freedom.

Understand here, that while I don't think I was ever a direct victim of sexual abuse, I was raised with a mother who was - by her brother, and my sister, who was either abused, or witnessed a cousin's sexual abuse at a very young age. I am not new to this type of offense and shame. And yet, as I tried to do the "right thing" in the case of my son and my daughter, I feel our family has been treated like less than 2nd class citizens, my son rejected - even though we have in writing, his very own therapist, his middle school asst. principal and his middle school counselor - vouching that he's not a threat or a danger and is actually an asset to any school he attends due to his strength of character.

My plan, is to get this PERSECUTION AND WITCH HUNT OUT IN THE OPEN for all to see. We didn't have a lot of \$ to begin with, and of course, that leech of a lawyer, didn't help.

I find it sick and hypocritical to find that Colorado University's Football Team (I was a Cross Country runner for CU in 19\_\_ and I know how their athletics dept. likes to intimidate women, being one myself threatened by Eddie Crowder), gets off "rape charge free, and our \_\_\_\_\_ Force Academy male cadets get off for confessing the truth, but the rest of us "GRUNTS" have to go the regular route, even though we confessed the truth. Our lives, or our sons or spouses lives ruined forever - with no lofty, state or higher politician any the wiser to our plight, because it's so shameful, embarrassing and stigmatizing, they know many of us won't come forward to make any big noises about it.

It's almost as if all of us in this case, our extorting ourselves! I can speak for one family - ours, who is terrified at lobbying too aggressively due to the chance our names might be released into the public and our uninformed loved ones might find out.

If we come forward publicly, we expose the identity of our loved one who committed the act of sexual offense. However, if we don't voice our outrage at their persecution, it will never stop!!!! I am so concerned there will be more young men/women sex offenders who will kill themselves out of despair that humankind will NEVER, EVER accept them back into the fold!!!!!!

My son happens to be the namesake of his grandfather, who is a pillar of his community. IT FIGURES!!!!!! Perhaps it serves a purpose here to say, "folks, you don't know what your kids are going to do later in life, so DON'T name them after anyone you don't want to disappoint."

***TESTIMONIALS FROM VICTIMS & FAMILIES***  
***COLLATERAL DAMAGE – Redacted Version***

I wanted to add the most important part to why we need to right this terrible wrong done to people trying to get help.

**The reason is that if authorities make this type of offense so difficult to get out from under, then eventually, no one is going to turn in their son, husband, brother, etc., for fear of that person being persecuted until death. This works AGAINST Megan's Law, the laws that protect innocent people from sex abuse.**

NAME WITHHELD UPON REQUEST,  
Colorado

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

We live in \_\_\_\_\_rado. Our son, age 15, had to register due to his inappropriate contact with his sister. At the time, he was 12 and she was 5. We, his parents, turned him in immediately once our daughter told us. We got everyone in therapy, and in 2 1/2 years, we were a healthier, closer family and our son had accepted full responsibility and graduated in record time from one of the strictest sex offender therapy programs in Colorado. He passed his polygraphs, and was deemed by his therapist as a "low risk" for re-offending, and a low risk to the community. Both his former middle school assistant principal and his school counselor were very supportive and vouched that our son was an exemplary student and was a low risk to offend out in the community. We still keep our daughter and son separate - never to be alone together, and we communicate in our family better than ever before.

Just this past December 14, 2004, the deferred adjudication he was given was successfully dismissed with prejudice, his plea of guilty was withdrawn, and we were free to petition to have his name removed from the registry. You would think that would be the end of our terrible experience - but no!

As the mom, I lived under the shame and fear of that list for the full 2 1/2 years, wondering who could get access to my son's name, a juvenile, and who would point the finger at us. Through some fluke, when we went to re-register him for the year, it turned out he had never officially been put on the list, which turned out to be the fault of the probation dept. He officially made it on the list Oct. 25, 2004, and by the last week in Dec. 04, barely a few days after Christmas, we had our first act of what I consider harassment and vigilantism. I wonder how much more hell we would have endured had our son been on the list from Dec. 02, which we believed to be when he was registered?

We returned from our Christmas '04 vacation out of town only to be confronted by a neighbor who informed me that a woman banged on her door, shoved some papers in her face, and asked "did you know you live near a sex offender?"

My neighbor was dumbfounded and said "no."

The woman continued, "Do you know \_\_\_\_\_?"

My neighbor replied "Yes, and he's a wonderful young man."

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

The neighbor told me the woman said she was trying to buy a house up the street and she got the list. When the neighbor didn't react the way the woman expected, the woman got flustered and left, leaving my neighbor understandably shocked and scared. Luckily, I had confided a little bit to that neighbor a year earlier, not the total truth but a little bit about our "family crisis" we were going through and that it involved our son.

I was literally panic-stricken. Here we were, three weeks after our son's total dismissal and successful treatment, and we were being singled out and being pointed at. I was embarrassed and terrified the whole neighborhood had been informed by this woman with the list. I couldn't believe our son's name, as a juvenile, could be so accessible. And I couldn't believe how easy it was for this woman to abuse the list, and get away with it with no recourse.

The next Monday, Jan. 10, I called the \_\_\_\_\_ Sheriff's Dept. and reported that this had happened. I also called the Colorado Bureau of Investigation to let them know. The CBI was much more apologetic and understanding, and said they don't post juveniles on their internet site. But the most hurtful, arrogant reaction came from Officer Paul Rogers of Douglas County's Sheriff's Dept. His only response was a curt "well he's on the list, isn't he?"

Jan. 14, I submitted all the paperwork to petition to have our son removed from the registry. A few weeks later, the DA answered us back, objecting to his removal. We had to get a lawyer to assure we could get an end to a growing nightmare.

March 17, St. Patrick's Day, the \_\_\_\_\_ County Sheriff's Dept. held an "informational meeting" about a sexually violent predator moving into Highlands Ranch. I forced myself to go, knowing I might be panicking myself more about our situation. It was everything I feared it would be - **an absolute circus that the Sheriff's Dept. could not control.** People were given free information about the SVP, and were told not to retaliate, then the audience of probably over 2,000 people were told there were sex offender lists in the lobby and they could all get one if they each showed their ID and paid \$1.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

At least 1,300 people got the list that night - and I was one of them. I read down the list and there was our son's name. I could barely drive home. For nights afterward, I couldn't sleep for fear of retaliation against our house, our family, our son - who had ironically been recognized at school as "one of the students of the semester" for his exemplary attitude and efforts. I had to enlist the help of our family therapist because of my increasing panic attacks and fear of leaving the house. That's not the proper mental condition for a mother to be in to raise her 2 children and operate a household. My husband had to pick up a lot of the slack, when I was so polarized I couldn't think what to do next due to the stress. I should mention I still had to go to work everyday.

**Our son's name was listed as if he was convicted. He was never convicted**, and we fought with our lawyer to have the list corrected, but the \_\_\_\_\_ County Sheriff's Dept. stated that since they didn't *have* to correct the list, they *wouldn't*.

What made my panic worse, was the impending Colorado House Bill 05-1035, which would allow all police agencies in Colorado to publish sex offenders on the internet - photos, addresses and all. While senators and congressmen deliberated over what level of juveniles to publish on the internet, I lie awake at night, terrified that our son's life would be ruined as a result of their decisions. I called a couple of senators to voice my concern, and to beg them to pass my sentiments on. They did. Still, the bill passed, and I grieve for all the juveniles and adults on the list who did their time, in prison and/or in therapy, and are making good on their lives, not re-offending, only to have them *and their families ostracized, treated like lepers*.

It also didn't help that our local newspaper had a front page article every week about the ongoing saga about the SVP. I had to stop watching the news completely in order to diminish my attacks.

I was scared our daughter (the victim) would be singled out at school, if someone's mommy happened to get the list and talk about it to her kids. There was no way I could have any of her friends over to our house because they might find out our son was on the list. I couldn't trust that someone wouldn't run up to our house and yell something. It was starting to weigh heavily on our son, who felt guilty enough for what he'd done to his sister, but who was now beginning to wonder if any of this nightmare was going to end. He

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### ***COLLATERAL DAMAGE – Redacted Version***

was trying to keep up his GPA, his sports, and his keep his teenage emotions under check, along with watching me crumble under the weight of this list. Little did we know we'd have to endure a few more events before it did end.

Even though our son was free to go about his life, we would not allow him to go anywhere by himself. When he wanted to go on training runs to prepare for soccer, we wouldn't allow him to run in our neighborhood. Instead we made him cross busy Broadway, and run in the business district roads, so that no one could say he was around their children. We had no reason to distrust our son, yet we were so scared of the stigma of the list, we didn't want someone pointing or accusing him of something, simply because of who he was.

Once, I had him cross the street to check the mail (we have a community mail box directly across the street from our house). It was coincidentally right at the time the school bus arrived around the corner, and I watched from the front door as a group of about 5 mothers rounded the corner, watching our son, closing in, getting as close as about 25 yards, as he got the mail and headed back across the street. I felt myself crossing our lawn, approaching our son, almost fearing these women would confront him. It was a very upsetting and angering experience, yet subtle enough so that no one could claim they were breaking any law.

Later, I found out through the grapevine at my church, that the list had been copied and passed around the Mommy's group (I thought copying the list was illegal), and that as a result, one of our other neighbors had discovered our son's name on the list. Eventually, that neighbor would come to know the whole story behind our son's name being on the list, but it wasn't before I felt compelled to leave the church. Not even our pastor was sympathetic to my intense fear and shame. It's almost as if he was relieved that I was leaving his church, even though our son goes to a different church with my husband and his sister.

The nightmare would resurface when, in early May, our next door neighbors put their house up for sale - not because of our son being on the list, but because they were building a new home. They sold their home in just 1 day, for more than they asked, and they were

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

elated and I was happy for them. A mere 3 days before the closing on their home, they called us to tell us of the bombshell that had just befallen them. Apparently, an anonymous call came in to their realtor, stating that they lived next door to a sex offender. Now, they would have to tell the potential buyers (who had 3 children - all under age 6). My husband and I called our lawyer and asked him if it was prudent to just tell the neighbors the complete truth, and to offer to talk to the potential buyers. That is exactly what we did. Just a week before our hearing before the judge to ask that our son's name be removed, here we found ourselves next door with our neighbors, with the wife sobbing, and the husband glassy-eyed as we bared our souls. We almost felt like we had to come clean - fearing we could be sued by them if they couldn't sell their home. My husband also talked to their realtor, and our lawyer faxed a copy of our son's proof of case dismissal to both realtors as well as talked to both. Then, we were asked by our neighbors to sit down with them and the potential buyers and explain. We agreed, and to our surprise, they were actually thankful that we were so honest with them, when we didn't have to be, and when it was so painful for us to divulge the info. I thank God for the kind and understanding neighbors we had - even in the midst of the ones that sought to anonymously make our lives miserable.

I should also mention that even AFTER we had court order in hand from the judge, demanding that our son's name be removed from the list, we felt victimized once more, as Officer Paul Rogers, took the order, shoved it over to the clerk, and said in a louder voice so the entire lobby of people could hear, "well I guess you should take this over to Janelle to get his name off the SEX OFFENDER LIST!"

He never looked us in the eye, never acknowledged who we were standing there, he just yelled the order out, and swaggered away, unaffected by his statement, leaving me and my daughter (the victim), in the lobby, embarrassed, wondering who was looking at us.

Due to our son's strong mental attitude, our closeness and love as a family, and our faith, we survived this experience without it breaking us. Our son's turnaround and acceptance of his offenses was exemplary, and yet we fell victim to the abuses above.



## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

I email you today, for those families and sex offenders, both juveniles and adults, who are doing all the right things, but who are buckling under the pressure and intense stigma of being plopped indiscriminately onto a list along with the most violent and risky of sex offenders. Until you've been in this situation, you don't know what a suffocating, hurtful and terrifying experience it is to live under the oppression of this list. **It shackles not only the reformed offender but their family.**

**Just like us, many families will not report retaliation and vigilantism if it draws their family name more into the public eye to report the incident.** You can't measure the stresses this list causes. You can only count the number of suicides, re-offenses, failures to re-register, etc. How many suicides, re-offenses, failures to register may be actually be caused by the mere stigma of living under that list?

I'm leaving my name, address and phone, only knowing from SOhopeful's explanation, that you will keep my info secure and private. Thank you for the opportunity to tell our family's story.

NAME WITHHELD UPON REQUEST.  
Highlands Ranch, CO

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Hello, my counselor, Sue Garns, found the information about this ministry toward sex offenders. Well, I am registered sex offender after the terrible mistakes I made in the past. Also, I am Deaf and it's what making it somewhat more difficult for me because I don't really speak very well. I can write and read English without any difficulty as you can see.

According to my history in the past, I did improper actions toward teenagers (three victims to be exact who pressed the charges). All I did was touching the wrong places just because I thought it was normal and I went through a lot of years bottling up my feelings due to the serious family dysfunctional I had been undergoing. I was simply curious, but the problem is that I am over 18 years old (currently, I am 26 years old, serving 3 year terms of probation.)

Anyway, when I realized that I did was against the laws, I was so scared, but I immediately confessed my sins, even to the police myself. It was not easy, but I strongly believe in doing what's right. I kept wishing that I knew that's wrong, but I ended up getting the charges for misdemeanor counts of child molestation. But, it's not CHILD, it's MINOR, you know? And being registered sex offender, I personally FEEL it's over the line, but who am I kidding to fight against the law? From time to time, I do feel like I am so LOW because I can't work at some job due to background. It occurred twice because I applied for the job at BANK where there is NO children around. It's where I can do the data entry and filing and etc., but I failed due to the background. I understand that I can't work at any public school and I accept my consequences, but I couldn't work at other places just because of my past...?

Also, I am Deaf, most places don't accept me because I "can't talk on the phone." It's what it makes my life more difficult. Fortunately, I have a job, but the pay is not so good for my financial plan. I am still moving on as I have my faith in the Lord. Oh yes, speaking of the Lord, I am a Christian, saved by the grace and mercy of Jesus Christ. I also used to be a youth pastor. Unfortunately, I was licensed as a pastor under the peers rather than to follow my heart. It's a part of the long story, but as of now, I am talking about how I feel right now as I am living under the LAW and I simply hope that the law don't treat my life much worse than necessary.

Oh yes, speaking of being treated by law, I was in jail for only 45 days, but it was the worst part of my life. I even had several nightmares from that experience, experiencing plenty of post-traumatic stress disorder. I have been seeing my counselor weekly for two years and a half.

***TESTIMONIALS FROM VICTIMS & FAMILIES***

***COLLATERAL DAMAGE – Redacted Version***

Well, I am just hoping that my expression could help contributing to the good cause for the future. Of course, every offense is very wrong, however for the offenders like me, I am human being and I felt like I am being in the lowest place.

I hope I can hear from you.

In Christ always,  
NAME WITHHELD UPON REQUEST

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

My name is \_\_\_\_\_. I spent 51 months detained pre-trial in Florida's civil commitment centers. It was alleged that I was a sexually violent predator (svp). In November of 2003, after numerous motions demanding a trial, I finally was allowed to go to trial. The trial lasted 9 days. The prosecutor did everything he could, including introducing perjured testimony, in an attempt to have me civilly committed. I am the only man in Florida to receive a unanimous verdict in an svp trial. Some of the jury members spoke with me outside the courthouse.

