March 1999

**Sex Offender Registration: Community Safety or Invasion of Privacy?**

Maria Orecchio

Theresa A. Tebbett

Follow this and additional works at: https://scholarship.law.stjohns.edu/jcred

**Recommended Citation**


Available at: https://scholarship.law.stjohns.edu/jcred/vol13/iss3/8

This Note is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.
SEX OFFENDER REGISTRATION: COMMUNITY SAFETY OR INVASION OF PRIVACY?

INTRODUCTION

An individual's right to privacy, although not specifically enumerated in the Constitution, has been adjudicated a fundamental right. When embodied in legislation that is presumed to be constitutional, this fundamental right is steadfast. Although

1 See Griswold v. Connecticut, 381 U.S. 479, 484-85 (1965). A general right to privacy was found to exist through a collaboration of the penumbras of the First, Third, Fourth, and Fifth Amendments to the Constitution. Id.; see also Roe v. Wade (opinion of J. Blackmun), 410 U.S. 113, 153 (1973). Later, the Supreme Court specifically ruled the right to privacy to be a fundamental right under the Fourteenth Amendment. Id.; Eisenstadt v. Baird, 405 U.S. 438, 453 (1972). The limits of this right were specified to include the right of an individual to be free from unwanted governmental intrusion into private matters.

2 See Griswold, 381 U.S. at 482-84. The Supreme Court recognized that penumbras within the guarantees afforded by the Bill of Rights create such things as "zones of privacy". Id. at 484. See, e.g., Doe v. Poritz, 661 A.2d 1335 (N.J. Super. Ct. Law Div. 1995), aff'd, 662 A.2d 367, 412 (N.J. 1995). That right of privacy is encompassed within the provisions of Article 1, § 1 of New Jersey Constitution. Id.

3 See People v. Afrika, 648 N.Y.S.2d 235, 238 (Sup. Ct. 1996) (acknowledging as fundamental precept legislative enactment's strong presumption of constitutionality); State
federal constitutions guarantee the right to privacy, numerous court decisions have compromised this right in order to further the respective objectives of various states. In particular, state concern for protecting communities from recidivist sex offenders is viewed as an objective that outweighs an individual's right to privacy.

Incidents of child molestation and murder, brought to the forefront by the media, have horrified and outraged both the public

v. Calhoun, 669 So. 2d 1351, 1358 (La. App. 1st Cir. 1996) (stating "statutes are presumed to be valid and constitutionality of statute should be upheld whenever possible").

4 See Griswold, 381 U.S. at 484-85 (acknowledging general right to privacy existing through collaboration of penumbras of First, Third, Fourth, and Fifth Amendments to Constitution); see also Eisenstadt, 405 U.S. at 453 (noting limits of privacy right to include right of individual to be free from unwanted governmental intrusion); Roe, (opinion of J. Blackmun), 410 U.S. at 153 (ruling right to privacy to be fundamental right under Fourteenth Amendment).


6 See Whalen v. Roe, 429 U.S. 589, 599-600 (1977) (recognizing two separate interests embodied in individuals right to privacy: (1) avoiding disclosure of personal matters and (2) independence in making certain decisions).


8 See Peter Finn, Sex Offender Community Notification, (visited Nov. 11, 1997) <http://www.NCJRS.ORG/txtfiles/162364.txt> (discussing public's determination to take action in prevention of commission of crimes).

9 See N.Y. CORRECT. LAW § 168, Historical and Statutory Notes (McKinney Supp. 1996) (propounding that legislature's intent behind enactment of sex offender registration and notification laws was to enhance safety within communities); see also Tara L. Wayt, Note, Megan's Law: A Violation of the Right to Privacy, 6 TEMP. POL. & CIV. RTS. L. REV. 139, 141 (Fall 1996-Spring 1997) (stating that court decided that state's interest in protecting society from recidivist sex offenders outweighs invasion of registrant's privacy); Finn, supra note 8 (stating community notification and registration together offer adequate protection to public against released sex offenders).

10 See David Kaplan, The Incorrigibles, NEWSWEEK, Jan. 15, 1993, at 48-49. In 1989, a seven year old boy was lured into a wooded area in Tacoma, Washington by Earl Shriner, a prior sexual offender out on bail pending trial for a rape charge. Id. Shriner raped, stabbed, and mutilated the child, finally leaving him to die. Id.; see also Michele L. Earl-Hubbard, The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated With the Scarlet Letter Laws of the 1990s, 90 NW. U.L. REV. 788, 794 (1996). In 1990, eleven year old Jacob Wetterling was abducted from his home in Minnesota. Id. Jacob was never found, nor was his abductor brought to justice. Id. On July 15, 1993, ten year old Zachary Snider was molested and murdered by a released sex offender whose criminal record was unknown to the community in which he resided. Id. In July 1994, Jesse Timmendequas, a two-time convicted child sex offender, lured seven year old Megan Kanka into his house where he strangled her with a belt, sexually assaulted her, and then discarded her body in a toybox. Id. Timmendequas con-
1999] SEX OFFENDER REGISTRATION 677

and the government.11 Such highly publicized tragedies have fostered a national outcry that has resulted in the enactment of more exacting penalties for sexual offenders.12 In 1990, Washington was the first state to formulate a community notification and registration statute for convicted sex offenders on parole.13 Subsequently, all other states have enacted similar legislation.14 As

fessed to the killing. Id.; Sex Offender Indicted in Megan Kanka's Slaying—Death Penalty Will Be Sought, Prosecutor Says, RECORD, Oct. 20, 1994, at A3. The courts subsequently indicted this convicted sex offender for kidnapping, rape and murder. Id.

11 See Hal Spencer, Victim's Mother Glad Predators Locked Up, SEATTLE TIMES, May 15, 1994, at B1. Shriner was arrested for this incident. Id. The Washington state legislature reacted by passing a statute requiring convicted child sex offenders to register with local law enforcement. Id.; see also 42 U.S.C.A. § 14071(g)(2) (1998). The states that fail to implement the program, as defined by the Federal government, will lose their Section 3756 allocations. Id.; Earl-Hubbard, supra note 10, at 796. The sole purpose of the Jacob Wetterling Act was to encourage states to enact child sex offender registration laws. Id.

12 See Sheila A. Campbell, Battling Sex Offenders: Is Megan's Law an Effective Means of Achieving Public Safety?, 19 SETON HALL LEGIS. J. 519, 535-37 (1995). After the deaths of Megan Kanka and Amanda Wengert, proposals were ushered to the floor and the New Jersey legislature acknowledged the need for more stringent sex offender laws. Id.; Suspect Confessed in the Murder of a 7 Year Old, Prosecutors Say, N.Y. TIMES, Aug. 4, 1994, at B2. As a result of such horrific crimes against children, individual states have reacted by enacting registration laws for convicted sex offenders. Id. To encourage remaining states to enact versions of child sex offender registration statutes, the Jacob Wetterling Act required states to enact such provisions by 1997, or face losing ten percent of their federal grant money allocated for state crime-fighting programs. Id.; Henry Stern, Clinton Gets GOP Praise on "Megan's Law", RECORD, Aug. 18, 1994, at A3. As Congressman Zimmer commented, "If Megan Kanka's parents or Amanda Wengert's parents knew, they would have protected their kids. Id.

13 See WASH. REV. CODE § 9A.44.130 (West 1990)(requiring sex offenders and kidnapping offenders to register with sheriff of county of offender’s residence).

a result of these statutes, convicted sex offenders are required to register with local law enforcement authorities upon release from prison and relocation to a new community. Members of the general public may access such information upon request, either in person, at the local law enforcement office, by telephone or through the internet.

New York has adopted its own version of a community notification and registration statute, known as the Sex Offender Registration Act. Part I of this Note discusses the New York Sex Offender Registration Act in detail. Part II addresses the issue of whether the notification aspect of the New York Sex Offender Registration Act impermissibly infringes upon the offender’s constitutional right to privacy. This section further balances


15 See supra note 14 and accompanying text.

16 See supra note 14 and accompanying text.

17 See, e.g., N.Y. CORRECT. LAW § 168-p (McKinney Supp. 1997) (establishing “900” telephone number through which residents/public may inquire whether specific individual is listed); Jon R. Sorensen, Dial For Sex Predator Info., DAILY NEWS, Apr. 1, 1998, at 26 (noting that for $5.00 state resident can call (900) 288-3838 and give name to be checked against list of 7,000 convicted sex criminals).

18 See David Hakala, Megan’s Law in Cyberspace, NEWSDAY, Sept. 24, 1997, at C3. Web site postings of the names, rap sheets and location of sex offenders have become an accessible means by which communities may protect themselves. Id. Alaska, Florida, Virginia, Indiana, Kansas, Georgia, and Michigan have all elected to provide internet access to registrations. Id. New York’s sex offender registry may also soon be accessible through cyberspace. Id.; see also Kimberly O’Brien, Most Roanokers Praise Sex Offender Registry, Civil Rights Watchdogs, However, Say It’s An Invasion of Privacy, ROANOKE TIMES & WORLD NEWS, Jan. 4, 1999, at C1. The Virginia state police posts the names and addresses of more than 4,600 violent sex offenders on its website at <<www.vsp.state.va.us>>. Id.; Michael Stroh, Maryland May List Sex Convicts On Web; Officials Watching Stampede To Va Site “With Great Interest”, BALTIMORE SUN, Jan. 11, 1999, at 1A. This website provides the offender’s name, address, a physical description, photograph and details of the crime. Id. Users can search the database of violent sex offenders by name, county, city, or zip code. Id. Similarly, Maryland’s Department of Public Safety and Correctional Services maintains a website at <<www.dpscs.state.md.us>> that explains how to obtain a list of sex offenders, but does not list these offenders. Id.

19 See N.Y. CORRECT. LAW § 168 (McKinney Supp. 1997) (requiring registration by convicted sex offenders, and providing for community notification of registration information).

20 See N.Y. CORRECT. LAW § 168 (McKinney Supp. 1997) (requiring registration by convicted sex offenders, and providing for community notification of registration information).

21 See Griswold v. Connecticut, 381 U.S. 479, 484-85 (1965) (acknowledging general right to privacy existing through collaboration of penumbras of First, Third, Fourth, and Fifth Amendments to Constitution); see also Roe v. Wade, (opinion of J. Blackmun), 410 U.S. 113, 153 (1973) (ruling right to privacy to be fundamental right under Fourteenth Amendment); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (noting limits of privacy right to include right of individual to be free from unwanted governmental intrusion).
the offender's right to privacy with the legislature's interest, in and the general public's demand for protection. Part III examines the consequences of extending such provisions to all repeat violent offenders.

I. THE NEW YORK SEX OFFENDER REGISTRATION ACT SCHEME

New York passed a community notification and registration statute, based on New Jersey's Megan's Law, called the New York Sex Offender Registration Act ("NYSORA"), in response to growing public concern over the grave threat posed by sex offenders in their communities. The legislature articulated that the objectives behind NYSORA are: (1) to protect members of the community, particularly children, by notifying the community of the presence of individuals who may pose a danger, and (2) to enhance law enforcement authorities' ability to investigate and

22 See Doe v. Attorney Gen. of the U.S., 941 F.2d 780, 796 (9th Cir. 1991) (declaring that governmental use of private information results from balancing government's interest on having or using information against individual's interest in denying access to information); United States v. Westinghouse Elec. Corp., 638 F.2d 570, 577-78 (3d Cir. 1980) (reconciling privacy interests of employees in their medical records with significant public interest in research designed to improve occupational safety and health).

23 See State v. Clark, 880 P.2d 562, 565 (1994) (citing Laws of 1990, ch.3 at 401 which state that registration provisions have been helpful in aiding law enforcement agencies protect their communities).

24 See Kaplan, supra note 10, at 48. In 1991, experts estimated that approximately 173,000 rapes and attempted rapes were committed in the United States. Id. Further, the same study approximated the number of child sex abuse cases for that year to be 138,000. Id.; see also The National Center for Missing & Exploited Children, THE LEGAL VALIDITY AND POLICY CONCERNS ASSOCIATED WITH COMMUNITY NOTIFICATION FOR SEX OFFENDERS 1 (Sept. 1995). Studies have indicated that 61% of rape victims are less than 18 years old and 29% are less than 11 years old. Id.

25 See N.Y. CORRECT. LAW § 168-168v (McKinney Supp. 1997). New York became the forty-third state in the country to enact sex offender registration legislation, requiring individuals convicted of sex offenses to register with local law enforcement agencies, and the thirtieth state to provide for community notification and dissemination of registration information. Id. See generally Alison Virag Greissman, The Fate of Megan's Law in New York, 18 CARDOZO L. REV. 181, 182 (1996). Constructed by example, NYSORA will likely survive constitutional attacks as did similar sex offenders statutes in other states. Id.

27 See Doe v. Pataki, 919 F. Supp. 691, 694 (S.D.N.Y. 1996).[hereinafter Doe II]. Sex offenders, as a group, are perceived as more likely to repeat their crimes. Some studies put the recidivism rates for sex offenders between 40-60%. Id.; See Jan Hoffman, New Law Urged On Freed Sex Offenders, N.Y. TIMES, Aug. 4, 1994, at B1. Other studies show recidivism rates to be as high as 80%. Id. But see Robert E. Freeman-Longo & Ronald V. Wall, Changing a Lifetime of Sexual Crime: Can Sex Offenders Ever Alter Their Ways? Special Treatment Programs Provided Some Hope, PSYCHOL. TODAY, March 1986, at 58. There exists a strong possibility of rehabilitation for released sex offenders. Id.
prosecute sex crimes.28

A. Persons Covered by the Act

Under NYSORA, a "sex offender" is any person convicted of a "sex offense" or a "sexually violent offense".29 "Sex offenses" include such crimes as rape in the second30 or third degree,31 sodomy in the second32 or third degree,33 sexual abuse in the second degree,34 and convictions for attempts thereof.35 "Sexually vio-


The preamble to NYSORA states:

The legislature finds that the danger of recidivism posed by sex offenders, especially those sexually violent offenders who commit predatory acts characterized by repetitive and compulsive behavior, and that the protection of the public from these offenders is of paramount concern or interest to the government. The legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations and quickly apprehend sex offenders are impaired by the lack of information about sex offenders who live within their jurisdiction and that the lack of information shared with the public may result in the failure of the criminal justice system to identify, investigate, apprehend and prosecute sex offenders.

The system of registering sex offenders is proper exercise of the state's police power. Registration will provide law enforcement with additional information critical to preventing sexual victimization and to resolving incidents involving sexual abuse and exploitation promptly. It will allow them to alert the public when necessary for the continued protection of the community.

Id.; see also Doe v. Pataki, 120 F.3d 1263 (2d Cir. 1997)[hereinafter Doe III] (noting goals of NYSORA as community protection and augmented law enforcement); Doe v. Pataki, 940 F. Supp. 603, 606-07 (S.D.N.Y. 1996)[hereinafter Doe II] (noting that legislatures articulated these two goals in enacting such laws); Doe I, 919 F. Supp. at 694-95 (S.D.N.Y. 1996) (discussing law enforcement agencies' efforts to protect their communities and apprehend sex offenders).

29 See N.Y. CORRECT. LAW § 168-a(2) and -a(3) (McKinney Supp. 1996) (noting "sex offender" includes any person who is convicted of any of offenses set forth in the provisions of §168-a(2) and -a(3); see also People v. Griffin, 652 N.Y.S.2d 922, 924 (1996) (explaining "sex offender" within meaning of NYSORA).

30 See N.Y. PENAL LAW § 130.30 (McKinney 1996) (stating that person is guilty of rape in second degree when defendant is over 18 and engages in sexual intercourse with someone under 14 and unmarried).

31 See id. at § 130.25 (providing that person is guilty of rape in third degree when he engages in sexual intercourse with another person to whom he is not married, who is incapable of consent, or when he is over 21 and engages in sex with another who is under 17).

32 See id. at § 130.45 (stating that person is guilty of sodomy in second degree when he is 18 or over and engages in deviate sexual intercourse with another person less than 14).

33 See id. at § 130.40 (providing that person is guilty of sodomy in third degree when he engages in deviate sexual behavior with person incapable of consenting, or when he is 21 or older and engages in deviate sexual intercourse with person under 17).

34 See id. at § 130.60 (defining person guilty of sexual abuse in second degree when he subjects another, who is incapable of consent or is under 14, to sexual contact).

35 See N.Y. PENAL LAW § 110.05 (McKinney 1987 & Supp. 1996) (providing that attempt to commit crime is crime in itself).
lent offenses" include rape in the first degree, sodomy in the first degree, and sexual abuse in the first degree, as well as attempts to commit such crimes. All convicted sex offenders, including first time offenders, are subject to the requirements of NYSORA.