They told me that the decision to release me was a no-brainer. Two of them said they had lost faith in the legal system. One older black lady asked me, "You were innocent of the crime you went to prison for, weren't you?" When I said I was, she replied, "It was so obvious to me and the other members of the jury. That prosecutor is scared you're going to sue."

I came across your website while trying to locate an attorney to sue on my behalf. I was a law clerk in prison and during the 51 months spent in civil detention. I have 90+% of the records needed to prove how Florida set me up.

I managed to have myself transferred to California where I live with my wife. I've been seeing a psychiatrist who has diagnosed me with Post Traumatic Stress Disorder. Several of the expert witnesses at my trial (all PhD's), agree with this diagnosis. The 51 months of being civilly imprisoned has left me unable to work. I'm told I'm ineligible for disability or SSI.

NAME WITHHELD UPON REQUEST

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

My name is \_\_\_\_\_ and I am an Ordained Minister, a Certified Behavioral Counselor, and Executive Director of “The \_\_\_\_\_ Connection”, which is a non-profit religious organization affiliated with Logos Global Network in J\_\_\_\_\_, FL counseling to those who are struggling with anger or addiction issues. I hold a Master of Religious Arts/Christian Counseling Degree, a Bachelor of Biblical Studies Degree and am a member of the American Association of Christian Counselors. I have over twenty years of experience as a pastor, speaker and counselor and am a graduate of Nazarene Bible College in Colorado Springs, CO, International College of Bible Theology in Sikeston, MO and Logos Graduate School in Jacksonville, FL.

I am also a registered sex offender here in Florida, which has been a nightmare for both my wife and I – since she is a music teacher....and I will explain the harassment and discrimination we have had to undergo later in this letter.

About seven years ago, while I was working for General Motors and traveling a lot, I found my marriage was falling apart and my life starting to drift. One of the things I began to do in my lonely moments was to go into chat rooms on the Internet and spend hours chatting.

During that time I got involved in chatting online with an undercover police officer who was posing as a minor. I had my doubts whether this individual was actually a minor so after several months of chatting with this individual, out of curiosity, I agreed to meet her at a mall in Chicago.

Upon my arrival in the parking lot of the mall on February 18, 2000 I was greeted by police officers who surrounded my vehicle and immediately arrested me.

***There was no minor nor any victim to which a crime was committed against.*** My lawyer suggested I just plead guilty to the charge of “Indecent solicitation of a child”, accept a plea-bargain sentence of 3 ½ years and move on with my life. I served a total of 18 months of this sentence – one year in Dupage County Jail and an additional 6 months at the Robinson Correctional Facility in southern Illinois. Due to the current laws I am required to be registered as a sex offender.

I learned a valuable lesson from this experience and the poor choices I made that day. I took full responsibility for the decisions I made which brought about that tragic event, and asked God to forgive me, to cleanse me, and to renew my life. I have also undergone extensive counseling to correct the issues which contributed to my making these poor choices in my life.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Five days after my initial arrest I enrolled in programs at Dupage County Jail offered by J.U.S.T. of Dupage. For that entire year I was there I was involved on a weekly basis in 12-Steps for Life and Health, Relapse Prevention, Anger Management, Healing our Losses, Violence Prevention, and Men's Issues Group. These programs laid the foundation for the complete change in my life. – particularly the 12 Step Program which I was involved in on a daily basis both as participant and instructor.

I continued my treatment program during my 6 months at Robinson Correctional Facility by participation in State Sex offender Program, Sexual Addictions Group Therapy, AA Meetings, and a 12 week Design for Living Drug/Alcohol Education Program.

Upon my release I spent an additional year involved in weekly Sexual Addictions Group Therapy and individual counseling sessions. I have continued to this day attending support groups and I have men and counselors I meet with regularly and am accountable to. I have taken responsibility for my actions and am using this experience to help others.

Since this tragic event – over the past five years – I have completed my Bachelors Degree and my Masters Degree in Christian Counseling from Logos Graduate School. I have also become a Certified Behavioral Counselor and an Ordained Minister. I hold membership in the American Association of Christian Counselors and am Executive Director of The \_\_\_\_\_ Connection which is a nonprofit religious organization affiliated with Logos Global Network which ministers to men with various addiction and anger issues. I have signed the "AACC Christian Counseling Code of Ethics" agreement under the direct supervision Logos Global Network and hold Professional Liability Insurance with CNA/HPSO. Though I have made these tremendous strides in changing myself and helping others – life has not been easy for us – especially the last three years here in Florida.

My wife, who is a professional music teacher – teaching in our home, moved to Florida three years ago. At first we lived in an apartment until we were asked to leave due to the fact that I am a registered sex offender. We bought a house which eliminate people forcing us to move but we have been harassed and threatened several times. **I have received anonymous letters being very graphic as to what someone thought of "scum" like me living in their neighborhood and threatening my life – demanding that I move back to Illinois.**

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

**My wife has also been harassed for teaching children in our home and received numerous letters and threats about that....** Though all the parents of my wife's students know me and my story (as do my "immediate neighbors" living close to me) and have no problem with my situation whatsoever. Someone did get a list of all 30 of the students my wife teaches and called the sheriffs department – claiming it was their "Christian duty" to do so and gave the sheriff the list requesting the sheriff contact EACH of the parents to warn them of the danger of letting children come to our home. The sheriff carried through on that request, calling all the parents with stern warnings – which caused a lot of confusion – My wife only lost two students through this...BUT...this hurt her deeply and made her very angry for **her business should not have to be under scrutiny for all of this.**

I have had an extremely difficult time securing and keeping employment due to this "label" also. Until I get my own counseling ministry fully operational it has been necessary for me to work. I have never had difficulty in the past getting a job – with experience as a District Manager, Branch Manager, Sales Manager and Supervisor for such companies like General Motors, America Online and Sprint.... Jobs came easy and I was in demand.

Since coming here to Florida I was let go from a supervisor job with one company due to the "stink" raised by another employee who didn't like the fact that I was a registered sex offender. I have always been up front with every company I have interviewed for and when having to explain my past situation none of them had any problem with it until they found out that I was required to be on the sex offender registry list and then I would be told – due to those circumstances – that they could not consider me for the job. I have lost dozens of good opportunities I was fully qualified for due to this "label" and have lost thousands of dollars in income.

My wife and I have had to struggle financially with incomes well below have of what I used to earn and am fully capable of earning. I finally have a job in sales now – which my employer fully knows my situation and hopefully no one will cause me to lose this one too.

In addition to starting my own counseling ministry - I am currently working evenings as an addictions counselor with Sigma Center for Counseling in Jacksonville. In light of the counseling profession I am pursuing my CAP which I feel would give me an additional degree of accountability while adding to my level of professionalism. Due to the fact that I am a registered sex offender I am having to appeal to the Florida Certification Board this month (August 15<sup>th</sup>) to become a Certified Addiction Professional. At this point it looks doubtful, due to

## ***TESTIMONIALS FROM VICTIMS & FAMILIES***

### ***COLLATERAL DAMAGE – Redacted Version***

my “label” that I will be able to acquire this certification which I need and am qualified for.

Life has been very difficult for both my wife and I. This unfair law – which discriminates against persons like me, who never committed a crime against a child, has affected both our jobs and our lives. This law MUST be changed – to give good citizens and their families their constitutional rights back AND to better protect our children from the “real criminals” how are out there.

Thank you for listening

NAME WITHHELD UPON REQUEST  
Florida



## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

I am the wife of a "Registered Sex Offender". He offended against our daughter on 2 occasions when she was 11 years old. This occurred in February 2003. He was arrested May 1, 2003, and was sentenced to one year in jail and 13 years probation on July 28, 2003. To learn that your husband has breached your families trust is devastating. But the way we all have been treated by the State of Wisconsin has been equally as devastating.

My husband, though he has been actuarially rated as very low risk to re offend, now must register as a sex offender for life. But he is married, and has 4 children, so **actually we all are registered for life.**

Our families pain is out on the Internet for the world to see. During the questioning phase, police officers blatantly lied to my children telling them that their dad would not go to jail. My children now understandably have problems with law enforcement officials, and frankly, so do I. The media has portrayed all sex offenders as ticking time bombs, just waiting to go out and kidnap some innocent child to brutally rape and murder them. This is absurd.

If lawmakers and media personnel had enough integrity to search out the truth, they would find that only 4 - 13 percent of all sex offenders ever re offend sexually. That is the lowest recidivism rate of any "violent" crime. But if you were to ask a politician or reporter, most would say that the recidivism rate is closer to 50%. Why? I am not sure. Could it be that inflating these numbers, and then sounding and acting tough against these "monsters" is "good for business"?

Only they know for sure, but it is a travesty that because of their misinformation, deliberate or not, **that my family, and many more like us, are suffering.**

**The same family that has all ready suffered from this horrible event is now victimized again by those that are supposed to be protecting us.**

My husband is no more threat to the general public than the president, or Tom Brokaw, or you. But he has been permanently stamped "Undesirable and Unfit for Society" just so Americans can "Feel Safe".

We would be so much safer if we actually started to look for ways to educate and prevent abuse, then by throwing out absurd penalties that sound good.

NAME WITHHELD UPON REQUEST  
(location not given)

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

I still can't believe it: I am a convicted sex offender. My job is gone. I've become a prisoner in a small, dirty "rooming house", after being driven from my apartment of over 12 years. My car was torched. My name and face are posted on a government paid for web site, warning the world I am a convicted sex offender. There's only one small problem: I happen to be innocent.

Yes, I realize everyone accused of a crime claims to be innocent. In my case, it just happens to be true.

My story:

The woman I was dating ( I will call her M ) had a daughter that had been molested by her natural father; her mother told me this after we had been dating several months, by way of explanation as to why her daughter occasionally acted inappropriately, doing such things as exposing herself, masturbating in public, etc. ( She is nine years old ). As part of her Court mandated therapy sessions, she was continually asked if there were other molesters, other abusers in her life. Her mother was constantly looked at with suspicion, etc..

After we had been dating over a year, the therapist ( ever notice that is spelled the rapist ? ) wanted me to attend twice weekly court ordered sessions with M and her daughter. As the default father figure, and , at the time M and I were considering marriage, I agreed to attend. After several weeks of this, during one particularly stressful session M's daughter said she " saw mommy kissing my peepee". The therapist latched onto this with what I can only describe as lustful glee, and demanded the sobbing child tell "what else ". Eventually she said she had seen me naked, and that I had touched her "bad place".

Never mind the fact that I never touched her inappropriately. Never mind the fact the ONLY evidence against me was this frightened, pressured child's coerced statement. The therapist demanded I leave the room immediately. In shock and disbelief I complied.

Several days later M told me that her daughter told the therapist and investigators he brought in that she had made it up. I was stunned: investigators?? When had this happened? That very day, and over the next several days, I was told. I asked if I should get a lawyer: M said "don't worry, they know she only said it to satisfy the therapist"

Less than 24 hours later I was arrested at work, in front of co-workers and clients. The cops make a point of saying loudly " he likes to rape little girls" Rape

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

???!! My God, I never touched the child beyond bandaging a scraped knee and utterly platonic and occasional hugs!

I shelled out far, far more than I could afford on a lawyer, putting everything of value I owned up for collateral to make bail, etc. M was forbidden to associate with E, or her daughter would be removed from her custody. A 19 month ordeal of hearings, continuances, experts, polygraphs ( which I passed ), evaluations, later, and finally my day in court.. surely this would all be rectified, and the nightmare would be over I thought.

The DA offered a plea bargain : I could plead guilty to 3rd sexual contact of a person under 12, or go to trial on " first degree sexual assault of a minor" and lesser included charges. My lawyer recommended I take the plea " the Judge is a hard liner on abuse cases" I was warned.

I turned down the plea.

At trial, the ONLY evidence were the original statements by M's daughter, and a slew of state "experts" explaining away her recanting those statements. A video taped interview with her showed her clearly stating she made it up to make "the guy stop bugging her".. to which the investigator / therapist ( not the original one ) replied, " but he must have done something for you to say that, right honey ? Come on, tell me the truth, you can tell me what he did, we know anyway, but you HAVE to tell me so we can help", and so forth and so on.. till she nodded.

I was convicted of second degree sexual abuse. Jailed for 9 months, forced into therapy where if I don't "admit" my crime and " disclose" over and over and over again what they say I did, my probation can and will be violated, and I will be returned to prison. Never mind I am innocent. Never mind the right against self incrimination, never mind the fact I have NEVER been sexually attracted, much less inappropriate with a child. If I don't "admit" to my "crimes", I am non-compliant, and in violation of probation.

Can there be any doubt why I am suicidal? Is it any wonder I've lost all respect and trust in "the system" ? That I , once a six-pack every 3-4 days now drink constantly to numb the pain? That EVERY single night I seriously consider ending my life?

Anonymous  
(location not given)

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### ***COLLATERAL DAMAGE – Redacted Version***

I write from the perspective of one who understands the complexities and consequences of sexual abuse and registration requirements, as viewed from both sides. I am friends with a talented and wonderful man who served time in prison for a domestic assault (on his wife) over 10 years ago. I have also learned that he was sexually abused by his female teacher and her boyfriend when my friend was in primary school. At the time, whether he had difficulty expressing the abuse to others, or denial was strong by his caretakers, he was apparently not believed, or at least not provided with medical intervention and treatment. Through the years he turned to drugs, left school and became a rebel... with a cause... to avoid the pain he could not live with, and which has over the years led him to attempt suicide. I find it remarkable that he survived.

As an adult, although he worked, intermittently, and raised a family, and also pursued many independent creative talents, he constantly struggled with the inner pain, recurrent drug abuse, and cycles of depression and erratic behavior ... disappearing for periods of time. At last, a medical evaluation from an enlightened, compassionate physician revealed that he has a number of emotional and mental complexes, most likely as a result of the early abuse...trauma that caused changes in brain chemistry, the glial cells and the limbic area of the brain. He now is under treatment and things are much improved medically, but this medical help was not in time to prevent the incident with his wife years ago for which he was sent to prison. And he must continue to live with the consequences of the event and the required registration. It was also recently discovered that the registration was incorrect, and he had been listed under the child molestation section rather than the spousal or domestic criminal section.

Above all, I can't get it out of my mind that he who was the 8 year old child, abused by his teacher, suffering developmental trauma to the brain and emotional system, now is the one who must register for life. Everyone he meets likes him tremendously. He is a genuinely kind and generous soul, and exceptionally intelligent. However, he hides his past, and in the one instance I know where it was discovered, he was immediately shunned; information was sent to dozens of people with whom he worked or were involved with his creative endeavors. He lost work and income potential; more, he suffered the humiliation of losing friends and contacts in his field of work. And with Governor Schwarznegger deciding on the California SOR Internet Law at the end of September 2004, I am filled with heartache and fear. How will he respond to yet another, higher level action to reveal his name, photo and address to the world via the World Wide Web?

## ***TESTIMONIALS FROM VICTIMS & FAMILIES***

### ***COLLATERAL DAMAGE – Redacted Version***

It is time to let him live and find peace. It is time to stop all the harassment, from his third-grade teacher to the current SOR laws. I plead to the lawmakers, let him heal and live and fulfill his potential as the tremendous being he is.

A worried friend of one who has suffered enough, one who has in a sense served more than his time, and who was listed incorrectly in the register for 10 years!

Please do not list my name.