B. The Registration Provision

The first significant provision of NYSORA is the registration requirement. Any person convicted of a sex offense or a sexually violent offense must register with the Division of Criminal Justice Services ("DCJS") within ten days after his discharge, release, or parole. Upon registration, the DCJS establishes and maintains a file containing the required information for each sex offender and sexually violent offender. Included in the file is personal identifying information, a description of the offense, the date of the conviction, and the sentence imposed. The state re-

36 See id. at § 130.35 (defining rape in first degree as intercourse with female by forcible compulsion, or who is incapable of consent, or who is under 11).
37 See id. at § 130.50 (defining sodomy in first degree as engaging in deviate sexual intercourse with another by forcible compulsion, or who is incapable of consent, or who is under 11).
38 See id. at § 130.65 (defining sexual abuse in first degree as subjecting another person to sexual contact by forcible compulsion, or who is incapable of consent, or who is under 11).
39 See id. at § 110.05 (providing when attempt to commit crime is crime in itself).
40 See Doe III, 120 F.3d 1263, 1267 (2d Cir. 1997) (explaining that sex offenses include, for example, rape, sodomy, and attempts).
41 See N.Y. CORRECT. LAW § 168-b to -i (McKinney Supp. 1997) (enumerating particulars of information complied of each registrant and noting states right to make such registry information available to public).
42 The authors use "he" and "his" generally to refer to sex offenders, and "she" and "her" to refer to sex crimes victims.
43 See N.Y. CORRECT. LAW § 168-f(1) (McKinney Supp. 1997) (requiring any sex offender who is paroled to register within 10 calendar days to verify his intended place of residence); see also Doe III, 120 F.3d at 1267 (delineating requirements of who must register); Doe II, 940 F. Supp. at 606 (noting that sex offenders are required to register, including those incarcerated as of Acts effective date); Doe I, 919 F. Supp. at 695 (requiring offenders on parole or probation on effective date to register).
44 See N.Y. CORRECT. LAW § 168-b(1) (McKinney Supp. 1997) (providing for compilation of registration information); see also Doe III, 120 F.3d at 1267 (explaining what information must be provided in offender's file).
45 See N.Y. CORRECT. LAW § 168-b(1)(a), (c) (McKinney Supp. 1997). Such information includes an offender's name, date of birth, home address, sex, race, height, weight, eye color, and driver's license number. Id.; see also Doe III, 120 F.3d at 1267. An offender must provide specific identifying information upon his registration. Id.; Doe II, 940 F. Supp. at 606. In addition to identifying information, offender must provide a description of the offense. Id.; Doe I, 919 F. Supp. at 695. All information required of a convicted sex offender must be provided to the DCJS. Id.; Cf. TEX. PENAL CODE ANN. tit. 110A Art. 6252-13c.1 (1994). Sex offenders in Texas are required to provide additional details such
quires the offender to provide a photograph and a set of fingerprints.\textsuperscript{46} 

In addition to these requirements, those convicted of sexually violent offenses must register for a minimum of ten years and are potentially subject to lifetime registration.\textsuperscript{47} They must register quarterly, instead of annually, and do so in person, rather than by mail.\textsuperscript{48} The failure to register is a class A misdemeanor\textsuperscript{49} for the first offense and a class D felony\textsuperscript{50} for a second or subsequent offense.\textsuperscript{51} Any sex offender, however, may petition the sentencing court to be relieved of registration duty.\textsuperscript{52} Upon receipt of a petition, the court must obtain an updated report on the offender, from the Board of Examiners of Sex Offenders (the “Board”). After reviewing the Board’s report, the court may grant or deny the relief.\textsuperscript{53}

as alias, shoe six and social security number. \textit{Id.}

\textsuperscript{46} N.Y. CORRECT. LAW §168-b (1)(b) (McKinney Supp. 1997)(listing requirements for registration); see also Doe III, 120 F.3d at 1267 (listing some of requirements for registering); Doe II, 940 F. Supp. at 607 (discussing legislative intent for passage of such registration laws); Doe I, 919 F. Supp. at 695 (listing registration requirements and information that must be provided). See, e.g., ARK. CODE ANN. § 12-12-906 (Michie Supp. 1995)(requiring registration within 60 days of release); CONN. GEN. STAT. ANN. § 54-102r(b) (West 1996)(requiring registration within five days of release).

\textsuperscript{47} Compare N.Y. CORRECT. LAW § 168-o (McKinney Supp. 1997) (allowing convicted sex offender to petition sentencing court for discretionary relief from requirement of registration) and Doe III, 120 F.3d at 1267 (noting that sexually violent predators must verify information every 90 days for 10 years and potentially for life) with N.J. STAT. ANN. § 2C:7-2 (West 1997) (terminating required period of registration at fifteen years if no further crimes have been committed).

\textsuperscript{48} Compare N.Y. CORRECT. LAW § 168-f(3) (McKinney Supp. 1997) (requiring “sexually violent predators” to personally re-register with local law enforcement every 90 days after date of release or parole) with Doe III, 120 F.3d at 1267 (noting that sexually violent predators must register annually and personally verify registration at their local law enforcement agency) with N.J. STAT. ANN. § 2C:7-2 (West 1997) (making no mention of renewal requirements).

\textsuperscript{49} See N.Y. PENAL LAW § 10.00(4) (McKinney 1987 & Supp. 1996)(defining “misdemeanor” as offense for which sentence of imprisonment is between 15 days and one year).

\textsuperscript{50} See id. § 10.00(5) (defining “felony” as offense for which sentence of imprisonment is over one year).

\textsuperscript{51} See N.Y. CORRECT. LAW § 168-t (McKinney Supp. 1996)(enumerating consequences of an offender’s failure to register); see also Doe III, 120 F.3d at 1267 (noting failure to register as required by NYSORA is a crime); Doe II, 940 F. Supp. at 606 (noting that a number of prosecutions have been brought against individuals who failed to register); Doe I, 919 F. Supp. at 695 (providing failure to register under NYSORA is a crime).

\textsuperscript{52} See N.Y. CORRECT. LAW § 168-o (McKinney Supp. 1996) (discussing offender’s right to petition for relief but noting courts discretionary right to grant such relief).

\textsuperscript{53} See id. (describing court’s process in determining offender’s right to relief); see also Doe III, 120 F.3d at 1267 (explaining that any sex offender required to register may petition court for relief); Doe II, 940 F. Supp. at 603 (providing offenders opportunity to petition sentencing court to be relieved of duty to register); Doe I, 919 F. Supp. at 695 (noting possibility of court relieving offender of duty to register).
C. The Classification and Notification Provisions

NYSORA promulgates three levels of notification to law enforcement agencies and/or the public. The extent of community notification is based on an offender's classification,\(^5\) which takes into account certain factors, including the risk of re-offense and the danger to the public.\(^5\) The greater the risk of a repeat offense and the threat posed to society, the greater the extent of the notification.\(^5\)

\(^5\) See N.Y. CORRECT. LAW § 168-l(5) (McKinney Supp. 1996). Several criteria are used to assess the threat offender poses to society but also to determine the extent of community notification necessary. Id.; Doe v. Pataki, 3 F.Supp.2d 456, 469 (S.D.N.Y. 1998) [hereinafter Doe V]. In assigning risk levels to convicted sex offenders, under the Act, certain procedures are required to satisfy due process. Id. at 470. Courts have considered the impact of an erroneous determination of a sex offender's risk level. Id. at 469 (quoting E.B. v. Verniero, 119 F.3d 1077, 1110 (3d Cir. 1997), cert. denied,—U.S.—, 118 S.Ct. 1039 (1998)). A mistaken underestimation of an individual's dangerousness does not necessarily result in harm because NYSORA mandates registration regardless of an offender's classification. Id. at 469–70. In contrast, an overestimation of an individual's dangerousness "will lead to immediate and irreparable harm to the offender: his conviction become public, he is officially recorded as being a danger to the community, and the veil of relative anonymity behind which he might have existed disappears." Id. (quoting E.B. v. Verniero, 119 F.3d at 1110). Thus, the possibility of error, in risk level classifications, requires greater procedural safeguards before a final risk level can be assigned and notification can proceed. Id. at 470.

\(^5\) See N.Y. CORRECT. LAW § 168-l(5) (McKinney Supp. 1996). Relevant factors used in the Board's determination include: (1) use of violence, (2) sexual contact with victim, (3) number of victims, (4) duration of offense conduct with victim, (5) age of victim, (6) other victim characteristics, (7) relationship between offender and victim, (8) age of offender at first sex crime, (9) number and nature of prior crimes, (10) recentness of prior felony or sex crime, (11) drug or alcohol abuse, (12) acceptance of responsibility, (13) conduct while confined or under supervision, (14) release environment. Id.; see also Doe III, 120 F.3d at 1268, n. 6. The Board has the responsibility of developing guidelines and procedures to assess the risk of re-offense and potential threat. Id. The Board has developed "Risk Assessment guidelines" for determining an offender's level of notification based on this risk assessment. Id. This system assigns numerical point values to each of the fourteen risk factors. Id. A "risk level" is then calculated for an offender by adding up the points. Id. The Board may not digress from this risk level unless it concludes that there is some aggravating or mitigating factor, which needs to be taken into account. Id.; Bill Al- den, Megan's Law Classification Raised: Increased Risk Factor Found to be Justified, N.Y.L.J., Nov. 12, 1997, at A1. There existed particular facts in People v. Haddock which warranted an upward departure. For all sex offenders sentenced or released from a state correctional facility after the effective date of the Act, the original sentencing court has the responsibility of determining the risk level, after receiving a recommendation from the Board. See generally N.Y. CORRECT. LAW § 168-d(3), 168-l(6), 168-n(2) (McKinney Supp. 1997). This recommendation should be accepted by the sentencing court unless arbitrary or capricious. Id.; People v. Ross, 646 N.Y.S.2d 249, 252 (Sup. Ct. N.Y. Co. 1996).
If the Board determines that the risk of repeat offense is "low," the sex offender is designated Level One, and only notification to local law enforcement agencies is authorized. Members of the public, however, may obtain the Level One sex offender's registration information through a special "900" telephone number.

If the risk of recidivism is determined by the Board to be "moderate," the offender is given a Level Two designation. The law enforcement agency, which has jurisdiction over the offender, is notified and may disseminate relevant information regarding the nature of the offense to "any entity with vulnerable populations." It appears that the ability to disseminate such information may be problematic due to the fact that NYSORA does not...

For sex offenders on parole or probation on the effective date of NYSORA, the Division of Parole and the Department of Probation have the duty of determining the risk levels, with the recommendation of the Board. Id.


58 See id. (specifying notification authorized for level one offenders); see also Doe III, 120 F.3d at 1269 (discussing extent of notification provided for level one offenders); Doe II, 940 F. Supp. at 607 (noting only notification to law enforcement agencies is authorized); Doe I, 919 F. Supp. at 695 (noting level one does not provide for any public notification); Greissman, supra note 26, at 195 (providing that only law enforcement officials are notified when risk of re-offense is low).

59 See Doe III, 120 F.3d at 1269. In the context of a Level One offender, callers cannot obtain any information unless they first provide particular, specified information that reasonably identifies the offender. Id.; see also Greissman, supra note 26, at 220, n.85. A recorded message informs the caller only that the offender is listed in the central registry and that the offender's risk level is Level One. Id.; see also Sorensen, supra note 17, at 26. New Yorkers can call (900) 288-3838 to check a name against the New York State Sex Offender Registry. Id.

60 See N.Y. CORRECT. LAW § 168-1(6)(b) (McKinney Supp. 1997) (specifying exact terms as used in statute).

61 See N.Y. CORRECT. LAW § 168-1(6)(b) (McKinney Supp. 1997) (designating risk level commensurate with moderate risk of re-offense); see also Doe III, 120 F.3d at 1269 (providing that police can disseminate information to "vulnerable entities" for level 2 offenders); Doe II, 940 F. Supp. at 607 (discussing dissemination of information such as address, photograph and background information); Doe I, 919 F. Supp. at 695 (noting that offenders whose risk is moderate are assigned level 2); Greissman, supra note 26, at 195 (discussing dissemination by law enforcement for level 2 offenders).

62 See N.Y. CORRECT. LAW § 168-1(6)(b) (McKinney Supp. 1997) (allowing law enforcement agency to disseminate registry information to entities); see also Doe III, 120 F.3d at 1269 (providing information may include offender's address, photograph, and background information); Doe II, 940 F. Supp. at 607 (noting police may disseminate information); Doe I, 919 F. Supp. at 695 (discussing when law enforcement agencies are notified and authorized in turn to disseminate); Greissman, supra note 26, at 195 (explaining when police may disseminate information including offender's approximate address).

63 See Doe II, 940 F. Supp. at 607. It has been suggested that this term refers to organizations such as child-care centers, schools, or women's shelters. Id.; see also Hakala, supra note 18, at C10. The term "entity" can encompass anything from an individual to America Online. Id.
define "entities." Despite this, the NYSORA further provides for additional dissemination of registration information at the discretion of these enumerated entities.\textsuperscript{64} Thus, it seems that any subjectively determined "entity" can further disseminate information without regulation,\textsuperscript{65} possibly in violation of an offender's right to privacy.\textsuperscript{66}

If the risk of re-offense is "high"\textsuperscript{67} and a threat to public safety exists, an offender is deemed a "sexually violent predator," and is classified at Level Three.\textsuperscript{68} For this category of offenders, registration information is maintained in a sexually violent predators subdirectory\textsuperscript{69} and publicly disseminated in three ways.\textsuperscript{70} A person may directly access the subdirectory to obtain the offender's

\textsuperscript{64} See N.Y. CORRECT. LAW § 168-l(6)(b) (McKinney Supp. 1997) (providing "any entity receiving information . . . may disclose or further disseminate such information such information at [it]s discretion"); see also Doe III, 120 F.3d at 1269 (allowing these entities to further disseminate registration information); Doe II, 940 F. Supp. at 607 (noting Act does not define term "entity"); Doe I, 919 F. Supp. at 695 (discussing how NYSORA does not define "entities", but allows these entities to further disseminate information); Greissman, supra note 26, at 196 (explaining how level 3 information is disclosed to vulnerable institutions).

\textsuperscript{65} See N.Y. CORRECT. LAW § 168-l(6)(c) (McKinney Supp. 1997) (allowing entities to further disclose registry information at their discretion).

\textsuperscript{66} See Whalen v. Roe, 429 U.S. 589, 599-600 (1977) (recognizing two separate interests embodied in individual's right to privacy: (1) avoiding disclosure of personal matters and (2) independence in making certain decisions).

\textsuperscript{67} See N.Y. CORRECT. LAW § 168 (6)(c) (McKinney 1997) (referring to specific term in statute).

\textsuperscript{68} See N.Y. CORRECT. LAW § 168-l (6)(c) (McKinney 1996) (delineating those offenders whose risk of re-offense is high as "level three" offenders); see also Doe III, 120 F.3d at 1270 (noting how statute designates offenders whose risk of repeat offense is "high" as level three offenders); Doe II, 940 F. Supp. at 606 (discussing fact that offenders are assigned risk level three if their risk of re-offense is high); Doe I, 919 F. Supp. at 695 (explaining that if risk is "high" and "there exists a 'threat to the public safety,' the offender is deemed a sexually violent predator" and assigned risk level three); Greissman, supra note 26, at 195 (discussing designation of certain offenders as "sexually violent predators").

\textsuperscript{69} See N.Y. CORRECT. LAW § 168-l (6)(c)(McKinney Supp. 1996) (providing for establishment of subdirectory containing registration information for sexually violent predators); see also Doe III, 120 F.3d at 1270 (discussing inclusion of offenders assigned risk level three in subdirectory); Doe II, 940 F. Supp. at 606 (noting that this subdirectory contains exact address, other identifying information, and photograph of offender); Doe I, 919 F. Supp. at 695-96 (discussing that subdirectory is to be maintained by DCJS); Greissman, supra note 26, at 196 (explaining how information concerning sexually violent predators is maintained in a sexually violent predator subdirectory).

\textsuperscript{70} See N.Y. CORRECT. LAW § 168-l (6)(c) (McKinney Supp. 1996) (providing for dissemination of information contained in this subdirectory); see also Doe III, 120 F.3d at 1270 (discussing availability of registration information for level three offenders); Doe II, 940 F. Supp. at 606 (noting statewide availability of subdirectory, which will be distributed annually to local police departments for public access); Doe I, 919 F. Supp. at 696 (explaining how subdirectory will have listings by county and zip code); Greissman, supra note 26, at 195-96 (mentioning that person must make written request in order to access information in the subdirectory).
particular identifying information. Alternatively, persons can obtain information through the "900" number, or contact local law enforcement agencies with jurisdiction over the offender, as they are provided with the offender's registration information. The respective agency may then disseminate the registry information, which includes the offender's exact street address, to entities with vulnerable populations. Such an entity may then further disseminate the information it receives at its discretion.

The provisions of the existing notification laws in other states vary. All states do, however, require the offender to notify a lo-

---

71 See N.Y. CORRECT. LAW § 168-1(6)(c) & 168-9(1) (McKinney Supp. 1996). The subdirectory contains the offender's name, exact street address, photograph and physical description. Id. Also contained in the subdirectory is general background information relating to the crime for which he was convicted such as modus operandi, type of victim, and any special conditions of his parole or probation. Id. To have access to this subdirectory, a person must make a written request expressing a purpose, and such requests are kept on record. Id.

72 See N.Y. CORRECT. LAW § 168-p(1) (McKinney Supp. 1996). In order to receive registry information from this "900" number, callers must provide sufficiently detailed information, including an exact street address, driver's license number or birth date. Id. If the exact date of birth or address is unknown, then additional information such as social security number, hair color, eye color, height, weight, distinctive markings, ethnicity or any combination of those characteristics may be requested. Id.; see also Greissman, supra note 26, at 220, n.98. The DCJS determines whether "the named person reasonably appears to be a person listed", based upon information provided by caller. Id.

73 See N.Y. CORRECT. LAW § 168 (6)(c) (McKinney Supp. 1997). The local law enforcement agency may disseminate information, using their discretion, to chosen entities. Id.

74 See N.Y. CORRECT. LAW § 168-1(6)(c) (McKinney Supp. 1997) (providing for dissemination by local law enforcement agencies to entities with "vulnerable populations"); see also Doe III, 120 F.3d at 1270 (noting that registration information for level three offenders may be disseminated by law enforcement agencies having the subdirectory); Doe II, 940 F. Supp. at 607 (noting that "registry may be available to any regional or national registry of sex offenders for the purpose of sharing information"); Doe I, 919 F. Supp. at 695 (mentioning how level of notification authorized for level two is also authorized for level three, except that for level three offenders, law enforcement agencies may disclose offender's exact address).