NAME WITHHELD UPON REQUEST

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Hello. My name is \_\_\_\_\_, and I am a convicted sex offender. My wife, lives in \_\_\_\_\_ Missouri, and I live in \_\_\_\_\_, Illinois. I have attempted to move to Missouri 2 times now, and have been blocked by doing so both times.

The first time, I was not married, but my fiancé lived in Missouri. Because she was not 'family' my request for transfer of probation was refused. We had to give up the hopes of a big wedding when I was there, and she came to Illinois to marry me in a court house, by a judge, with a friend as witness, and that was it.

After the wedding, I applied for transfer again. The probation officer who performed the background check on my residence I was moving to called my wife, asked her if she knew I was a sex offender, **and made her feel small because she loved me in spite of my problems.** The PO then asked if her family knows 'what he is' (me) and then said that the house we would be living in was within 1000 feet of a day care center, and she was going to refuse my transfer.

We did our own research, and the only 3 day care centers we found in \_\_\_\_\_, Missouri were well beyond 2500 feet of the property, and the only possible property she would think was day care by the 'looks' of it was a private family's park in their yard. All of the attempts to contact the PO to get addresses of day cares in the area, result in a voice mail, and no return calls.

My father in law, who lives in \_\_\_\_\_, Missouri, (the reason I want to move there, is a supportive family base, and my wife's family supports me fully, and doesn't care about the issues) works in a plant in town (the only plant), York International, and twice since my arrest has seen a list distributed by co-workers with the sex offenders and addresses passed to each and every employee.

At this moment, my wife is looking for a new residence in \_\_\_\_\_ to stay near her father, but without having the addresses of day cares (besides the 3 that \_\_\_\_\_ chamber of commerce gave us) it will be difficult to know where is 'safe'.

NAME WITHHELD UPON REQUEST  
Illinois

\* feel free to use my first name, and Missouri, but please, \_\_\_\_\_ is a small town and I would rather it be removed, along with the names \_\_\_\_\_ and \_\_\_\_\_ if published on website, though for purposes of the hearing, if you need specifics feel free to contact me for more, and use what is given here freely.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

My 37 y.o. son served 3 m0s. in jail because a 13 year old girl said he followed her in his work van and then masturbated. There was no physical contact and no body parts were exposed.

my son does heating and air conditioning for a living and drives a van that is so high you almost need a ladder to get in it! There is no way anyone could see inside that van from the street! What my son was really doing was "rolling a joint".

He is on 3 years probation and will be on the registry for 10 years, all on one girl's statement. His wife has divorced him and his probation officer won't let him see his children. He lost his job ;he has finally found another. His probation officere won't let him live anywhere near children ,this is nowhere since children are everywhere!

He finally found a house miles away from family and friends . He can't participate in family functions because we have a lot of children in our family so he spends most of his time by himself. He has no money for an attorney to help straighten this out since he now has child support to pay {for 2 children that he can't see}, rent and all the bills from his marriage that he must pay.

All this on the word of one 13 year old girl!

His whole life is ruined, he is an outcast! This law needs to be changed ,each case needs to be judged on an individual basis, not with everyone all lumped together under one umbrella. offenders who rape ,maim,etc. should not be put together with people like my son or men who visits prostitutes,etc. My son is not a pedophile just a guy in the wrong place at the wrong time!

Maybe murderers, kidnappers, other felons should register so we'll know if we're living next door to them as well!!!

NAME WITHHELD UPON REQUEST  
Location unknown

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

I want to share my story. Megan's law doesn't keep the predators from attacking our children. The registry is nothing more than a witch hunt that harms families.

My son is a non-violent offender who is serving 10 yrs in TDCJ for having consensual sex with a teenage partner. As so many stories go, the "victim" lied about their age. Many of these "victims" possess fake id's and are in bars where college students gather. My son was 18 and a freshman in college. The "victim" was afraid that the family would find out about the sex and of course decided to press charges. By the time we went to court, my son had graduated with honors and had been accepted to 2 graduate programs. However, instead of continuing his education, he is now an inmate serving 10 years and will be labeled for the rest of his life.

I understand why Megan's law was enacted but we have way too many on the registries that are in no way predators or violent people. Something needs to be done. What about the murderers who are paroled that do not have to register? Maybe I would like to know if a drug dealer or murderer is living in my neighborhood. Isn't it time that we punished the "victims" for the lies that they tell? I thought that possessing a fake id and being in clubs underage was against the law. But these are never punished. They are free to do these things again and again. I am so angry with the justice system that punishes consensual sex crimes.

Something needs to be done. My son is rotting in prison when he should be in graduate school. What about drunk drivers that Kill? We even have a United States Senator that was driving drunk and killed someone. Was he punished? NO! He is still in the Senate making laws for the rest of us. If I sound bitter, well I am. The witch hunts continue and does nothing to protect the communities from true sexual predators. My son made one mistake and now will have to suffer for the rest of his life.

Yes, we need to be tough on crime, but teenagers who have consensual sex don't need to be punished. If we wanted to carry it to the highest level, then we need to go into the school parking lots and arrest all the teenagers who are having sex. It goes on every day. What has happened to our country? Things need to change now and we need to look at the real criminals. Megan's law has done nothing to prevent true predators. It is time to take a step to change this law.

Thank you for your time in reading this

NAME WITHHELD UPON REQUEST, Texas



## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

"Secondarily Sentenced" in Colorado

Tomorrow I will be going in for surgery at the local hospital and it will be the second time that I have been put under anesthesia since my husband has become a SO. He was not given permission to come to the hospital and he wasn't denied it either because the surgery was scheduled quickly and he could not notify his Sex Offender Therapy or his P.O. in what they determine a timely manner (give them all of the details, fill out a safety plan, etc.). Since they never told him one way or another he will drop me off at the hospital on his way to work and I will have to have someone else pick me up because he cannot come into the hospital (there might be children there). The surgery is nothing serious, just day surgery but being put under really does scare me - something I can never let him know because he would try to be with me and risk being "violated". His offense was not rape, was not molesting but it was "aggravated" first by a parent, then further by the "system" for a stronger case and then after counseling, the victim changed her story to go along with the parent's accusations.

When he was accused, sentenced, etc. I learned that I am "Secondarily Sentenced". The longer that I am tied to the "SO system" the more I feel the sentence and I also have learned that I am not alone. All it takes to be "Secondarily Sentenced" is to be a spouse, significant other, parent, child, sibling, relative, friend or associate of a sex offender. I have been screeched at by one of my husband's therapists when I stood up for myself, didn't agree with her or make statements the way they wanted me to which would have been turning truth into lies and I was told by some of the other therapists that Colorado is the pilot program for sex offender treatment and carte blanche for the strictest/harshes sex offender treatment in the country .

The therapist brought up my statements in the "class" I was required to take to chaperone my husband - she said I was in serious denial and extremely antagonistic toward the victim's parent. When I told her that person, **stalked me, drove past my home as much as 10 times during the day or night at an extremely slow speed, on the wrong side of the road depending on the direction they were going and staring at the house - that the person tail-gated my car, tried to run me off the road, pull out in front of me from stop signs, swerve at my car in oncoming traffic, drive past my daughter's very slowing and park near her house when I was taking care of the grandchildren and watch the kids play in the yard, etc. and that the victim walked past our house carrying a camera, etc.** Her response was that as long as I was still married and with my husband I had no rights to report or complain about anything the victim or her parent does.

## ***TESTIMONIALS FROM VICTIMS & FAMILIES***

### ***COLLATERAL DAMAGE – Redacted Version***

I replied that contradicted what I was told by a CBI agent and an investigator from our sheriff's dept told me. At that point she started screeching that she could see why I failed my chaperone class because all I do is argue and stay in denial. She also recommended to the other therapists in that agency and to my husband's P.O. that I am not a suitable person for my husband to live with or associate with.

That is something that many of the "Secondarily Sentenced" are faced with, the continuous effort to separate and isolate the S.O. from any form of support that they might have from spouse, etc.

NAME WITHHELD UPON REQUEST  
CO

## ***TESTIMONIALS FROM VICTIMS & FAMILIES***

### ***COLLATERAL DAMAGE – Redacted Version***

There is no end to my nightmare. Ti has bin 20 years and there is not a day that goose by that I'm not scare that some will try to kill me. After 18 years the state cops came down saying I'm a predatory sex offender rite before they have money changes coming up and I have to pay them to be a predatory. Before this I was beet up by a man who was let out in Alabama after 23years for killing someone and after betting me up taking 4 teeth the cops said things I'm still trying to unbrstand. But then the man kills again not even a week after betting on me. I didn't know tell I tried to talk to the DA to get the man for betting on me. The DA said a woman didn't know a thing. There's not a day that goes by I don't think about killing myself but god keeps me going. There is so much more that has happen to me in my 20 years of being a sex offender that I have be a kid and use what I did when I was a kid try to forget the bad and go on. Theres nothing like being a victim all over again and again for life again. I will welcome being killed now. I have to stop rite now I know myself and I have to take time for my self or I'll go insane. I have cry before I go on. Is there no end to the nightmare.

NAME WITHHELD UPON REQUEST  
Location unknown

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

My name is \_\_\_\_\_ and I met my boy friend a year ago. He told me he was going through a court case, when he was arrested they found 5 child pornography 3 images and 2 movie clips amongst adult porn. He was arrested and 2 years later nearly one year after I met him we went to court and he pleaded not guilty.

He says he was bulk down loading through Kazza, you can down load with out opening the files and also there was a few pictures but the was no chance of prosecution against these because it was questionable about the age of the models.

We went to court and every one agreed my boyfriend had not intentionally down loaded cp [\*Ed Note: cp = child pornography] but had accidentally come across them, he knew there was a risk but ignored it.

We were told he had to plead guilty or he would be sent to prison for a very long time, so they threw as much as they could at him and we backed down and my boy friend was charged with five counts of possession of child porn. He did not look for it or knew it was there and we could prove it had never been viewed apart from one file. They were levels 4 and 5. We thought because of this we would go for a pre sentence report.

He went to probation and was very nervous, the advice he was given is as you have pleaded guilty you have to admit a certain amount of guilt, so my b/f did his best and the meeting went fairly well, his risk assessment was medium to re offend and low to actually harm.

We went back to court for sentencing and the probation officer had completely changed the report to make my boy friend sound really bad, putting him as a high risk to re offend and high risk to harm. He had never seen the files on his computer- we could prove this.

The pictures which did not form part of the charge so we never got a chance to get them analyzed changed the probation officers view of my b/f because she felt it showed he had an interest, I wish they had now so we could have got am expert rather than a police man to look at them, but they were never made accounted for. But did form a large part of the pre sentence report.

We contested the report and we went back to probation, with the same lady interviewing him, she admitted to getting some vital facts wrong but refused to change the report, such an important report with vital facts wrong. A pre sentence report determines what sentence you receive and how long you receive probation and your registry requirements.

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

He went to prison on the back of a very wrong report as he had never seen the files and still claims the models in the pictures he had were women.

He said on the day he was arrested he had 10 pictures under his bed and the police came in and took three away, the police man said one model looked old enough and another picture of the same lady didn't. We never got the chance to find out.

My b/f got six months in which he serves three, and three years on probation and seven years on the registry.

I do not understand the law in the probation meeting rose hanks wanted my b/f to admit to having an interest in some thing he does not and because he did not say what she wanted to hear she made it up any way. The interview is on a one to one and is not recorded. Maybe this is to make her job sound more important-who knows? She also runs the group when he gets out, but we are frightened of the power she will have if she can make such a vital mistake what else could she do.

We feel we were builed into pleading guilty and we were not ready for the crown court experience.

How wrong is this case?

THE FILES WERE NEVER OPENED ONLY DOWN LOADED  
THERE WAS NEVER ANY CHARGES FOR THE 3 PICTURES BUT THEY  
WERE BROUGHT UP IN THE PRE SENTENCE REPORT  
THE PRE SENTENCE REPORT HAD SOME VITAL ERRORS IN WHICH A  
PRISON SENTENCE IS NOW BEING SERVED  
ANOTHER ISSUE **THE POLICE STARTED THERE INVESTAGATIONS WAY  
BEFORE ANY FILES ARRIVED ON HIS COMPUTER**

We are at our wits end, if my b/f goes to prison again we will be bankrupt. He will be home Christmas eve this year, I can't wait!

Sorry if this is too long. I hope it helps you. I have written to my MP but he just fobbed me off. I have also written to a justice organization, but they haven't written back, I will fight this.

NAME WITHHELD UPON REQUEST  
UK

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

Here is our family's story. My name is \_\_\_\_\_ and we live in \_\_\_\_\_, Vermont. I sent this out to the Vermont groups but don't know if anyone received it.

Three years ago, my son was a very naive 18-year-old, who fell in love with a street-wise 14 year-old girl, who actually pressured him to have sex. He is now, however, a convicted felon, for consensual teenage sex. He was convicted of sexual assault on a minor and sentenced to 3-8 years. (Vermont Statute 3252 (3)) He was a virgin, the girl was not.

He was incarcerated for over a month. The day before he got out of jail, another inmate punched him in the face, leaving him with a black eye. (sex offenders are targeted in prison, thank God he got out!)

He is now on probation and is required to register as a sex offender for at least 10 years. He must complete the state's sex offender treatment program, which consists of aversion therapy, if asked he must submit to a penile plethysmograph to monitor sexual stimulation, he must admit to "deviant thought and fantasies", even if he has none. He attends these "classes" with much older men that have raped and in some cases violently raped women and children.

Any violation of his many stringent conditions of probation will result in his incarceration, to serve his full sentence.

Our system is grossly unfair, as it punishes teenagers in the same age group, the same way it would punish men 10 or 20 years older. Teenagers are together at school, share common interests, attend the same social functions; it is only reasonable to conclude that relationships will develop.

Since this nightmare began, I have met two others that have been victimized by this law. One, just 16-years-old. The other was 19, his girlfriend was 15 at the time. He is now incarcerated and is serving 3-10 years.

With just a few over-zealous prosecutors, our jails will be filled with teenage boys, where instead of learning how to become productive members of society, they will learn of life from hardened criminals.

I believe people need to know that this could happen to their families.

NAME WITHHELD UPON REQUEST  
VT

## **TESTIMONIALS FROM VICTIMS & FAMILIES**

### **COLLATERAL DAMAGE – Redacted Version**

\_\_\_\_\_ was of two counts of child molestation 1992 May 9th, went thru complete therapy for the next three, while being placed on the Sexual Offense Registry for an offense he pleaded guilty to, for he and a thirteen old were off to get married, the step father had been molesting her and my 20 old son thought he could protect her. The mother and Step pressed charges, the girl Stacey want to Marry. He was told at Jan 93, conviction and sentencing that he would be on the Sexual Offense Registry for fifteen years, and if he had no prior offenses up ten years he could get off the Registry. Ten years was was up 2003, he requested that he be removed from the Registry, But \_\_\_\_\_ County said they have no Idea how that could be accomplished without going thru a lawyer, the only lawyer said he would help for \$20,000 But he also said "This would be his first motion of this kind"

Since my son and the entire family went thru the hell of seeing him placed in jail two times, the second one was because a pregnant Probation officer said he had a picture up in his brothers room which the brother told the Probation office was his, But to put him in jail, because he wanted his stuff.