75 See N.Y. CORRECT. LAW § 168-1(6)(c)(McKinney Supp. 1997) (allowing entities to further disclose registry information at their discretion); see also Doe III, 120 F.3d at 120 (explaining how entities notified of level two and level offenders may further disclose information at their discretion); Doe II, 940 F. Supp. at 606-07 (providing for further dissemination). See, e.g., David M. Halbfinger, Schools Told to Post Photos of Offenders In Sex Cases, N.Y. TIMES, Nov. 16, 1998, at B5 (discussing order by Queens school board to post photographs of released sex offenders in school hallways or cafeterias).

76 See IDAHO CODE §§ 9340(11)(f)(ii) & 18-8306 (Supp. 1994). In Idaho, "any person" can request the names of registrants and information about the crimes for which they were convicted although addresses are not released. Id.; IND. CODE ANN. §§ 5-2-12-11 (Burns Supp. 1994). In Indiana, "entities" may request a copy of the registry but may not obtain the home addresses of offenders. Id.; OR. REV. STAT. § 181.589 (1997); State v. Bateman, 771 P.2d 314, 316 (Or. Ct. App. 1989). Oregon statute was interpreted by one judge so as to force one released sex offender to post signs on his car and on the door of his home that read "Dangerous Sex Offender. No Children Allowed". Id.; see also LA. REV. STAT. ANN. § 15:542; LA ADMIN. CODE tit. 22, § IX 1987. Louisiana similarly brands its
Sex Offender Registration

When he is released within the state and establishes residence there. Some state laws, in addition to the federal guidelines, go even further by allowing law enforcement officials to notify communities when a convicted sex offender establishes residence.

II. The Constitutional Dilemma Inherent in Registration and Notification Statutes

A. Invasion of a Protected Interest and Justification

Supreme Court precedent has established the right to privacy as fundamental, and implicit within the provisions of the Constitution and federal law enforcement agency when he is released within the state and establishes residence there. Some state laws, in addition to the federal guidelines, go even further by allowing law enforcement officials to notify communities when a convicted sex offender establishes residence.

sex offenders by requiring them to personally notify his neighbors of his address and criminal records by mailing notifications and taking out classified ads at his own expense. Id. The offender may also be forced to wear special clothing, post signs on his home or place bumper stickers on his car. Id. Louisiana courts have authority through statute to enact any means necessary including but not limited to signs, handbills or bumper stickers or labeled clothing to give “adequate” notice to the community of the presence of convicted sex offenders. Id. New York looked to New Jersey's Megan's Law as the model for NYSORA, while attempting to address and remedy some of the legal and logistical problems of Megan's Law. Compare N.J. STAT. ANN. § 2C: 7-1 (West 1996). In New Jersey, authorities are obligated to inform member of the public “likely to encounter the registrant” Id.; with N.Y. CORRECT. LAW § 168- C (1) (McKinney Supp. 1996). In New York, community notification is not required, it is merely allowed. Id. Law enforcement agencies have the option to disseminate information. Id. NYSORA also requires an independent board to determine the level of a sex offender's classification. Id. and Doe v. Poritz, 662 A.2d 367, 421 (N.J. 1995). Although the prosecutor determines classifications, the court “need not impugn motives of prosecutor to require that independent decision maker review Tier classification”. Id. Further, in New York, offenders can petition judges for relief from registration requirements. N.Y. CORRECT. LAW § 168-o (McKinney Supp. 1996). However, this relief is not available in New Jersey.

77 See GA. CODE ANN. § 42-9-44.1 (1995) (requiring convicted sex offenders, as condition of parole, to give notice of his name and address, crime for which he was convicted and date of parole, to superintendent of public school district where he resides); ME. REV. STAT. ANN. tit 34-A, § 11003 (1996) (requiring sex offenders to register his current address with Department of Public Safety Bureau of Identification, within 15 calendar days after discharge); N.D. CENT. CODE § 12.1-32-15 (1997) (requiring convicted sex offenders to register within 10 calendar days of his entering county with chief of police of city or sheriff of county); TEX. REV. CIV. STAT. ANN. art. 6252-13c.1 (1997); WIS. STAT. § 175.45(1)(1996).


80 See Roe v. Wade, 410 U.S. 113, 152-54 (1972) (stating that right of privacy, al-
The recognition of this right, however, requires an evaluation of the circumstances surrounding the alleged invasion of this right and a subsequent determination of whether there exists a "reasonable expectation" of privacy. The requirement of a "reasonable expectation" is inherently controversial. Courts have inconsistently found a right of privacy, despite similar circumstances. In particular, courts have neglected to establish a clear and decisive test to determine whether the disclosure of registry information constitutes an actionable invasion of an individual's right to privacy.

The existence of a reasonable expectation of privacy, however, does not ensure that a purposefully imposed restriction will automatically be deemed unconstitutional simply because it treads upon an individual's privacy. Once it has been determined that there is a fundamental right at stake with respect to a statute, the state must come forward with a "compelling interest" to justify such an infringement. The establishment of such

though not explicitly mentioned in constitution, exists); Griswold v. Connecticut, 381 U.S. 479, 482 (1965) (declaring "penumbra of privacy" for individuals).

See Griswold, 381 U.S. at 482 (declaring "penumbra of privacy" for individuals); Roe, 410 U.S. at 152-53 (stating that right of privacy, although not explicitly mentioned in the constitution, exists). See generally Ronald D. Rotunda, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 18.26 - 18.30 (1986) (discussing progression of privacy rights in Supreme Court); Sammel D. Warren & Louis D. Brandeis, The Right To Privacy, 4 HARV. L. REV. 193, 193 (1890) (introducing concept of right to be let alone).

See, e.g., National Treasury Employees Union v. Department of Treasury, 25 F.3d 237, 243 (5th Cir. 1994) (noting that plaintiff does not have standing to sue for violation of right to privacy in federal court if he has no reasonable expectation of privacy).

See Rowe v. Burton, 884 F. Supp. 1372, 1388 (D. Alaska 1994) (holding that convicted sex offender does not have reasonable expectation of privacy in information registered with sex offender registry for subsequent public disclosure); see also United States Dep't of Justice v. Reporters Comm., 489 U.S. 749, 764 (1989) (holding disclosure of criminal information contained in F.B.I. files is invasion of personal privacy, despite that information was matter of public record).

See, e.g., Robin L. Deems, Comment, California's Sex Offender Notification Statute: A Constitutional Analysis, 33 SAN DIEGO L. REV. 1195, 1223 (1996) (stating that case law provides no clear cut rule addressing issue of whether disclosure of public information is violation of individual's right to privacy).

See G. Scott Rafshoon, Comment, Community Notification of Sex Offenders: Issues of Punishment, Privacy, and Due Process, 44 EMORY L.J. 1633, 1644 (Fall 1995) (discussing how states amended civil disability legislation and how this legislation with stood constitutional attack).

See Doe v. Poritz, 662 A.2d 367, 413 (N.J. 1995) (holding that although active dissemination affects privacy interests, this invasion is necessary for public protection); Rafshoon, supra note 85, at 1651 (discussing how government can take offender's "right to personal privacy" if government's interest is compelling and statute is narrowly tailored to protect liberty interest).
a compelling interest will allow the state to continue to burden the right in issue, as long as the statute is narrowly tailored to meet the interest of the state.87

For example, courts have consistently upheld civil disability statutes, which infringe upon convicted offenders' constitutionally guaranteed rights.88 These statutes take away certain constitutional rights from convicted felons, such as the right to vote,89 the right to hold office,90 and the right to bear firearms.91 Despite these infringements, these statutes have remained a part of our criminal justice system since its inception.92

87 See, e.g., Roe v. Wade, 410 U.S. 113, 155 (1973) (stating that regulation limiting “fundamental rights” may be justified only by “compelling state interest”); Doe v. Attorney General of the United States, 941 F.2d 780, 796 (9th Cir. 1991) (holding that state legitimate interest can warrant intrusion into individual constitutional right to privacy); Thorne v. City of El Segundo, 726 F.2d 459, 469-71 (9th Cir. 1984) (stating that government may seek and use information covered by right to privacy if it can show that its use would advance legitimate state interest); Doe v. Poritz, 662 A.2d 367, 373-377 (N.J. 1995) (discussing state interest in protecting society from recidivist sex offenders); Rafshoon, supra note 85, at 1651 (stating that governmental interest must be compelling in order to violate offender’s right to privacy); Debra L. Weiss, Casenote and Comment, The Sex Offender Registration and Community Notification Acts: Does Disclosure Violate an Offender’s Right To Privacy?, 20 HAMLINE L.REV. 557, 567 (1996) (discussing that violation of privacy are acceptable when government interests outweigh individual privacy).

88 See Lewis v. United States, 445 U.S. 55, 65 (1980) (upholding prohibition of fire arm possession by convicted felon); DeVeau v. Braisted, 363 U.S. 144, 160 (1960) (upholding denial of convicted felon’s right to hold office in waterfront labor organization); Green v. Board of Elections of City Of New York, 380 F.2d 445, 445 (2d Cir. 1967) (holding disenfranchisement of convicted felon was not form of punishment); see also Rafshoon, supra note 85, at 1645 (discussing how civil disabilities legislation has withstood constitutional attack); Note, The Disenfranchisement of Ex Felons: Citizenship, Criminality, and “The Purity of the Ballot Box”, 102 HARV. L. REV. 1300, 1314-15 (1989) (stating disenfranchisement of convicted felons was justified by idea that deviants are source of moral corruption).

89 See, e.g., GA. CONST. art. 2, section 1, part. III (1976) (taking away convicted felon’s right to vote).


92 See Walter Matthews Grant et al., The Collateral Consequences of a Criminal Conviction, 23 VAND. L. REV. 929, 949-50 (1970). Convicted criminals, once released from prison, rightfully do not have the same rights they enjoyed before conviction. Id. The rationale that supports such a standing finds a basis in the philosophy of Locke, in that those who break the law lose the right to shape it. Id. Examples of familiar civil disabilities such as the loss of the right to hold office have been a distinct part of criminal punishment since the beginning of the union. Id. Because civil disabilities, as those enumerated in text, impose private prohibitions on an offender’s ability to enjoy certain freedoms, said restrictions are limited and well defined. Id. Once the offender commits a crime, he/she acknowledges the loss of a defined right. Id. However, concerning sex offender notification and registration laws, it appears that the consequences of the statute are unlimited and also undefined. Arguably, prior to committing the crime, the offender does not know the extent or exactly which right he/she will lose. It seems that such a substantial distinction weakens the argument that an invasion of the right to privacy held by a sex
B. Balancing a Community’s Right to be Secure With an Offender’s Right to Privacy

1. The Offender’s View of What Leads to an Invasion of His Privacy

When a convicted sex offender is released from prison, his “freedom” remains limited by his required adherence to sex offender registration and notification laws. Offenders have consistently argued that the dissemination of the registration information constitutes an invasion of the guaranteed right to privacy. The courts have consistently rejected this argument. Some courts have stated that the offender does not have the requisite reasonable expectation of privacy in this registration information because it is accessible to the public at large. Con-
victed sex offenders assert that it is not the mere accessibility to this data that makes the law unconstitutional; rather the compilation and affirmative dissemination of this information into a comprehensive bundle constitutes the actionable invasion of the right to privacy. Other courts have ruled, however, that any invasion of an offender's right to privacy caused by the dissemination of sex offender registry information is outweighed by the compelling state interest in disseminating such information.

Even when an offender's privacy expectation is deemed reasonable, an invasion of that privacy may not be actionable due to with payment of a minor monetary fee, to the New York State Department of Motor Vehicles. N.Y. VEH. & TRAF. LAW § 202 (McKinney 1996). Information available from this source includes the make and model of the individual's car and also a physical description, height, hair color, eye color. Id. Further, trials are open to the public thereby allowing any member of society to view a defendant. This reality opens the possibility that a member of society may sketch a defendant, note aspects of the case, and combine with this information that which he/she received from state records. This compilation could then be used as a "warning sign" if posted within the community. This in effect will circumvent the need for notification statutes. But see United States Dep't of Justice v. Reporters Comm. For Freedom of Press, 498 U.S. 749, 764 (1989). The court found that a privacy interest does not disappear simply because the information was previously available to the public. Id.; Michelle Pia Jerusalem, Note, A Framework for Post-Sentence Offender Legislation: Perspective on Prevention, Registration, and the Public's "Right" To Know, 48 VAND. L. REV. 219, 245 (1995). The author described problems with the public record rationale utilized by the courts because of the difference between availability and dissemination of public information. Id.

See United States Dep't of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 764-765 (1989) (recognizing that power of whole "rap sheet" is greater than sum of its parts, even though this information is available to public through numerous resources); Wayt, supra note 8, at 145 (describing that Megan's Law presents information as packages which would be difficult for members of public to ascertain on their own); Rafshoon, supra note 85, at 1650 (discussing that privacy violation is greater when government complies information from various available sources); Weiss, supra note 87, at 591 (discussing that privacy could be violated when information could not be compiled after routine search).

See Doe v. Poritz, 662 A.2d 367, 409 (N.J. 1995). The court ruled that Megan's Law does not violate an offender's right to privacy but further stated that the information disseminated to the community does implicate a privacy interest. Id. When the government allows public access to the bundled information in sex offender registries, allows for an increased threat to the offender's right to privacy. See Rafshoon, supra note 85, at 1649. Courts have recognized that privacy violations are greater when government complies information and then takes active steps to release it. Id.

its classification as a civil disability\textsuperscript{100} or due to a compelling governmental interest.\textsuperscript{101} Essentially, courts engage in balancing the possible consequences of the restriction, both to society and the individual, before determining if the burden is justified by a compelling governmental interest.\textsuperscript{102}

2. Government's Compelling Interest in Statutory Enactment

State government has been persuaded by various factors in determining what constitutes a "compelling interest" with respect to this statute.\textsuperscript{103} Included among these factors are sentiments of public fear and rage,\textsuperscript{104} and high recidivism rates for sex offenders.\textsuperscript{105} Observers have commented that "sex crimes make people

\textsuperscript{100} See Walter Matthews Grant et al., The Collateral Consequences of a Criminal Conviction, 23 VAND. L. REV. 929, 949-50 (1970). Convicted criminals, once released from prison, rightfully do not have the same rights they enjoyed before conviction. Civil disabilities provide that once an offender commits a crime, he/she will lose of a defined right. \textit{Id}.

\textsuperscript{101} This note acknowledges the possibility of restrictions upon a constitutionally protected interest in the form of civil disabilities, yet will not concern itself with an extensive review of the issue.

\textsuperscript{102} See Rafshoon, \textit{supra} note 85, at 1651 (stating that governmental interest must be compelling in order to violate offender's right to privacy); see also Roe v. Wade, 410 U.S. 113, 155 (1973) (stating that regulation limiting "fundamental rights" may be justified only by "compelling state interest"); Doe v. Attorney Gen. of the United States, 941 F.2d 780, 796 (9th Cir. 1991) (holding that state legitimate interest can warrant intrusion into individual constitutional right to privacy); Doe v. Poritz, 662 A.2d 367, 373-377 (N.J. 1995) (discussing state interest in protecting society from recidivist sex offenders).

\textsuperscript{103} See Greissman, \textit{supra} note 26, at 206-07 (noting how courts must establish whether intrusion on right of privacy is justified by balancing governmental interest in disclosure against privacy interest of confidentiality).

\textsuperscript{104} See United States v. Salerno, 481 U.S. 739, 751 (1987) (holding that "regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest"); United States v. Westinghouse Elec. Corp., 638 F.2d 570, 577 (3d. Cir. 1980) (describing court's balancing of government's interest in using information, against individual interest and privacy); People v. Mills, 146 Cal. Rptr. 411, 413 (1978) (upholding enforcement of provision invading individual's privacy because legislature's rational basis for action outweighed infringement).


\textsuperscript{106} See Shari P. Geller, Zero Tolerance For Child Molesters; Sexual Predators: Why Do We Release Convicted Pedophiles So They Can Do It Again and Again? Make It a One Strike Offense, L.A. TIMES, Dec. 16, 1996, at B5 (stating that recidivism rate within three
years of release from prison is as high as 75%); Robert Teir & Kevin McCoy, Approaches to Sexual Predators: Community Notification and Civil Commitment, 23 NEW ENG. J. ON CRIM. & GV. CONFINEMENT 405, 408 (1997) (noting high profile cases involved repeat sex offenders); see also Joe Lambe & Tony Rizzo, States Get Tougher on Sex Crimes: Public Outcry About Short Sentences Leads to Laws Requiring Longer Jail Time, KAN. CITY STAR, Aug. 3, 1997, at A1 (citing recidivism rates among pedophiles and sadists to be as high as 65%); Brian McGrory, Clinton Sets Tracking of Sex Offenders, BOSTON GLOBE, Aug. 25, 1996, at A1 (stating that sex offenders who victimize children as twice as likely to have multiple victims as those who target adults); Joyce Price, States Find New Ways to Stop Sex Offenders, WASH. TIMES, Oct. 1, 1995, at A1 (discussing that studies have shown recidivism rates among pedophiles range from ten to seventy percent). But see Matthew Stadler, Stalking the Predator, N.Y. TIMES, Nov. 7, 1995, at A23 (describing Washington state study showing that recidivism by sex offenders has not changed in that state in five years since implementation of notification law).