It cost his Grandmother and me \$7,000 for lawyers and a private Group home, for him, as the Judge automatically put him up to a level three, for a Probation violation, which was dropped back down to a 1 when he finished more therapy, and got off Supervision. He has been beaten up in Alley's, and now there are a lower class of young men, names who are on a restraining order and on a \_\_\_\_\_ County Sheriffs South Pricinct as harashing him, they same animals have called every member of our family at 3AM and telling us they have info on Don Jr, and wondering if we were Rapping children also, and they are going to kill Don Jr and dismember our bodies and burn them with the KKK-and the hate goes on.

**My son wants to join the Army**, and this he can't do until he gets off the Registry, and gets his Gun rights back. This is something we are trying to file motions in the \_\_\_\_\_ County Courts, but they will not even let him do that, and he can't have normal visiting rights with his four year old daughter because the Judge says he feels like a sex offense takes all rights away forever. Now he has had these undesirable individuals come to his work, and the boss is firing him.

They have violated the restraining order ( which cost another \$150.00 and the Cops oh well, we can't do anything until they hurt you real bad, and remember they have Rights, and they get all the information on you from the Registry, so it is easy for them.

NAME WITHHELD UPON REQUEST, Washington

***PREVENTION AND EDUCATION ORIENTED ORGANIZATIONS,  
RESTORATIVE JUSTICE PROGRAMS***



## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

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## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

**1-Hour Arrest** When does a snapshot of a mother breast-feeding her child become kiddie porn? Ask the Richardson police.

By Thomas Korosec

The service was fast, the judgments even hastier.

Never did Jacqueline Mercado imagine that four rolls of film dropped off at an Eckerd Drugs one-hour photo lab near her home would turn her life inside out, threaten to send her to jail and prompt the state to take away her kids.

For Mercado and her family, last fall was a happy time, one they wanted to record and save in the venerable tradition of the family photo. Johnny Fernandez, Mercado's boyfriend, had just emigrated from Lima, Peru, ending a yearlong separation, and on top of that, **it was their son's first birthday.**

Jacqueline Mercado, a 33-year-old Peruvian immigrant, took a few photos of her young children at bath time. A week later, Richardson police were rummaging through her house for kiddie porn, and a state child welfare worker came to take her kids away.

The photographs they took over several days in late October included pictures of Fernandez reunited with the family at their modest home in suburban Richardson. Others captured their **1-year-old son Rodrigo**, and 4-year-old Pablizio, from Mercado's earlier marriage, playing in a neighborhood park. Using the camera's timer, they also took three snapshots of themselves, naked in their bed. They arranged their bodies in ways that showed less flesh than most freeway billboards.

A half-dozen others recorded the kids at bath time. Fernandez took several photos of the boys "playing around," naked and innocent, with the oldest flashing a big smile. Mercado, who says she often bathed with the kids, is in several of the shots unclothed from the waist up, holding her arm modestly across her bare chest.

ndeaz ase. Mark Graham **The photo in question:** (left) Jacqueline Mercado and Johnny Fernandez say they took this image last October to memorialize the breast-feeding stage of their son's life. **Below:** (below left) The Lucca Madonna, painted in the 15th century by the Dutch master Jan van Eyck. Defense lawyers argued that while breast-feeding images are a second-degree felony in Richardson, they are also on public display in the finest art museums in the world. **The legal team:** (left) Steven Lafuente, Bill Stovall and Andrew Chatham all went to work on the Mercado-Ferna c

In one--the photo that would threaten to send Mercado and her boyfriend to prison--**the infant Rodrigo is suckling her left breast.**

After Mercado dropped off the film for processing, a technician viewed the

### **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

images and decided they were "suspicious," according to a police report. As required under Texas law, he immediately contacted local police. Mercado says that when she went to pick up her pictures, the clerk told her there would be a delay, and then only returned three of the four sets of prints.

To Richardson police, who arrived at the store that afternoon and apparently made up their minds from the content of the pictures alone, **this was nothing short of a felony case of child pornography. "We thought they contained sexuality," says Sergeant Danny Martin, a Richardson police spokesman, explaining why two Richardson police detectives began pursuing a criminal case. "If you saw the photos, you'd know what I mean."**

With nothing else to support their contention that the photos were related to sex or sexual gratification, the police and the Dallas County District Attorney's Office presented the photos to a grand jury in January and came away with indictments against Mercado and Fernandez for "**sexual performance of a child**," a second-degree felony punishable by up to 20 years in prison. **The charges centered on a single photo, the breast-feeding shot.** Fernandez and Mercado say they took it--although the child had ceased breast-feeding--to memorialize that stage of their baby's development.

"We wanted to see if he would take it, and he did," says Mercado, explaining through an interpreter that it was a spur-of-the moment notion to which they gave little thought. "Johnny never saw the child breast-feeding, so this was for memories. For us."

Mercado, who brushed back strands of brown hair from her reddened eyes as she spoke, has a story that has not changed from the start. She told the Richardson police officer who responded to the store's call that she had always taken pictures of her children nude, and that it wasn't uncommon in her native Peru to do so. They were innocent baby pictures, taken for the family's benefit, she said.

Five days later, when a state child welfare investigator and two detectives arrived at her house, Mercado again insisted that she saw nothing wrong with the photos. She allowed the group to search the couple's cramped room, and the detectives went through everything, including their photo albums, apparently looking for more evidence of child porn. They found nothing.

"We fought so hard to come to this country," says Mercado, a 33-year-old who was a nurse in Peru and aspires to become licensed in the United States one day. "For this to happen is unbelievable."

Andrew Chatham, one of three lawyers working on behalf of Mercado and her boyfriend, says **it is difficult to imagine a clearer case of over-reaching by police and prosecutors.** "Their theory, which is supported by nothing, is that these pictures were taken to satisfy the boyfriend's sexual desires. These aren't

### **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

pictures that were peddled on the open market. This wasn't on someone's Web site. This is just a mother who took a roll of film and left it off at Eckerd's. The state used them to arrest her, indict her for a felony and take away her kids."

On November 13, the day Richardson police "tossed" or searched Mercado's house, a caseworker with the Dallas County Child Protective Services Unit of the Texas Department of Protective and Regulatory Services took custody of the children and recommended to a family judge that they be placed in a foster home. The caseworker's notes state that a supervisor, acting on the content of the photos alone, decided that "the children needed to be removed from their mother's care."

Her hard-rubbed eyes drooping with worry, Mercado says she told the caseworker, "Please don't take our children. We love our children."

In the months since, one of the couple's most onerous problems has been resolved. In late March, a week after the *Dallas Observer* asked District Attorney Bill Hill about the case, he ordered the criminal charges against both parents dropped. "It has some gray areas to it, but it doesn't rise to the level of a crime," Hill said. He said justice comes from more than isolating facts and interpreting them in a way to make them narrowly fit into a criminal statute.

Still, at press time, **child welfare authorities continue to maintain control of the boys**, even though a lawyer appointed to represent them says he believes they should go home. In its latest legal filing, the state said it would not consent to releasing the boys until the couple jumps through more hoops, including a lie-detector test they must take at their own expense.

"They ripped out my heart," Mercado says. "Even if we get them back, I don't know how we'll recover from what's been done."

"How could they accuse me of doing something with our own children?" says Fernandez, a lanky 35-year-old who worked as a hospital technician in Peru before embarking on his disastrous start in Texas. "How can they accuse us of being something we're not?"

It wasn't difficult at all.

When Andrew Chatham first learned of the Mercado-Fernandez case from lawyer Steven Lafuente, who the family hired at the outset, he was certain there must be more to it than a picture of a mother with an infant's lips on her breast. "I wondered what I wasn't getting," he says. "There had to be more."

There was not.

Police and child welfare files contain no criminal histories, no hint that there were other suspicions or evidence of child abuse or neglect. Mercado and Fernandez had not been in the United States long enough to have histories of much of anything. She arrived in August 2001, moved in with her parents in Richardson

### **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

and took a job cleaning a nearby Wal-Mart in the middle of the night. Johnny arrived about 13 months later and went to work cleaning stores, too, before moving on to a job in a budget steak house.

By the time Chatham became involved in the case, which his partner Bill Stovall took on without a fee, the parents were devastated and penniless. "I think the **police department and the DA's office select people to prosecute who have the least ability to defend themselves**," says Chatham, who says he took the case on principle. "If these pictures were on their way back to some big home in Highland Park, they would have turned around and left. They were going after easy marks."

Mercado and Fernandez--who were released on bonds of \$10,000 and \$12,500, respectively--borrowed money from their family to get out of jail and drew comfort from the help and encouragement they received from their church.

Maybell Palacios, Mercado's aunt, says her niece is as dedicated a mother as she has ever seen. "She'd be working seven days a week at nights, and when she'd come home tired she had time for her children. To feed them. Wash them. Do their clothes."

Victor Jaeger, pastor of the Iglesia Adventista del 7 Dia de Richardson, says, "The community has been very supportive of them. They see it as a big misunderstanding." About a third of his Spanish-speaking Seventh Day Adventist congregation in blue-collar East Richardson is Peruvian-born.

The pastor says he was prepared to testify on the couple's behalf and explain what appears to him to have been a cultural misunderstanding. Jaeger, who grew up in Peru, says breast-feeding is culturally important in his native country and considered acceptable to do in public, particularly in the country's jungle regions. "My cousin sent me a picture of her newborn, and it was of the baby being breast-fed," he says. "As someone who has lived here for 20 years, I asked myself, 'Why did she send me *that* picture?' To her, it was nothing."

**To memorialize the act of breast-feeding in a snapshot is as common in Peru as wanting to save a photo of a first step**, or a first two-wheeler, or a first baseball game, he says.

Jaeger says Mercado and Fernandez, who both have roots in rural Peru, "sat in my office crying" on several occasions. He has come to the conclusion that they are good parents caught in an awful bind.

Their most pressing problem was the breast-feeding picture, which the indictment characterized as sexual, "to wit; actual lewd exhibition of...a portion of the female breast below the top of the areola, and the said defendant did and then employ, authorize and induce Rodrigo Fernandez, a child younger than 18 years of age, to engage in said sexual conduct and sexual performance." In other words, says Chatham, **the act of simulated breast-feeding, captured on film, was being**

### **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

**portrayed as a sex act.** "They're saying the guy who took the picture is a sicko and wanted a photo of this to satisfy his sexual desire."

Through the ages, Chatham says, images of breast-feeding have been viewed more as art than deviancy.

"Look at this," he says, handing over a print of The Lucca Madonna, painted in 1436 by the Dutch master Jan van Eyck. The painting, depicting an enthroned Mary suckling the baby Jesus, hangs in the Stadelches Kunstinstitut, an art museum in Frankfurt, Germany. "My sister-in-law was an art major in college, and when I told her about this, she said, 'Andy, **there are thousands of great works of art portraying the breast-feeding of children. They grace the halls of great art museums around the world. I could have used dozens of others.**'"

Adds Stovall, his law partner, "I was just up at Z Gallery last weekend, and there's a print of a woman breast-feeding."

The breast-feeding Madonnas no doubt were done with live models, Chatham says. "You may think it's kooky, but through the ages this is how we've portrayed the bond between mother and child."

In late February, Chatham drafted a legal motion seeking dismissal of the indictments, using The Lucca Madonna as his star exhibit. "The material at issue falls squarely within the ambit of the First Amendment's protection," Chatham wrote in his brief. "The portrayal of the suckling child is found in countless numbers of artwork. Whether the medium is canvas, marble or Kodak film is irrelevant for the purposes of First Amendment protection."

The motion was pending and being studied by an assistant prosecutor in late March when the *Observer* asked Bill Hill about the Mercado-Fernandez case. "I'll look into it," he said. A week later, he said his assistant thought the case would "wash out of court" on The Lucca Madonna motion, so Hill says he ordered him to dismiss it. "I looked at those pictures and there were some quirky things to them, and **I can see where the grand jury had probable cause.** But a woman has her breast exposed, and her child is there. I'm not sure that is a prosecutable offense," he says. He says his assistant agreed the case was "weak."

Hill did not fault the work of his assistants who presented the case to the grand jury, or the police who now are reportedly perturbed that their case was dumped. The charges and the couple's arrests were no doubt "traumatic," he says, "but in this instance the system worked."

Not if you are Rodrigo and Pablizio, who have not been returned to their mother yet.

Lieutenant Bill Walsh, head of the Dallas Police Department's youth and family crimes section, says calls from photo labs and computer repair shops are a

### **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

useful tool in policing child sexual abuse and child pornography. His department makes several important cases a year after being alerted by technicians who stumble across the evidence.

"The law in Texas says all adults must report suspicion of child abuse, but it doesn't set out what the boundaries for that are," he says. Once detectives review the pictures, Walsh says, it is usually a "no-brainer" which ones are the work of abusers and child pornographers and which are innocent pictures of bathing children and "the cute one of the kid whose bathing suit fell off when he ran through the sprinkler." Naked baby pictures and photos of toddlers' backsides are on display in work cubicles and office credenzas all over town.

"We don't see many sticky cases," Walsh says. "Child porn usually isn't subtle."

**A photo of a mother breast-feeding, or a couple of smiling kids getting ready for a bath, or, separately, two nude consenting adults, "aren't something we're going to be too concerned with," he says. "The most important thing is to look at the pictures in context. Under what circumstances were they taken."**

To make a case against Mercado and Fernandez as parents, Richardson police and CPS investigators made no mention in their reports of any other photos on the four rolls, such as the ones of five kids at a birthday party. They focused only on the naked ones.

"It's like they took something from each one and twisted it to try to make a case," says Lafuente, who is handling the custody side of the couple's legal problems.

In his report to CPS, Richardson Detective John Wakefield wrote, "I viewed the photographs and had concern of possible sexual abuse, inappropriate sexual behavior and possible child pornography from nine [of them]."

The four photos in which Mercado is seen with her forearm closely covering her chest, for instance, Wakefield described thusly: "Mercado is in the photograph topless and touching her breast." In two others he notes that the older boy was "touching his genital area." Mercado told Wakefield, and anyone else who cared, that the boy had a rash and was constantly scratching himself there. She produced a tube of prescription medication to prove he was being treated for the problem, police reports show.

Her explanations and defenses came long before she was forced to hire lawyers, and they have not changed since the day the Richardson officers knocked on her door.

Lafuente says the actions of CPS and criminal authorities tended to reinforce each other, to the family's detriment, as the case has gone along. Meanwhile, nobody was interested in Mercado's and Fernandez's explanations. "I wanted Jacqueline to waive her Fifth Amendment right and testify before the grand jury.

### ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

They didn't want to hear from her," he says. CPS reports, meanwhile, make prominent mention of the fact that the couple had been indicted on felony charges.

Says Stovall: "The very accusation in this case carries such a bad taste that they automatically assume the worst. I tell you they are charged with possession of child pornography, and you automatically envision the worst possible scenario."

Lafuente says he has been willing to concede that the photos show behavior that some people of a conservative nature might consider inappropriate, such as a mother bathing with her 4-year-old, or being topless around the kids. Yet those hardly rise to the level of sexual abuse. The family lives together in one room, making privacy difficult, but that does not mean Mercado and Fernandez are not loving parents, he says.

At a December 5 hearing on CPS's removal of the children, Lafuente reached a compromise with the state to put them in the temporary custody of Mercado's former husband, who also lives in the Dallas area. Mercado says that in the five months since, he has given her liberal visitation rights, but she and Fernandez cannot be left alone with the children, nor can the children sleep at the couple's house.

They also agreed to attend "group treatment for sexual issues" and submitted to extensive psychological exams.