See Doe v. Poritz, 662 A.2d 367, 370 (N.J. 1995) (stating that statute designed solely to enable public to protect itself from known sex offenders); see also Teir & McCoy, supra note 105, at 426 (discussing sex offenders' serious threat to society); Note, Prevention Versus Punishment: Toward a Principled Distinction in the Restraint of Released Sex Offenders, supra note 104, at 1718 (discussing that states enacted laws that burdened sex offenders for betterment of society); Weiss, supra note 87, at 579 (discussing policy reasons behind enactment of notification statutes). Cf. Katherine Seligman, Megan's Law Warning Targets Fewer in San Francisco: Faced With 1,300 "Serious" Offenders, Police to Notify Neighbors Only in Highest-Risk Cases, SAN. FRAN. EXAM., Nov. 3, 1997, at B1 (describing police attempts to ensure that information is used "solely to protect the public").


See Lin Song & Roxanne Lieb, WASHINGTON STATE INST. FOR PUB. POLICY, ADULT
tification laws, by positively contributing to public safety,\textsuperscript{110} outweigh the potential infringement on constitutional rights, including any threats to the offender's right to privacy.\textsuperscript{111}

\textbf{C. Prior Court Analysis of Registration and Notification Laws in New York}

Sex offender registration and notification laws have been the subject of controversy and litigation since their enactment.\textsuperscript{112}

\textbf{SEX OFFENDER RECIDIVISM: A REVIEW OF STUDIES} 1, 5-6 (Jan. 1994). A study conducted by the California Department of Justice found sex offenders were five times more likely than other violent offenders to recommit the same offense. \textit{Id.; see also} California Department of Justice, \textit{Effectiveness of Statutory Requirements for Registration of Sex Offenders} at 7, (1988). A sampling of 2,000 children between the ages of ten and sixteen years old, of which 3.2\% of females and 0.60\% of males have suffered sexual abuse, revealed that children have experienced levels of sexual victimization exceeding that of adults. \textit{Id. But see} Stadler, \textit{supra} note 105, at A23. Washington State Institute for Public Policy released a study in September 1995 which showed that recidivism by sex offenders has not changed in Washington state in the five years since Washington's there community notification law became effective. \textit{Id.; Song & Lieb, supra, at 5-6}. Song and Lieb's study also noted the lack of solid scientific evidence that shows treatment programs successfully reduce sex offender recidivism. \textit{Id. Unlike criminals who violate other laws, the propensity of sex offender to commit these types of crimes does not decrease with age. Id.}

\textsuperscript{110} \textit{Compare} Jerusalem, \textit{supra} note 96, at 238-39 (discussing deterrent effect of regulation requirements) \textit{with} Stadler, \textit{supra} note 105, at A23 (indicating lack of change in recidivism rates since enactment of community notification and registration laws) and Song and Lieb, \textit{supra} note 109 (noting lack of evidence indicating that treatment reduces recidivism among sex offenders).


The courts have taken different approaches when analyzing the constitutionality of such provisions. New York's own legislation has been a source of debate within its courts.

A constitutional challenge to NYSORA was unsuccessfully raised in *Doe v. Pataki*, upon a motion for a preliminary injunction regarding the retroactive application of the statute's registration and notification provisions. The United States Court of Appeals for the Second Circuit held that both the registration and notification provisions of NYSORA were constitutional. This was a reversal of the District Court's finding.

This note addresses only the right to privacy rationale argued by offenders in their opposition to community registration and notification laws. Several courts have dealt with various other grounds, such as the Ex Post Facto Clause, Double Jeopardy, Bill of Attainder, the Eighth Amendment guarantee against cruel and unusual punishment, Equal Protection, and the Due Process Clause. For a further discussion of these constitutional challenges, see *Heaphy*, supra note 111, at 918 & n.10, which discusses subsequent analyses of these challenges.


*See Doe III*, 120 F.3d 1263 (2d Cir. 1997) (holding that neither registration nor notification provisions of NYSORA inflict “punishment” under ex post facto clause), aff’d in part and rev’d in part, *Doe II*, 940 F. Supp. 603 (S.D.N.Y. 1996) (holding that notification provision, but not registration requirement, violated Ex Post Facto clause and precluded retroactive application of NYSORA); *see also Doe I*, 919 F. Supp. 691 (S.D.N.Y. 1996) (granting preliminary injunction against retroactive application of NYSORA); *People v. Afrika*, 648 N.Y.S.2d 235 (N.Y. 1996) (holding that NYSORA does not violate ex post facto clause because it is remedial in nature).


The plaintiffs moved for a preliminary injunction enjoining retroactive application of the law based on Ex Post Facto grounds. *See Doe I*, 919 F. Supp. at 693. In support of their application, plaintiffs cited a number of incidents involving individuals who were required to register and who were subjected to notification under NYSORA. *Id.* at 697.

One example related one offender’s release after pleading guilty to statutory rape, wherein the Westchester County District Attorney’s office issued a news release and the registration process became a media event. *Id.* In a second incident a parolee offender was the focus of a mass mailing which identified him by name and address and was sent to all residents of the district. *Id.* This parolee was subjected to harassment and anonymous phone calls, in addition to losing his job. *Id.* A third paroled offender also became the subject of a mass mailing, sent by the Superintendent of Schools for the Cornwall Central School District to all parents and guardians within the district. *Id.* Additionally, several newspapers published articles containing the sex offender’s name, picture, address, crime, and other information. *Id.*

*See Doe III*, 120 F. Supp. at 1266 (finding neither provision constituted additional punishment for purposes of ex post facto clause).

*See Doe I*, 919 F. Supp. at 702. The court ruled that notification provisions constitute punitive measures. *Id.*; see also *Doe III*, 120 F.3d at 1265. The court ruled neither notification nor registration provisions were unconstitutional. *Id.*; *Doe II*, 940 F. Supp. at 604. The court ruled that retroactive application of notification provisions violated ex post facto clause. *Id.* In *Doe I*, the court reasoned that the plaintiffs had to show: (a) that they
that NYSORA's public notification provisions constituted punishment,\footnote{120} and increased punishment\footnote{121} after the fact in violation of the Ex Post Facto Clause.\footnote{122}

On appeal, the Second Circuit reversed the decision of the lower court\footnote{123} on the same grounds.\footnote{124} The court upheld\footnote{125} both the registration and the notification provisions of NYSORA\footnote{126} as

were likely to suffer irreparable harm if temporary injunctive relief was not granted; and (b) either (i) likelihood of success on the merits or (ii) sufficiently serious questions as to the merits to make their case appropriate for litigation. See Doe I, 919 F. Supp. at 697. The court found that the plaintiffs were likely to suffer irreparable harm based on the rationale that a violation of their constitutional right to be free from Ex Post Facto laws is per se irreparable harm. Finding that the notification provisions of NYSORA were triggered only by an offender's identity and status as a sex offender, it followed that such provisions were Ex Post Facto violations and that the plaintiffs had satisfied their burden of showing irreparable harm. \textit{Id.} at 698.

In contrast, the plaintiffs did not meet their burden of showing irreparable harm with respect to the registration requirements of NYSORA because they were merely informing the police of information the police could have obtained by other means. \textit{Id.}

In assessing the plaintiffs' likely success on the merits, the court had to determine whether NYSORA was punitive in nature, such that its retroactive application would be an impermissible violation of the Ex Post Facto Clause. \textit{Id.} Because the court found that the public notification provisions of NYSORA impose additional punishment, the court held that plaintiffs demonstrated a likelihood of success on the merits. \textit{Id.} The court therefore granted plaintiffs' motion for a preliminary injunction. \textit{Id.} at 702.

\footnote{120} See Doe I, 919 F.Supp. at 702. The court found that the notification aspects were punitive nature for several reasons. \textit{Id.} First, it was clear to the court that although the legislature's intent in passing NYSORA was to protect communities from the dangers of sex offenders, the legislature also intended to punish sex offenders. \textit{Id.} Second, the design of NYSORA contained "classic indicia of a punitive scheme." \textit{Id.} at 605. Third, public notification is historically punitive in nature, as the "modern-day equivalent of branding and banishment." \textit{Id.} Lastly, the court found that the effect of NYSORA was punishment that resulted in an affirmative disability and restraint on offenders. \textit{Id.}

\footnote{121} See Doe II, 940 F. Supp. at 626. The court found that community notification increased punishment because it increased the penalty, or "suffering in right, person, or property," imposed on a sex offender for his crime. \textit{Id.} Notification has led to an affirmative disability or restraint on offenders and their families, to excessively harsh results, stemming from the reactions of community members. \textit{Id.; Doe I, 919 F. Supp. at 627.} Public notification has also presented an obstacle to offenders in their attempts at rehabilitation after release. \textit{Id.} at 628. The court determined these deleterious effects on convicted sex offenders constituted increased punishment. \textit{Id.}

\footnote{122} See \textit{id.} at 631 (holding retroactive application of notification provisions of NYSORA would violate ex post facto clause).

\footnote{123} See Doe III, 120 F.3d at 1263 (2d Cir. 1997) (noting court's reversal of lower court's decision).