At the group counseling, Mercado says, she has learned that kids in the United States are subject to the most horrendous abuse. "Their parents are on drugs...They're left with relatives who molest them. It's horrible." None of it seems to apply to her and her boyfriend, she says, although they say they attend the sessions regularly and try to partake.

"It's about as useful as tits on a bull," sniffs Chatham.

In their psychological exams, which they made available for this report, the only problems the experts could discern in interviews with the parents were those heaped on them by CPS and the police. And those, too, seemed to be held against them in the less-than-empirical world of psychoanalysis.

"When asked about problems occurring in his life currently, Mr. Fernandez states that the children have been removed, there is little money for lawyers, and it's all a big injustice," wrote Robert Antonetti, a Dallas psychologist who interviewed the couple earlier this year. "He reported currently feeling anxious, angry at the injustice he is enduring and fearful of what may happen. When asked about coping with stress he said he's been praying a lot."

In his summary and recommendations, Antonetti mentions no evidence of sexual deviancy in either parent. Instead, he concludes that Fernandez "feels very vulnerable to criticism and judgment."



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The accusation that you're a sexual deviant who victimizes his own children might tend to do that.

The psychologist divines from his own psychological tests--and no material evidence whatsoever--that Fernandez appeared to be so "anxious to please" that he might be hiding something. "The profile suggests the probability that he attempted to present himself in an improbably favorable light," Antonetti concludes. Hence, the state-hired Antonetti recommended Fernandez be made to take a polygraph test before getting his son back. He recommended Mercado should be hooked up to one, too. He further recommended both should undergo parenting classes, individual counseling and couples counseling.

Two weeks ago, with a deadline looming for the state either to return the children or go back to court and ask to remove them permanently, Dallas Assistant District Attorney April Carter asked the judge in the case to require the parents to take the tests and attend the counseling before anyone goes home. "There are concerns we need to address," says Carter, who is representing CPS in family court. She says the store clerk, the Richardson police, the grand jury and others took issue with the photos and without further proof, "it's not clear whether this was sexual or cultural." She says she believes lie-detector tests would put that question to rest.

At press time, a hearing on that matter was pending. "We're going to fight it," says Lafuente, saying the state has dragged out the matter long enough and has had five months to ask courts to order tests or counseling. He says there might be a disagreement over appropriate parental behavior, but it isn't something that will be settled by psychologists or lie detectors.

Robert Herrera, who was appointed by the family court to represent the interests of the children alone, agrees. "My feeling is at this point the children should be returned to their parents," he says. "I don't know how strongly CPS disagrees with that, but I think this should be resolved without any more trips to court."

If what she and her boyfriend did was wrong, Mercado says, "I'm sorry. I didn't know these pictures were wrong...I just want my children back. They belong with us."

[http://www.dallasobserver.com/issues/2003-04-17/news/feature2\\_print.html](http://www.dallasobserver.com/issues/2003-04-17/news/feature2_print.html)

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## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **Teens Charged With Rape Of Each Other**

A pair of Wisconsin teens face criminal charges for having consensual sex. The prosecutor charged the underage couple with the statutory rape of each other. Can two people simultaneously rape each other? Apparently in Wisconsin, the answer is yes. At least, that's what prosecutor Lori Kornblum claims happened when a boy and a girl, (both 14 years old) had sex. As each was having sex with someone under Wisconsin's age of consent (16 years old), each was charged with the sexual assault of the other. [Neither child's name has been released due to their age].

While, the girl has pled guilty to sexual assault, the boy's attorney has challenged the charge on privacy grounds. He has also pointed out that this is a misapplication of the statutory rape law, since such a law was intended to prevent the sexual exploitation of a young person by someone older and more experienced. Obviously, where they are the same age and maturity, such exploitation is not possible. Certainly, its hard to see how they could each have the superior knowledge and experience to sexually exploit the other at the same time.

Ms Kornblum is claiming that she is doing this for these kids own good. It seems they have bad attitudes, a history of misbehavior, and are unrepentant. They also have a history of troubled childhoods (including attention deficit disorder and parental abandonment). So Ms. Kornblum wants to "help" them by locking them up and labeling them as rapists and sex offenders.

While 14 is too young to be having sex and kids of that age should be discouraged from doing so, should such bad judgment be a criminal offense? When did we decide that adolescent "bad attitudes" should be a matter for the judicial system and criminal law instead of for parents and counselors?

These kids are troubled teens who need real help. What they don't need is Ms Kornblum's kind of "help"

## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **Police: Locker Room Sex Could Lead To Rape Charges**

Parents Unaware Of Incident At Ecorse School

POSTED: 7:10 pm EST February 3, 2005 UPDATED: 7:54 pm EST February 3, 2005

ECORSE, Mich. -- A 17-year-old boy was taken into police custody on Wednesday after he was caught having sex with a 15-year-old girl, police said. The incident -- which reportedly took place in a locker room at Ecorse High School -- may have been consensual, but in Michigan, the legal age of consent is 16. Students, Parents React To Sex Investigation Students were not surprised that a sex act took place inside of the school, Local 4 reported. "This is a normal day for us. People get caught in the locker room all of the time," said Kowanna Redwine, a junior at the high school. Parents were reportedly upset that the district did not notify them of the incident. "Either release a letter, inform parents of what's going on and tell us what they're going to do," said an unnamed mother of an Ecorse student.

Students were told by school officials not to talk to the media, Local 4 reported. The 17-year-old is being held at the Ecorse Jail while prosecutors decide on whether he will be charged. Under state law, the teen could be tried as an adult.

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## **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

### **He grabbed girl's arm -- now he's a sex offender**

*July 1, 2005*

BY [STEVE PATTERSON](#) Staff Reporter

Fitzroy Barnaby said he had to swerve to avoid hitting the 14-year-old Des Plaines girl who walked in front of his car.

She said he yelled, "Come here, little girl," before getting out of his car and grabbing her by the arm.

He said he simply lectured her.

She said she broke free and ran, fearful of what he'd do next.

In a Thursday ruling, the Appellate Court of Illinois said the 28-year-old Evanston man must register as a sex offender.

While acknowledging it might be "unfair for [Barnaby] to suffer the stigmatization of being labeled a sex offender when his crime was not sexually motivated," the court said his actions are the type that are "often a precursor" to a child being abducted or molested.

Though Barnaby was acquitted of attempted kidnapping and child abduction charges stemming from the November 2002 incident, he was convicted of unlawful restraint of a minor -- which is a sex offense.

### **'Most stupid ruling'**

Now, he will have to tell local police where he lives and won't be able to live near a park or school.

"This is the most stupid ruling the appellate court has rendered in years," said Barnaby's Chicago attorney, Frederick Cohn. "If you see a 15-year-old beating up your 8-year-old and you grab that kid's hand and are found guilty of unlawful restraint, do you now have to register as a sex offender?"

But Cook County state's attorney spokesman Tom Stanton said Barnaby should have to register "because of the proclivity of offenders who restrain children to also commit sex acts or other crimes against them."

In the criminal case against him, Cook County Judge Patrick Morse said that "it's more likely than not" Barnaby planned only "to chastise the girl" when he grabbed her, but "I can't read his mind."

"I don't really see the purpose of registration in this case. I really don't," Morse said. "But I feel that I am constrained by the statute."

Recognizing the stigma that comes with being labeled as a sex offender, the appellate court said "it is [Barnaby's] actions which have caused him to be

***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***  
stigmatized, not the courts."

<http://www.suntimes.com/output/news/cst-nws-molest01.html>

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## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **Teen who posted own photo charged with child porn**

Monday, March 29, 2004

Pittsburgh Post-Gazette

State police have charged a 15-year-old Latrobe girl with child pornography for taking photos of herself and posting them on the Internet.

Police said the girl, whose identity they withheld, photographed herself in various states of undress and performing a variety of sexual acts. She then sent the photos to people she met in chat rooms.

A police report did not say how police learned about the girl. They found dozens of pictures of her on her computer.

She has been charged with sexual abuse of children, possession of child pornography and dissemination of child pornography.

Police said they are trying to identify all the people who receive photos from the girl.

<http://www.post-gazette.com/breaking/20040329pornp6.asp>

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## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **16 Year Old Girls Charged with Disseminating their Own Brand of Child Porn**

Roanoke Times 7-25-04.

Two Northside High School girls who took nude pictures of themselves and e-mailed them to their boyfriends last year said they only did it to be flirtatious. It wasn't long before they realized the consequences: loss of friends, no more school activities, seeing themselves on Internet sites and felony charges. By the time the girls faced Roanoke County Juvenile and Domestic Relations Judge Philip Trompeter on Thursday, all joking was aside. "You were degrading and hurting yourselves doing this," Trompeter told them. Both 16-year-olds were charged with production and dissemination of child pornography. The Roanoke Times was allowed access to the court proceedings on Thursday on the condition that the girls not be named.

<http://www.geocities.com/eadvocate/issues/va-04-07-25-self-child-porn.html>

## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **Man Loses Fight to Avoid Listing on Sex Offenders' Registry**

8-7-2003 Minnesota

by [ADAM LIPTAK | New York Times](#)

Minnesota man must register as a sex offender even though he has not been convicted of a sex crime, the federal appeals court in St. Louis ruled yesterday. That ruling "turns reason and fairness on its head," wrote Judge C. Arlen Beam, who nonetheless concurred in the unanimous decision of the three-judge panel of the court. The case arose from an encounter in a bar in 1998. Brian Gunderson went home with a woman he met there and, according to her, assaulted and raped her. He was charged two days later with sexual assault. But the physical evidence collected by the police did not support the woman's accusation of rape. Judge Beam wrote, "The police investigation clearly established a lack of sexual contact between Mr. Gunderson and the complaining woman." The original criminal complaint was dropped, and Mr. Gunderson pleaded guilty to a new one charging him with assault. He received a 15-month suspended sentence and three years of probation. State officials later told Mr. Gunderson that he must register as a sex offender under a state law that requires it whenever someone is convicted of a sexual offense "or another offense arising out of the same set of circumstances." The Eighth Circuit said it was bound by a 1999 decision by the Minnesota Supreme Court in which a defendant charged with a sex crime was required to register after pleading guilty to a lesser charge. The federal court also held that including people who are not sexual predators in a registry of sex offenders does not violate their fundamental constitutional rights.



## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **Cases dismissed, but many still on list**

[By Ted Streuli](#)

The Daily News

Published December 21, 2003 - Updated minutes ago

David Dockens is serving a life sentence, even though he's never been convicted of a crime.

It isn't supposed to happen here; punishment without a finding of guilt is the sort of thing that occurs elsewhere. Still, it happened to Dockens, and he's not alone.

A three-month review by The Galveston County Daily News of Department of Public Safety and county criminal justice records found thousands of people in the same situation.

Dockens is one of about 85 people in Galveston County and more than 6,000 statewide who, because of a 1997 change in the Texas Code of Criminal Procedure, must register as sex offenders even though charges against them were dismissed.

Without a criminal conviction on their records, their photographs, addresses and other information — even their height, weight and shoe size — are published on the DPS Web site. There are a plethora of licenses they can't hold and jobs they can't get, but most importantly, there is the stigma of being publicly labeled a sex offender.

### **Changing The Rules**

Dockens was 31 years old and involved in a contentious divorce in 1987 when his soon-to-be ex-wife made an allegation that he had sexually assaulted his 9-year-old stepdaughter. He hired a lawyer, who told him the case was highly defensible; there was no physical evidence, just his word against hers. Chances at trial were good, the lawyer said, but the district attorney had offered a deal. If Dockens pleaded guilty, he would get deferred adjudication, a postponement of the court ruling on his case. There would be no trial, and if there were no problems during the next 10 years the case would be dismissed.

There was no Internet in 1987, and no sex offender registration law. Faced with the gamble of a \$15,000 jury trial and a long delay in the divorce proceedings, Dockens opted to take the deal.

"They didn't have much of a case," said Dockens. "But there's no way to guarantee what a jury will do, and how do you prove you didn't do something? It seemed like the best thing to do."

## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

Prosecutors use plea bargains for various reasons: sometimes they don't want a child to testify, sometimes it's the prudent way to keep the wheels of justice turning, sometimes the case isn't as strong as they'd like it to be.

Dockens is sure that in his case, he was offered a deal because the state had no case. Nine years and 45 weeks passed without incident. Then, with only 49 days remaining until his case would be dismissed, the state changed the rules.

A new law took effect Sept. 1, 1997, that amended the Texas Code of Criminal Procedure, vastly broadening the requirements for sex offender registration. Among the changes was a clause that required anyone then on probation for a sexual offense to meet the registration requirements.

Dockens — and an estimated 6,045 others — had agreed to deferred adjudication before that but had not yet completed the probationary period that would allow their cases to be dismissed.

Dockens said that if there had been a sex offender registration law in 1987 he wouldn't have agreed to the plea bargain. "It's wrong," Dockens said. "You go through the court system and you think it's going to be over, but it's not."

### **An Unintended Consequence**

When legislators passed Senate Bill 875 that year, cases such as Dockens' weren't even discussed. State Rep. Craig Eiland, a Galveston Democrat, was one of four lawmakers who sponsored the bill, which was authored by State Sen. Florence Shapiro, a conservative Republican from Plano.

"We never really addressed that possibility or that category of people who would be put in a situation like this," said Eiland. "Oftentimes there's unintended consequences, which we then have to go back and fix."

### **Defense, Prosecution Agree**

Criminal lawyers on both sides of the dais agree there's something wrong with the law. Tad Nelson spent three years as a prosecutor before becoming a criminal defense attorney in 1994. Nelson said what was a fair deal at the time turned sour.

"A lot of these people pled out and made arrangements both they and the district attorney thought were fair and it ended up being something else," Nelson said. "It took away what they agreed to."

Even First Assistant District Attorney Mohamed Ibrahim, a career prosecutor,

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said the law is unfair. “It certainly wasn’t something he signed up for when he waived his right to a jury trial,” Ibrahim said. “I think fair means being able to make an intelligent choice and that means being aware of all the possible consequences.”

All — including Dockens — agree that the question of fairness evaporates for people who entered a plea after Sept. 1, 1997. Those defendants knew that registration as a sex offender would be a consequence of their plea, even if the case were eventually dismissed.

### **Unfair Isn’t Unconstitutional**

The Texas Constitution includes a section that bans retroactive punishment, as does the U.S. Constitution. Technically known as an ex post facto clause, it prevents lawmakers from applying new, longer sentences after a defendant has been tried.

But the U.S. Supreme Court ruled in March that requiring someone to register as a sex offender is a public safeguard, not a punishment, and state courts have taken the same view.

University of Houston Law Professor Irene Rosenberg, a specialist in criminal and constitutional law, said that unfair doesn’t equal unconstitutional.

“The unfairness here is in the retroactive application of that law,” Rosenberg said. “The statute suffers from bandwagoning. Somebody gets an idea to do something to fix a problem; other states jump on the bandwagon and do not think through the consequences of what the law is doing. I think that’s what happened here in Texas; the Legislature didn’t think the statute would create the kind of consequences applied to this group.”

### **A Challenge From Nueces County**

Although the courts are clear that sex offender registration doesn’t violate ex post facto rules, the issue has been tested only once when deferred adjudication and a case dismissal were involved.

Wade Kubas of Nueces County appealed a 2000 state district court ruling in which the court held that even though his case was dismissed and his probation terminated, he was still required to register as a sex offender.

Kubas successfully completed five years of probation under a deferred adjudication deal he agreed to in 1993. He argued that the order terminating his probation and releasing him from “all penalties and disabilities” included the requirement to register as a sex offender.

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When the court disagreed, Kubas appealed. Corpus Christi attorney Grant Jones handled Kubas' appeal, arguing the statute violated the state constitution's stringent ex post facto clause.

"That was changing the rules in the middle of the game," said Jones, who served as a district attorney for 10 years and a prosecutor for 18. "It's obviously a violation of the spirit of the constitution."

### **Courts: It's Not Punishment**

Three justices of the 13th Court of Appeals didn't see it that way, ruling in August 2002 that registering as a sex offender wasn't punishment. Therefore, the court said, the ex post facto clause didn't apply.

***Dockens' experience, however, suggests that registration as a sex offender carries numerous penalties.*** When the directors of Water Control and Improvement District No. 12 became aware of his status, they didn't ask for details. They simply let him know that they no longer wanted him serving as chief of the Kemah Volunteer Fire Department, which the water district controls. Dockens resigned rather than wage a public battle to keep his job.

While he was fire chief, Dockens avoided school appearances and dodged situations that put him in close proximity to children other than his own.

His **daughter suffered embarrassment like only an adolescent can** when a **fellow student** working in the school office **saw a "confidential" notification** of Dockens' status and **spread the news throughout the campus.**

Because he is a registered sex offender, state law prohibits him from holding a license to operate a day care center, a tanning salon or participating in dozens of other occupations regulated by the state.

The court's contention, according to Justice Linda Reyna Yanez's published opinion, is that the amendments to the sex offender registration statute were remedial, not punitive. The court held that since the amendments merely enveloped people who had not previously been required to register, they did not violate the constitution's ex post facto clause.

"Everybody knows it's unfair," Jones said. "I was hoping the Court of Criminal Appeals would use the retroactive clause to hold that you can't change the rules in the middle of the game."

But the Court of Criminal Appeals declined to hear the case and let the ruling stand. **"It's the closest thing to banishment we have,"** said Jones. **"Public**

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humiliation is a violation of the due process clause of the United States Constitution. We've tried it in the past and it doesn't work — it's uncivilized. You're treated as if you're guilty. It emasculates the meaning of deferred adjudication."

### **Highest Court Agrees**

The U.S. Supreme Court has yet to hear a sex offender registration argument with a set of facts such as those in the Dockens and Kubas cases, but the justices ruled in two cases this year that registration laws were not punitive.

In a 6-3 decision, the court said that Alaska's sex offender registration statute — which includes a publicly accessible Internet database much like Texas' — did not violate the U.S. Constitution's ex post facto clause.

"Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment," Justice Anthony Kennedy wrote for the majority. "The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender."

**Justice Ruth Bader Ginsberg** drafted the dissenting opinion, in which she said, "however plain it may be that a former sex offender currently poses no threat of recidivism, he will remain subject to long-term monitoring and inescapable humiliation."

But appellate courts don't decide if a law is a good idea, or even if it's fair, said Rosenberg. They only decide if a law violates the Constitution.

David Crump, also a University of Houston law professor, said that if the law were to change it would have to be done by the Legislature.

"The courts have gone much further than this in holding things that look punitive as preventive," said Crump, a former prosecutor. "Is it silly? Some of these things may be, but silly isn't necessarily unconstitutional. Our remedy is simple: we get the Legislature to change it."

### **A Political Quagmire**

That might be easier said than done, especially in a climate where political futures aren't helped by any stand that appears soft on sex offenders.

Janice Sager, spokeswoman for victims rights group Texans for Equal Justice, said her organization might lobby against a proposed change to the law.

"I think deferred adjudication for sex offenders is ludicrous to start with," Sager

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said. “I find it hard to have sympathy for someone who doesn’t like the fact that they have to register now.”

Eiland said he would consider authoring or sponsoring an amendment to the statute in the next legislative session, but was pessimistic about the chances of a blanket exemption gaining support.

“It would probably be very difficult to get it done,” he said. “The legislators would be very gun-shy about allowing anybody with a taint of being a sexual predator from being removed from that list.”

#### **Plan B**

Eiland said that a more viable alternative would be to amend the statute so that state judges could exempt certain people from registering.

“For situations like that — where there was no finding of guilt — there should be a way for the court to review the situation,” Eiland said.

In 1997, there was. The law included a stipulation that allowed anyone required to register as a sex offender to petition the court for an exemption. The clause was repealed in 1999.

**State District Court Judge Susan Criss** said she would support an amendment that reinstated a judicial remedy. “Legislators pass laws in general,” she said. “Courts deal with individuals.”

Criss said the ability to petition the court for an exemption was originally included so there was a way to make exceptions when appropriate. “Maybe it shouldn’t have been taken out,” Criss said.

#### **No Remedy**

Jones was more direct. “They need to go back and change the law, but it won’t happen because our elected officials don’t have the guts to do anything that would make life better for anyone accused of a sexual offense,” he said. “It would be a rare public official who would be willing to stand up and be counted on this. Generally, in our legal system, if you get screwed you’re supposed to have a remedy.”

David Dockens — and more than 6,000 other Texans whose cases were dismissed — has no remedy. “I have to do it the rest of my life,” Dockens said. “If I move, I have to let them know. The police have to know, the schools have to know. If there were ever a problem with a child in the area, they’d come here. They’d want to know where I was and what I was doing.”

## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

It would be no different if there was a convicted robber in the area and the local convenience store was held up — except for one detail. “I don’t have a criminal record,” Dockens said. [*emphasis mine*]

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<http://www.galvnews.com/story.lasso?wcd=16259>

## **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

### **Man will be breaking new sex offender law if he stays with wife, kids**

*Associated Press*

**KNOXVILLE** — A new law meant to protect children from sex offenders is forcing a Knoxville father to leave his family.

If he doesn't move out, he will be committing a felony.

"We are in shock, and we're trying to figure out what to do," Christy Long said after a judge refused to make an exception for her husband, Lonnie Long.

***"It's in no one's interest, especially not the state's, to break up this home,"*** Assistant District Attorney General Zane Scarlett told the court, ***"but I have to enforce" the law.***

Knox County Criminal Court Judge Ray Lee Jenkins agreed Wednesday, ruling on a petition from the Longs that there was nothing he could do.

The law, approved earlier this year and taking effect tomorrow, made sweeping changes in the state's sex offender registration program.

One of those changes makes it a felony for a convicted sex offender to live in a home where a child lives — if the child is not the offender's own.

Long, 33, lives with Christy, whom he married on Valentine's Day 2003 after a two-year courtship, as well as his 13-year-old son and 6-year-old stepdaughter. "Lonnie is the only stable daddy she's had," Christy Long said of her daughter.

According to its preamble, the law was designed to protect children from sex offenders "who prey on children." But Long is not a child molester.

He pleaded no contest in 1999 to attempted rape and attempted kidnapping of his girlfriend in 1996.

It was his only conviction. He received a six-year sentence, spending nine months in jail and the rest on probation.

According to testimony Wednesday, Long has been a model probationer.

He attends sex offender treatment classes, complies with sex offender registry requirements and takes a lie-detector test every six months to confirm he hasn't committed or desired to commit a sex crime.

He works. He supports his family.

He is, according to his probation officer and his therapist, a good father.

But Lonnie Long will be moving out of his home tomorrow or else he will be committing a felony and violating his probation.



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"We both came home and cried," Lonnie Long said of his and his wife's reaction to Jenkins' ruling. "I'm not no danger to children. I can't stand to see anybody hurt a kid."

Christy Long said she realizes her husband "messed up" in the attempted-rape case.

"But he is not a danger to my daughter.

"He did not hurt a child. He would never hurt a child. It's totally different from sex offenders who go after children," she said.

State Attorney General Paul Summers warned legislators in a March opinion that the residency law was flawed and "would be subject to serious constitutional challenges." But it passed anyway, with several sponsors.

Rep. Harry Brooks, R-Knoxville, said his intent in passing the law was to protect children from sex offenders who targeted children.

***"It wouldn't be the first time" a law had unintended consequences, Brooks said. "We often have to go back to work to clarify the language."***

The legislature will not convene until January.

In the meantime, the Longs' lawyer, Charles Deas of Maryville, said he is contacting a special legal "strike force" to see if some court action can be taken.

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[http://www.tennessean.com/local/archives/04/07/55223815.shtml?Element\\_ID=55223815](http://www.tennessean.com/local/archives/04/07/55223815.shtml?Element_ID=55223815)

## ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

### **List keeps sex offender's past in present**

Neighbors got worried when they found Jason Gallagher listed on the Web. Gallagher says his past is behind him.

By LISA GREENE

© St. Petersburg Times, published January 29, 2001

CLEARWATER -- When neighbors found out about Jason Gallagher, they were scared.

They're senior citizens. He's a sex offender.

It's easy to sum it up that way. But the truth is a bit more complicated. The facts on the Florida Department of Law Enforcement Web site spoke for themselves. Check it and you would find Gallagher's mug shot and boilerplate jargon that said he had sex with two girls.

Gallagher's neighbors used the Web site to make sure their fears were grounded in fact. Rumors were spreading. Questions were being asked. Is there a dangerous felon among us?

"It's got us all spooked, and I've never been spooked," said Toni Mattz, 66. "I just think somebody like that should not be here where so many people are so vulnerable."

The neighbors called a meeting. They called condo management. They even called a reporter.

They didn't call Gallagher.

But he wasn't surprised.

"People see that and they don't ask questions," Gallagher said of the Web site. "They just act."

Gallagher says his neighbors never saw this: He's a 24-year-old electrician who moved to Clearwater last fall to spend time with his dying grandmother. He's a man who admits that as a teenager, he was out of control. But he says he's paid for his crimes and now wants to put his past behind him.

"He has a good heart," said his former boss, Bill Cowherd.

So there it is: two portraits, one man.

\* \* \*

Gallagher is one of 884 Pinellas County residents whose names, pictures, addresses and sex crime histories are posted on the FDLE's Web site. At any hour, anyone could see two "lewd, lascivious child U/16" convictions next to his name.

But a review by the St. Petersburg Times showed that the Web site was wrong.

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State prosecutors dropped one charge. And in the second, Gallagher pleaded guilty to attempting a lewd act, not committing one.

It was August 1993 in Edgewater.

She was 16. He was 17.

She let him in her window. They had sex.

She said it was rape. He said it was consensual.

None of this makes Gallagher a model citizen. He was imprisoned for car theft, and a judge gave him five years of probation for the attempted lewd act.

On Friday, the deputy circuit administrator for the state Department of Corrections said his staffers reviewed Gallagher's case after being contacted by the Times. They confirmed that Gallagher's convictions were listed incorrectly. "We're going to get that corrected on the FDLE Web site," Peter Hughes said. "We'll call them and have them work on it."

By Friday evening, Gallagher's record had been set straight on the site. Aside from the errors, civil rights advocates say Gallagher's case raises a larger question: should felons with low-level convictions be on the list at all?

"People see the postings and they don't know the facts of each case," said Denis de Vlaming, a well-known Pinellas County defense lawyer.

A high school senior found "in the back of Dad's Chevy" with his 15-year-old girlfriend "gets the same exposure on the Internet as the pervert hanging around the bus stops with the 6-year-olds," de Vlaming said.

FDLE doesn't choose whom to include, said FDLE spokeswoman Jennifer McCord. Federal rules say the state must list offenses such as Gallagher's or forfeit federal law enforcement money.

Most importantly, McCord said, the public wants the information.

"Don't you think you have a right to know who is living in your neighborhood? Or your elderly mother's neighborhood?" she said. "The bottom line is that public safety is our priority here."

But just being listed can destroy a life. Gallagher said one of his bosses fired him after discovering his past. In 1999, the home of an Apollo Beach man was set on fire twice after neighbors learned he was listed as a sexual predator.

"It effectively draws a big target around the person whose name and likeness is on that computer," de Vlaming said.

When Gallagher pleaded guilty in 1993, there was no sex offender list. When he was freed from prison in 1997, there was.

### **CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES**

"If I had known anything about (being on the list) now, I wouldn't have pleaded guilty," Gallagher said.

Defense lawyers say the state basically punished Gallagher twice.

"It's just a trend," said Pinellas-Pasco Public Defender Bob Dillinger. "More and more, you can never pay your debt to society."

Courts have rejected that argument. Sex offender registries aren't punishment, but merely a list of public records, judges have ruled.

For Gallagher, that doesn't make starting over again any easier.

Gallagher said part of his problems as a teen stemmed from his parents' divorce when he was 12. Before that, his father was "beyond strict." Afterward, he said, they had little contact.

He wouldn't discuss those problems further. They don't excuse his later crimes, he said.

"I'm not looking for anybody to feel sorry for me," he said. "I did what I did and I'm trying to rebuild my life. . . . I can't go back and change it. All I can do is my best now."

The list haunts him. He attended two semesters of community college after serving his time, he said. He wants to go back but doesn't want to borrow money for school because he's not sure a sex offender could get a good enough job to repay the loans.

De Vlaming said Gallagher should ask a judge to remove him from the list.

Gallagher said he has no money and no hope anything would change.

"This way, it makes life almost unlivable for people," Gallagher said. "I did four years. Isn't that enough?"

But 76-year-old Nicholas Zullo, one of Gallagher's neighbors at the Top of the World retirement community in Clearwater, wasn't reassured when he discovered Gallagher's sex crime convictions were years old.

"If he's a sex offender, he's a sex offender," Zullo said. "I don't think he'll ever get over that. I haven't had a drink in 20 years, but I'm still an alcoholic."

"It's a disease," said Estelle Seltenreich, who is 74. "People like that may never do it again. But then, you never know."

Edgewater resident Joe McAllister, who hired Gallagher to work sales at his moving company, sympathizes with the fears of Gallagher's neighbors. He remembers how shocked he was when he walked into his children's school and saw Gallagher's mug shot on the wall. "I immediately go, 'Oh my God,' "

### ***CASES THAT NEVER SHOULD HAVE BEEN SEX CRIMES***

McAllister said. "I knew he had a history, but I didn't know what it was." McAllister confronted Gallagher. The two talked it over, and McAllister kept Gallagher on the job. He "made a lot of mistakes" when he was younger, but that didn't show at work, McAllister said. Gallagher was "real good with people" and worked hard.

"It's a valid concern, but I have kids, and I would have trusted him alone with my kids," McAllister said. "They never were, because the scenario never popped up. But I wouldn't feel uncomfortable with him living in my neighborhood." Gallagher said his neighbors' worries soon will be over. His grandmother died Jan. 10, so he's leaving Top of the World, where he was living in his grandmother's condo. "I'm moving in less than a month," he said. "If I can find another place, it'll be before that time." When he does, the law says Gallagher must tell police where he's going. His new address will be posted on the Internet. And then Gallagher's neighbors can find out about his past once again. - Times researcher Cathy Wos contributed to this report.

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[http://www.sptimes.com/News/012901/news\\_pf/NorthPinellas/List\\_keeps\\_sex\\_offend.shtml](http://www.sptimes.com/News/012901/news_pf/NorthPinellas/List_keeps_sex_offend.shtml)

## ***LETTERS OF SUPPORT***

Florida Justice Alliance, Inc.  
PO BOX 1426  
Pinellas Park, Florida 33780-1426  
727-545-9268

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Nancy E Morais,  
President

Jeanine Cohen Esq., Vice President

---

Ms Caroline Ferguson  
Director, Sohopeful

08/12/2005

Dear Ms Ferguson:

It has come to my attention that you have taken a stand against the ill fated laws legislated that control sex offenders. Although my concerns continue in safeguarding our children, I feel you may very well have hit the nail on the head in regard to the hysterical laws we have allowed our legislators to create.

It is always our responsibility to police their actions and I feel many of the laws governing sex offenders have been created out of hysteria and will prove to be a downfall for America in the long run. Some how I feel our quick to act legislators have failed to see the bigger picture here.

It is my prayer that you can move forward and present a more feasible program that would not only safeguard our young children, but serve the tax payers in a better way. Having studied the numbers I found that we are paying astronomical amounts of money to house thousand across America, and all because the public in general are not educated as to the choices that may be available verses incarceration. I also understand that most facilities lack any treatment program because it is deemed impossible to treat these people properly while incarcerated. Yet, once released into society having paid their time for their crimes, they are yet detained again under extreme punitive conditions for treatment. In most cases, most facilities hold these men captive under more punitive conditions than they had in prison.

This may not be the case in all states, but Florida has created a volatile situation that has become terrible abusive and inhumane to these men detained in Arcadia. Most have been there for years and have not yet been found to be violent by the courts. Since they have not waived their speedy trial which should

## ***LETTERS OF SUPPORT***

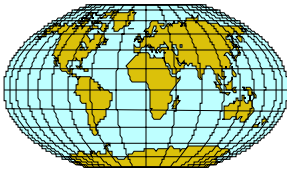
take place within thirty days or their release from prison, I can't help but wonder just how long they will be detained without treatment. The facility has claimed it can on functionally treat about one hundred fifty while they have incarcerated well over five hundred. So I ask, where does it end?

I would like to encourage you to continue your fight against these atrocities brought on by our higher powers and will do what I can to support your efforts. Please let me know what I can do to help expedite your efforts in this area.

I thank you so much and will pass this information you are doing down through my serve list. Sending this way will reach better than ten thousand on my list alone, and I will encourage all to pass information down their serve lists as well. Using the internet will by far reach more voters and that's what will make the impact. We have some good people in Washington and I am praying that we can reach "them."

Most Sincerely Yours,  
Nancy E Morais,  
FJA Executive Director

## LETTERS OF SUPPORT



Robert E. Longo, MRC, LPC  
1471 Swamp Fox Lane  
James Island, South Carolina  
29412 • USA  
Phone 843.345.5445

- E-mail: [robertelongo@aol.com](mailto:robertelongo@aol.com)
- Web Site: [www.saperi.com](http://www.saperi.com)
- Consultation
- Training
- Program Evaluation
- Program Development

August 19, 2005

SOhopeful International  
1900 NE 181<sup>st</sup> Avenue ~ Suite 111  
Portland, Oregon 97230

Dear SOhopeful:

I am writing this letter in support of your efforts to bring to the attention of legislators and others, current and pressing issues regarding laws that address sexual offending. I have worked in the field of assessing and treating young people under age 12 with sexual behavior problems, and juvenile and adult sexual offenders for over 28 years. I have watched the laws in the United States at both state and Federal levels change, typically for the worse, during my entire career. Despite the obvious history that proves these laws seldom work, little if any money or effort has been put into sexual abuse prevention, or trying restorative justice models

SOhopeful has been at the forefront of addressing legislation regarding sexual abuse, including efforts that address prevention, education and the restorative justice alternatives that are viable, effective and fiscally responsible. SOhopeful, **must** continue its work.

I understand you are actively trying to educate people about existing and pending laws that are using a “one size fits all” approach to punishing sexual offenders. Unfortunately, these laws also wind up being applied to children and adolescents, and effect their families in a very damaging ways. Additionally, many of the existing laws, and proposed legislation use or will use untried and untested methods to monitor sexual offenders. In the past, such laws have not proven to be effective yet cost American tax payers hundreds of millions of dollars each year with no proof that they have or will ever work. Many of these



## ***LETTERS OF SUPPORT***

laws have created more damage to families and others than anyone could have ever anticipated. None of these laws has proven to be effective in preventing even a single sex crime!

There is nothing in these laws that provide true benefit for the public. Having to electronically monitor offenders currently on probation or parole is an expensive and tiresome prospect, and by and large, unnecessary. Such laws are based on single case situations that

Residing 2000 feet away from school or licensed daycares is ridiculous. It accomplishes only one thing - people who are doing well in treatment, following their probation, attempting to reintegrate into society, etc. are now treated as lepers while the public cheers that there s no place for them to live within the city limits.

Furthermore, such laws do nothing to increase compliance by convicted sex offenders. The horrific cases of child abduction, sexual abuse, rape, and murder during 2005 have all involved convicted, registered sex offenders who were generally not provided treatment. These cases account for less than one-half of one percent of all sexual crimes in America. Such laws burden sex offenders who have been in treatment, are low risk, and the result is to cause them great hardships financially, relationship wise, and residentially.

For sex offenders, compliance with treatment - true compliance, not just doing something because they have to - happens when they feel respected and that they matter and are important. With good treatment and appropriate monitoring, their investment in treatment programming moves them toward a more positive and healthful situation for their communities, their families, and themselves.

The bottom line, lest we forget, is that in nearly every instance, the most dangerous sexual offender in any community is the one who has not been caught and is continuing to offend. This is why we need to put money into prevention, not punishment.

It is my hope that SOhopeful will continue to do what it is doing and help

## ***LETTERS OF SUPPORT***

educate the American public with data and fact regarding what is happening in our country. Thank you so much for your support and understanding, it means a lot to treated sex offenders and their families affected by these ridiculous laws.

Sincerely,

Robert E. Longo, MRC; LPC

## **LETTERS OF SUPPORT**



### **Stop the Silence**

CSA is not one group's problem; by expert accounts, it is a silent epidemic throughout the United States, and, indeed, the world, creating pain and social havoc – for the children, adult survivors, and society. It can be prevented and it can be treated, but a conscious and sustained effort is both missing and essential.

August 20, 2005

Carolyn Ferguson  
Sohopeful International, Inc.  
1900 NE 181<sup>st</sup> Ave., Suite 111  
Portland, OR 97230

Dear Carolyn,

Thank you for your organizations' efforts toward bringing about change in the legislative discussion and agenda with regard to child sexual abuse (CSA), particularly around the issue of societies' activities surrounding offenders. We support your efforts wholeheartedly. If we are to protect the children, we must educate the public as to the realities of the environment surrounding CSA, and then act on those realities in a comprehensive manner utilizing viable, effective, and fiscally responsible transformative justice approaches that respond in ways that are in the best interest of the victim, offender, family, and community. Your report is a critical first step. Please let me know if there is anything else Stop the Silence, Inc. can do to support your important work.

Sincerely,

Pamela Pine, PhD, MPH  
Founder, Stop the Silence, Inc.

# PROBATION DEPARTMENT

Loren Buddress, Chief Probation Officer



# COUNTY OF SAN MATEO

Email: [Lbuddress@co.sanmateo.ca.us](mailto:Lbuddress@co.sanmateo.ca.us)

08/22/2005

Ms Carolyn Ferguson  
Sohopeful International  
1900 181st NE, Suite 111  
Portland, OR 97230

RE: SOhopeful International's efforts to amend the Sex Offender  
Registration and Notification Act (S 1086 & H.R. 2423)  
Jetseta Gage Prevention and Deterrence of Crimes Against  
Children Act of 2005 (S 956 & H.R. 2318 and 2388)

Dear Ms. Ferguson:

It has come to my attention that your organization is making efforts to strengthen Megan's Law and the Sex Offender Registry through prevention and education efforts, and you have some viable, effective alternatives to long-term incarceration for one-time, non-violent offenders.

While it is of particular importance to protect our community from predators, in my judgment, the current system and proposed bills in the US Congress at this time will not further that goal. In fact, I believe the mandatory minimum sentencing component of this proposed legislation will have the opposite effect. From the point of view of the Probation Department, these provisions will exacerbate an already difficult situation with regards to monitoring and tracking registrants. These provisions will make it more difficult to keep track of the most violent, predatory and habitual offenders because our attention is so diffused, due to the requirement to increased supervision of the low-risk, non-violent offenders.

I support your efforts to amend these bills and to bring the issues of prevention and education to the forefront of the discussion.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Loren Buddress  
Chief Probation Officer

---

21 Tower Road • San Mateo, Ca 94402

650-312-8816 • 800-310-8816 • Fax: 650-312-5597

## ***Projected Costs of Expanding Registry***

### **1. CURRENT COSTS FOR SEX OFFENDER INCARCERATION AND SUPERVISION**

The current approach to the problem of sex crimes against children is to arrest and convict the offenders and put them behind bars for as long as possible, then monitor them via parole or probation for decades, or for the rest of their lives.

Current costs for this approach include the costs for:

- € Incarcerating offenders now in jails and prisons
- € Providing for families of incarcerated offenders through Welfare and Medicaid
- € Tax revenue lost through lost wages of incarcerated offenders
- € Supervising and tracking released offenders
- € Tax revenue lost through likely joblessness among released offenders
- € Providing for families of released offenders unable to obtain jobs

These cost elements are detailed below.

#### **Incarceration**

The average cost in 2001 to incarcerate one inmate in a State prison was \$62.05 per day (\$22,630 per year) and in Federal prisons, it cost \$62.05 per day (\$22,650 per year). [Bureau of Justice Statistics. State Prison Expenditures, 2001]. Medical expenses for prisoners are also increasing, and are not included in this total.

#### **Care of Inmate's Family**

Many prisoners have a wife and children. If the wife is unable to support their two to three children (on average) through a job, they end up on Welfare. Costs to the State and Federal governments would then include Food Stamps, at a cost of \$4,027 for the family of 4 and WIC at \$1,697 and Temporary Assistance for Needy Families (TANF), which would average \$5,315 for her family. In addition, she might need housing assistance of some sort, like low-income housing assistance, at a cost of \$9,877 for herself and her children. [Statistical Abstract of the United States: 2004-2005, Table Number 550, 545, and 524.] Without including other aid, like school lunches and breakfasts, educational aid, child care, job training, educational assistance, or low-income energy assistance, supporting this family would cost the State and Federal government \$20,917. In addition, the health-care costs for people on Medicaid averaged \$463 each person. The typical family below the poverty level had two to three children, so the family [minus the incarcerated father, typically] would cost \$1,850 per year.

[Statistical Abstract of the United States, 2004-2005; Table Numbers 33 and 134.] So to feed, house, and provide medical care for this family of one incarcerated man costs the taxpayers \$22,767 per year.

### **Lost Tax Revenue from Inmate's Former Earnings**

In addition to the direct costs of incarcerating each inmate and providing for his family, there is the lost revenue from the taxes he could be paying, had he been employed. This averages \$3,338 in 2003, according to Table Number 473 of the Statistical Abstracts of the United States, 2004-2005.

### **Parole**

Once the offender is released, the incarceration cost is gone, but there is a cost for parole supervision (not including the costs for any tracking devices). Data on the national average costs for parole were not available, however one estimate is about \$1,500 per year at a maximum.

### **Post-Release Welfare**

Since most places do not want to hire ex-convicts, and since sex offenders are prohibited by law from working in a number of industries or near sensitive sites like schools, work prospects for registrants on parole are very bleak. This results in additional lost tax revenue, of \$3,338 and another person on the welfare rolls, at an additional annual cost of \$3,940 for Medicaid, Food Stamps and Housing assistance. While this is going on, the costs for maintaining his family continue indefinitely.

### **Other Costs**

The costs detailed above do not include the costs for arresting, prosecuting, and locally incarcerating the offenders initially before they are transported to a State facility for long-term incarceration. Detailed information on these cost factors was not available. This also does not include the costs of tracking, which are discussed in Section 3.

### **Summary**

From this brief analysis, it can be seen that the cost of incarcerating a single offender for a single year can be substantial, totaling over \$48,700 per year,

After the offender is released, the costs drop, but not substantially because it is unlikely that a person on the sex offender registry will be able to find stable and continual work, so his family could remain on some sort of public assistance until the children are much older. Post-release costs for the offender and family during this time, are estimated at \$31,500 per year, whether or not they are able to live together.

Table 1 Summarizes these data.

**Table 1. Direct and Indirect Incarceration Costs per Inmate**

<b>Cost Factor</b>	<b>Annual Cost</b>	<b>Comments</b>
Incarceration	\$22,630	In State Facility
Welfare for Family		
Food Stamps	\$4,027	For mother with 3 children
Woman, Infants and Children Program	\$1,697	For mother with 3 children
Temporary Assistance to Needy Families (TANF)	\$5,316	For mother with 3 children
Housing Assistance	\$9,877	For mother with 3 children
Medicaid	\$1,850	For mother with 3 children
<b>Total Welfare for Family</b>	<b>\$22,767</b>	
Lost Tax Revenue through Inmate's Unemployment	\$3,338	Average tax payment in 2003
<b>Total Incarceration Direct and Indirect Costs</b>	<b>\$48,738</b>	
Post-Release Costs		
Parole	\$1,500	Estimate; may be high
Lost Tax Revenue	\$3,338	Average tax payment in 2003
Welfare for ex-inmate	\$3,940	Food Stamps and some housing assistance for one
Continued welfare assistance for family	\$22,767	As calculated above
<b>Total Post-Release Costs</b>	<b>\$31,543</b>	

Considering that each currently incarcerated registrant will spend about 10 years in prison, his incarceration costs could total about **\$480,000 per offender**. This cost includes no treatment or rehabilitation, other than the standard now conducted in some prisons.

After his release, he will still have to be monitored, and he will still incur costs for basic living expenses, due to his likely inability to work. Although most of the post-release costs are not part of the law enforcement and corrections expenses, they are still taxpayer expenses.

## 2. PROJECTED COST INCREASES WITH NO CHANGES IN EXISTING LAWS

If none of the laws, policies or regulations change, the population of inmates in U.S. prisons will increase and the population of sex offenders will also increase.

The overall prison population in the United States is increasing at a rate of 2.6% per year. Costs for prison operation are increasing much more rapidly. The Bureau of Justice Statistics Report "State Prison Expenditures, 2001" reports that **State correctional expenditures increased 150% from 2000 to 2001**. The population of local jails increased at an average annual rate of 3% between 1995 and 2001 [Statistical Abstract of the United States, 2001; Table Number 334.].

These data indicate that, without any major changes in laws, the prison and jail populations will continue to increase at a rate of 2.6 to 3% per year.

The population of registrants is increasing at a rate higher than that of the general prison population. The number of sex offenders on the National Sex Offender Registry is increasing nationwide at an average rate of 8% per year. The national registry includes registrants currently in prison, in mental hospitals, and those who have been released. Some states list all three status categories; some list only those who are released. Others list only the highest risk offenders. Therefore, distribution of incarcerated and released registrants is not readily available from the registry, as it is currently configured. We are estimating that the 8% increase in registrant population on the registry reflects an 8% increase in registrants in prison as well as an 8% increase in the population of registrants who have been released. This is consistent with information from a State of Colorado statistical study of their registrant population, which showed a 9.5% increase from 1997 to 1998.[Colorado Department of Corrections 1998. Statistical Report: Sex Offender Population and Treatment, Fiscal Year 1998]

If the registrant population increased at a rate of 8% per year, then the costs of incarcerating the registrants would also increase at the same rate. Table 2 illustrates this trend.

**Table 2. Projected Annual Costs for registrant Incarceration in 2003 Dollars with No Changes in Laws, and No Per Capita Incarceration Cost Increases**

<b>Year Number</b>	<b>Initial Cost to Incarcerate 100 Sex Offenders at \$48,000 each</b>	<b>Cumulative Percentage</b>
1	\$4.8 million	100%
10	\$9.59 million	199.99%

Doubling the costs of incarceration within 10 years will place a huge demand on already strained State and Federal budgets.

### **3. PROJECTED COST INCREASES DUE TO PROPOSED CHANGES IN THE NATIONAL SEX OFFENDER REGISTRY**

Costs of tracking all registrants include costs for the tracking devices and associated hardware, costs for personnel to monitor these devices, costs for training, and costs for added paperwork and record keeping.

According to one manufacturer of tracking devices, Securetrac, the tracking equipment can be leased for about \$8.75 per person per day. However, the salesperson said that Federal Grant money required purchasing rather than leasing items such as this. Purchase costs were about \$2,500 per unit, with a monitoring fee of \$3 to \$4 per day. Using a web-based system would preclude the need for full-time monitors in each locality. A full-time overseer would still be required, as would enough personnel to actually ensure compliance, by



physically checking addresses. An ongoing problem with police monitoring of registrants in communities has been registrants who move and do not notify the police of their whereabouts.

If these figures are considered to be realistic, then for each offender, there would be the initial cost of \$2,500 for the tracking unit, plus the daily cost, **which adds up to \$1,277 per year, in addition to the costs for post-release given in the preceding section.** It is likely that advances in technology, software and hardware will necessitate changes in these devices every five to seven years, to remain current with then-existing technology. Thus, the initial cost of the device can only be factored over a 7-year period, giving an annual cost of \$357 for the device.

Thus with the post release cost, the device cost and the daily monitoring costs, the cost to track each registrant for the rest of his life is \$33,178 *per year*. If a person is between age 20-40 years old, according to the Statistical Abstract of the United States, his life expectancy 46 additional years. This does not sound like much for one person, but multiplying it by the large existing and growing population adds up quickly.

#### **4. PROJECTED COST INCREASES DUE TO PROPOSED USE OF MANDATORY MINIMUM SENTENCING**

The projected use of mandatory minimum sentencing employs long prison terms for all offenses. First-time offenders automatically are charged from 15 years or more to life for a number of offenses. For purposes of this analysis, we will use 20 years.

The costs for each offender for one year were presented in Section 1. The costs for each offender for 20 years [in today's dollars] are simply the one-year costs per offender x 20.

When the annual growth rate of registrant population is factored into the equation, the costs increase dramatically because there is no loss of population of incarcerated registrants due to parole or release.

## **This is what happens to the children**

Children from fatherless homes account for:

63% of youth suicides.

(Source: US Dept. of Health & Human Services, Bureau of the Census).

71% of pregnant teenagers.

(Source: US Dept. of Health & Human Services)

90% of all homeless and runaway children.

70% of juveniles in state-operated institutions come from fatherless homes

(Source: U.S. Dept. of Justice, Special Report, Sept 1988)

85% of all children that exhibit behavioral disorders.

(Source: Center for Disease Control).

80% of rapists motivated with displaced anger.

(Source: Criminal Justice & Behavior, Vol. 14, p. 403-26, 1978).

71% of all high school dropouts.

(Source: National Principals Association Report on the State of High Schools).

75% of all adolescent patients in chemical abuse centers.

(Source: Rainbows for all God's Children).

85% of all youths sitting in prisons.

(Source: Fulton Co. Georgia jail populations, Texas Dept. of Corrections 1992).

## **Children from fatherless homes are:**

11 times more likely to exhibit violent behavior than children from intact "married" homes.

5 times more likely to commit suicide.

32 times more likely to runaway.

20 times more likely to have behavioral disorders.

14 times more likely to commit rape.

9 times more likely to drop out of high school.

10 times more likely to abuse chemical substances.

9 times more likely to end up in state-operated institutions.

20 times more likely to end up in prison.

37.9% of fathers have no access/visitation rights.

(Source: p.6,col.II, para. 6, lines 4 & 5, Census Bureau P-60, #173, Sept 1991.)

## Byrne Funding Trend 2000-2004

STATE	2000	2002	2004
Alabama	\$ 7,923,000	\$ 7,763,473	\$ 7,470,987
Alaska	\$ 2,169,000	\$ 2,158,472	\$ 2,105,433
American Samoa	\$ 913,210	\$ 953,222	\$ 926,722
Arizona	\$ 8,410,000	\$ 8,766,474	\$ 8,825,311
Arkansas	\$ 5,131,000	\$ 5,670,673	\$ 4,990,577
California	\$ 51,501,000	\$ 50,933,474	\$ 50,238,677
Colorado	\$ 7,336,000	\$ 7,549,473	\$ 7,498,960
Connecticut	\$ 6,263,700	\$ 6,235,473	\$ 6,038,387
District of Columbia	\$ 2,369,000	\$ 2,388,472	\$ 2,333,865
Delaware*	\$ 2,030,000	\$ 2,078,472	\$ 2,003,666
Florida	\$ 24,181,000	\$ 24,687,474	\$ 24,542,920
Georgia	\$ 12,986,000	\$ 13,249,474	\$ 13,159,194
Hawaii	\$ 3,061,000	\$ 3,016,472	\$ 2,945
Guam	\$ 1,429,000	\$ 1,443,752	\$ 1,404,775*
Idaho	\$ 3,115,000	\$ 3,137,473	\$ 3,079,129
Illinois	\$ 19,763,000	\$ 19,460,474	\$ 18,800,637
Indiana	\$ 10,304,000	\$ 10,160,474	\$ 9,806,365
Iowa	\$ 5,630,000	\$ 5,532,473	\$ 5,307,090
Kansas	\$ 5,271,000	\$ 5,183,473	\$ 4,998,683
Kentucky	\$ 7,283,000	\$ 7,169,373	\$ 6,921,383
Louisiana	\$ 7,949,000	\$ 7,795,473	\$ 7,465,594
Maine	\$ 3,139,000	\$ 3,109,473	\$ 3,013,969
Maryland	\$ 9,127,000	\$ 9,009,474	\$ 8,827,662
Massachusetts	\$ 10,685,000	\$ 11,591,053	\$ 10,163,694*
Michigan	\$ 16,334,000	\$ 15,820,474	\$ 15,239,856
Minnesota	\$ 8,497,000	\$ 8,456,474	\$ 8,215,505
Mississippi	\$ 5,460,000	\$ 5,412,473	\$ 5,216,362
Missouri	\$ 9,595,000	\$ 9,448,474	\$ 9,127,085
Montana	\$ 2,580,000	\$ 2,562,472	\$ 2,746,382
Nebraska	\$ 3,784,000	\$ 3,749,473	\$ 3,620,958
Nevada	\$ 3,913,000	\$ 4,170,473	\$ 4,241,345
New Hampshire	\$ 3,048,000	\$ 3,052,472	\$ 2,986,870
New Jersey	\$ 13,714,000	\$ 13,584,474	\$ 13,201,069
New Mexico	\$ 3,898,000	\$ 3,907,473	\$ 3,796,722
New York	\$ 29,198,000	\$ 29,080,474	\$ 27,955,987
North Carolina	\$ 12,839,000	\$ 13,048,474	\$ 12,823,856
North Dakota	\$ 2,207,000	\$ 2,181,472	\$ 2,109,922*
Ohio	\$ 18,477,000	\$ 17,895,474	\$ 17,153,919
Oklahoma	\$ 6,375,000	\$ 6,301,473	\$ 6,084,739
Oregon	\$ 6,276,000	\$ 6,258,473	\$ 6,123,577
Pennsylvania	\$ 19,696,000	\$ 19,257,474	\$ 18,429,882
Puerto Rico	\$ 7,165,000	\$ 6,826,473	\$ 6,594,533

**ADDENDUM TO REPORT**

**SEX OFFENDERS: Flaws in the System and Effective Solutions**

Rhode Island	\$ 2,746,000	\$ 2,777,472	\$ 2,700,168
South Carolina	\$ 7,128,000	\$ 7,125,473	\$ 6,941,339
South Dakota	\$ 2,361,000	\$ 2,346,472	\$ 2,269,185
Tennessee	\$ 9,583,000	\$ 9,586,474	\$ 9,301,217
Texas	\$ 31,636,000	\$ 31,831,474	\$ 31,617,562
Utah	\$ 4,456,000	\$ 4,515,473	\$ 4,440,686
Vermont	\$ 2,134,000	\$ 2,344,472	\$ 2,067,462
Virgin Islands	\$ 1,381,000	\$ 1,398,472	\$ 1,358,175
Virginia	\$ 11,677,000	\$ 11,624,474	\$ 11,390,419
Washington	\$ 9,981,000	\$ 9,886,474	\$ 9,680,598
West Virginia	\$ 4,012,000	\$ 3,892,473	\$ 3,772,459
Wisconsin	\$ 9,264,000	\$ 9,108,474	\$ 8,804,008
Wyoming	\$ 1,965,000	\$ 1,963,472	\$ 1,902,855
<b>TOTAL</b>	<b>\$ 489,348,910</b>	<b>\$ 488,459,731</b>	<b>\$ 458,162,936</b>

\* Includes redistribution and adjustments for fiscal year 2003 error in distribution for North Dakota (+18,000) Guam (+4336) & Massachusetts (+4336)

# ADDENDUM TO REPORT

SEX OFFENDERS: Flaws in the System and Effective Solutions

## DATA INCLUDED IN REGISTRY

(1=Yes, 0=No)

STATE	Name	Address	Date of Offense	Type of Offense	Date of Birth (or age)	Place of Employment	Registrant Description	Classification Risk Level	Type of Classification	# of fields out of 8
Alabama	1	1	1	1	1	0	1	0		6
Alaska	1	1	0	1	1	0	1	0		5
Arizona	1	1	0	1	1	0	1	1	Levels 1, 2, 3	6
Arkansas**	1	1	0	1	1	0	1	1	Levels 1, 2, 3, 4*	6
California***	1	1	0	1	1	0	1	0		5
Colorado****	1	1	1	1	1	0	1	1	See **** note	7
Connecticut	1	1	1	1	1	0	1	0		6
Delaware	1	1	1	1	1	1	1	1		8
Florida	1	1	0	1	1	0	1	1	Predator, offender	6
Georgia	1	1	1	1	1	0	1	0		6
Hawaii	1	1	1	1	0	0	0	0		4
Idaho	1	1	1	1	1	0	0	0		5
Illinois	1	1	0	1	1	0	1	1	Predator only	6
Indiana	1	1	0	1	1	1	1	0		6
Iowa	1	1	1	1	1	0	1	0		6
Kansas	1	1	0	1	1	0	1	0		5
Kentucky	1	1	0	1	1	0	1	1	10 yr, life	6
Louisiana	1	1	1	1	1	0	1	0		6
Maine	1	0	0	1	1	1	0	0		4
Maryland	1	1	0	1	0	0	0	0		3
Massachusetts	1	1	1	1	1	1	1	1	Levels 1, 2, 3*	8
Michigan	1	1	0	1	1	0	1	0		5
Minnesota	1	1	0	1	1	0	1	1	Levels 1, 2, 3*	6
Mississippi	1	1	1	1	1	0	1	0		6



**ADDENDUM TO REPORT**

SEX OFFENDERS: Flaws in the System and Effective Solutions

\*\*\*California's registry indicates some RSO's addresses are not required; assuming it's related to either Risk Level or legal severity of offense.

\*\*\*\*Colorado only lists those designated Sexual Violent Predator, Multiple Offenses and/or Failure to Register. All other sex offenders' info available by phone and only for the requestor's area.

!! Oregon and South Dakota do not allow internet access to their registry, only by phone or mail request.

++ North Dakota disclaimer indicates only high risk or lifetime registrants are listed but no explanation of levels is given.



## Disclaimers on State Internet Registries

**Disclaimer 1:** indicates accuracy of the information is not guaranteed.

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**Disclaimer 2:** indicates that caution must be used in identifying an individual based on the website photo & description and/or positive ID can only be made by fingerprint.

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**Disclaimer 3:** indicates misuse of registry information (harrassment, threats, intimidation, etc.) will result in legal and/or civil action.

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**Disclaimer 4:** indicates that not all persons convicted of sex offenses appear on the registry.

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**Disclaimer 5:** indicates that the state has not made a determination as to whether the registrants are at risk to re-offend and/or are considered dangerous.

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### DISCLAIMERS (1=Yes; 0=No)

STATE	Disclaimer 1	Disclaimer 2	Disclaimer 3	Disclaimer 4	Disclaimer 5	Total # of Disclaimers posted
Alabama	0	0	0	0	0	0
Alaska	1	1	1	1	0	4
Arizona	1	0	1	1	0	3
Arkansas	1	0	1	1	0	3
California	1	0	1	1	1	4
Colorado	1	1	0	1	0	3
Connecticut	1	0	1	1	1	4
Delaware*	1	1	0	1	0	3
Florida	1	1	1	0	1	4
Georgia	1	0	0	0	0	1
Hawaii	1	1	1	0	1	4
Idaho	1	1	1	1	0	4
Illinois	1	0	1	0	1	3
Indiana	1	0	1	0	1	3
Iowa	0	0	1	1	0	2
Kansas	1	0	1	1	0	3
Kentucky	0	0	1	0	0	1
Louisiana	1	0	1	0	0	2
Maine	1	1	1	1	0	4
Maryland	1	0	1	0	0	2
Massachusetts	0	0	1	0	0	1
Michigan	1	1	1	0	1	4
Minnesota	0	0	0	1	0	1
Mississippi	1	1	1	0	0	3
Missouri	1	0	0	0	1	2
Montana	1	1	1	0	0	3
Nebraska	0	0	1	0	0	1

**ADDENDUM TO REPORT**
**SEX OFFENDERS: Flaws in the System and Effective Solutions**

Nevada	1	1	1	1	0	4
New Hampshire	1	1	1	1	0	4
New Jersey	1	1	1	1	1	5
New Mexico	1	1	1	0	0	3
New York	1	1	1	1	0	4
North Carolina	1	0	1	0	0	2
North Dakota	1	0	1	1	0	3
Ohio	0	0	0	0	0	0
Oklahoma	1	0	1	0	1	3
Oregon**	0	0	0	0	0	0
Pennsylvania	1	1	1	1	0	4
Rhode Island	0	0	1	1	0	2
South Carolina	0	0	0	0	0	0
South Dakota**	0	0	0	0	0	0
Tennessee	1	0	1	0	0	2
Texas	0	1	0	0	0	1
Utah	1	0	1	0	1	3
Vermont	0	0	1	1	1	3
Virginia	1	0	1	0	1	3
Washington	1	0	1	1	0	3
Washington, D.C.	1	1	1	1	0	4
West Virginia	1	0	1	0	1	3
Wisconsin	1	0	1	1	1	4
Wyoming	1	0	0	1	0	2
<b>TOTALS</b>	<b>38</b>	<b>18</b>	<b>39</b>	<b>24</b>	<b>15</b>	

\*Delaware server has been unavailable to access name or geographical search in order to determine if Disclaimer 3 is given.

\*\* Oregon and South Dakota do not allow internet access to their registry, only by phone or mail request.