\footnote{124} See \textit{id.} The issue before the Court of Appeals was whether NYSORA inflicts "punishment," and thereby prohibiting its application to those who committed their crimes prior to NYSORA's enactment as volatile of the Ex Post Facto Clause. \textit{Id.} at 1265-66.

\footnote{125} See Doe III, 120 F.3d at 1263 (2d Cir. 1997). The Second Circuit concluded that neither the registration nor the notification provisions constituted "punishment" for purposes of the Ex Post Facto Clause, and that both aspects of NYSORA could be imposed upon offenders convicted before the effective date. \textit{Id.}

\footnote{126} N.Y. CORRECT. LAW §§ 168 to 168-v (McKinney Supp. 1997). Under NYSORA, convicted sex offenders are required to register personal information which is then compiled into registries made available through various means to the public. \textit{Id.}
SEX OFFENDER REGISTRATION

constitutional. The Supreme Court of the United States subsequently denied the petition for writ of certiorari.

On remand to the District Court for the Southern District of New York, offenders asserted claims of due process with respect to their right to appeal risk level classifications. The court recognized that community notification under NYSORA implicated a liberty interest on the part of offenders that was protected by the due process clause. The court acknowledged that "a protectible liberty interest may be implicated '[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him." The court ruled that "there was no genuine dispute that the dissemination of the information contemplated by the Act, to the community at

127 Neither the District Court nor the Court Appeals discussed the constitutionality of NYSORA on right to privacy grounds. In fact, the District Court dismissed as moot the plaintiffs' due process claim, from which the right to privacy argument is derived. See Doe II, 940 F. Supp. at 631. But see Bill Alden, Megan's Law Appeal Argued in 2d Circuit: Government Lawyers Face Queries on Statute's Effect, N.Y.L.J., Jan. 7, 1997, at 1 (noting that Assistant Attorney General and Assistant Southern District U.S. Attorney faced difficult questions on the issue of "safeguards as to the rights of the sex offenders," including acts of vigilantism after disclosure).


129 See Doe v. Pataki, 3 F. Supp.2d 456, 459 (S.D.N.Y. 1998) [hereinafter Doe V]. Upon remand, offender continued their challenge to the constitutionality of NYSORA, as applied to offenders who committed their crimes, prior to the effective date of NYSORA. See Doe V, 3 F. Supp.2d at 466 (citing Valmonte v. Bane, 18 F.3d 992, 998 (2d Cir. 1994)). The court recognized that to establish a due process claim, a plaintiff must show that he possesses a constitutionally protected interest in life, liberty or property and that state action has deprived him of that interest. Id. at 466.

130 See id. at 467 (quoting Wisconsin v. Constantineau, 400 U.S. 433, 434 (1971)). The court, in its ruling, gave deference to the numerous Supreme Court and Second Circuit decisions that discussed whether governmental actions that effects an individual's good name and reputation invoke a federally protected liberty interest. Id.; see, e.g., Where a person's reputation is at stake because of government action, notice and opportunity to be heard are essential. Id.; Board of Regents v. Roth, 408 U.S. 564, 573 (1972); Wisconsin v. Constantineau, 400 U.S.433, 437 (1971). A government employee's liberty interest would be implicated if charges for which he was dismissed imposed stigma on him. Id. But see Paul v. Davis, 424 U.S. 693, 701 (1976) "Reputation alone, apart from some more tangible interest... is neither liberty or property by itself sufficient to invoke the procedural protection of the due process clause". Id.
large, is potentially harmful to plaintiffs' personal reputations. On the other hand, the court noted that the state "has a compelling interest in protecting its citizens by giving prompt notification to potential victims and relevant caregivers, with respect to registrants who are accurately determined to be [level two] or [level three] risks."

The latest decision in the case of Doe v. Pataki, seems to bring the constitutional challenges to NYSORA full circle. The courts have yet to directly address the issue of the violation of a convicted offender's right to privacy, inherent in the widespread dissemination of registration information. A clear and decisive determination by the Supreme Court of the constitutionality of these laws is imperative. A denial of a petition for a writ of certiorari does not preclude the possibility of the Court fully reviewing and even disapproving of notification provisions.

The Supreme Court must assess the validity of such statutes

132 Doe V, 3 F. Supp.2d at 468. The court was convinced by the offender's argument that "wide spread dissemination of the information is likely to carry with it shame, humiliation, ostracism, loss of employment and decreased opportunities for employment, perhaps even physical violence, and a multitude of other adverse consequences." Id.


135 Compare Doe I, 919 F. Supp. 691, 693 (S.D.N.Y. 1996) (holding notification provisions were punishment for purposes of Ex Post Facto clause); with Doe II, 940 F. Supp. 603, 630 (S.D.N.Y. 1996) (holding that notification provision, but not registration requirement, violated Ex Post Facto clause and precluded retro active application of NYSORA); Doe III, 120 F.3d 1263, 1267 (2d Cir. 1997) (holding that neither registration nor notification provisions of NYSORA inflicts "punishment" under Ex Post Facto clause); Doe IV, 118 S.Ct. 1066 (1998) (denying petition for writ of certiorari); Doe V, 3 F. Supp.2d 456, 466-67 (S.D.N.Y. 1998) (holding that community notification of convicted offenders implicated protected liberty interests).

136 See Doe V, 3 F. Supp.2d at 467. The court acknowledged that one's name, physical appearance, and criminal history are all matters of public records in which one has no privacy interest. Id. The court noted however that because the act makes this information available to the community, in some cases through immediate dissemination of the information on a wide spread basis, a protected liberty interest may be affected. Id. Yet, the court failed to definitively rule that this widespread dissemination was unconstitutional because it violated an offender's right of privacy. But see Court Lets Megan's Law Stand, NEWSDAY, Feb. 24, 1998, at A21. "Michael Buncher, a New Jersey state public defender said the next federal challenge to Megan's Law will contend that community notification violated personal privacy rights." Id.

with respect to all aspects of the constitutional challenges. Once these issues are settled, the provisions can serve as an effective means of protecting communities against the dangers and risks associated with released sex offenders, while simultaneously affording the latter their constitutional rights.

III. HOW FAR IS TOO FAR? EXTENDING THE RATIONALE OF NYSORA TO OTHER REPEAT VIOLENT OFFENDERS

If registration and community notification laws are a constitutionally valid means of achieving the government’s interest in criminal deterrence and public safety, as against sex offenders and violent sex offenders, the question then becomes whether they can be applied with equal force to all types of violent offenders. This Note posits that the extension of registration and notification provisions, with respect to other violent offenders, would also withstand constitutional challenge, within certain limits. If communities have the right to know of the presence of convicted sex offenders, then they arguably have a similar right with respect to other released violent criminals who have established residence in their locales.

As it stands now, however, community notification requirements are not imposed upon those convicted of many other crimes of violence, including murder, robbery, and burglary.
The recidivism rates for such offenders, however, are just as significant as those of sex offenders. The underlying purposes of community notification laws pertaining to convicted sex offenders apply with equal force to other convicted violent offenders. The difficulty remains, however, in drawing the line between criminal releases that may lawfully be publicized pursuant to a community's right to know, and those that violate the individual's constitutional requirements for certain offenders; Eric Rasmusen, *Stigma and Self-Fulfilling Expectations of Criminality*, 39 J.L. & ECON. 519, 538 & n.37 (1996) (stating that some states have notification laws for various other offenses such as adultery, bigamy and voyeurism).

See, e.g., CAL. PENAL CODE §§ 187-190 (West 1999); FLA. STAT. ANN. § 782.04 (West 1998); MASS. GEN. LAWS 265 § 1 (West 1999); N.Y. PENAL LAW §§ 125.27 & 125.25 (McKinney 1997); TEX. PENAL CODE ANN. §§ 19.01 et seq (West 1994).

See, e.g., CAL. PENAL CODE § 212.5 (West 1999); FLA. STAT. ANN. § 772.11 (West 1998); MASS. GEN. LAWS 265 § 17 (West 1999); N.Y. PENAL LAW §§ 160.00-160.15 (McKinney 1997); TEX. PENAL CODE ANN. §§ 29.02 & 29.03 (West 1994).

See, e.g., CAL. PENAL CODE § 466 (West 1999); FLA. STAT. ANN. § 810.02 (West 1998); MASS. GEN. LAWS 266 § 14 (West 1999); N.Y. PENAL LAW §§ 140.25 & 140.30 (McKinney 1997); TEX. PENAL CODE ANN. §§ 30.01 (West 1994).

See Allan Beck et al., *Survey on State Prison Inmates*, Mar. 1993, at 11. Ninety-four percent of inmates have been convicted of a violent crime or have been previously sentenced to probation or incarceration, while over sixty percent have been incarcerated in the past. The Department of Justice Survey further found that the time lapse between offense and re-offense was minimal: ninety-one percent of prison inmates previously incarcerated had been in jail for their offense within five years before their current offense. *Id.*; see also Clarence Page, *More Jails? Less Schools? Way To Go!*, DES MOINES REG., Dec. 29, 1997, at 11. According to FBI statistics, 60% of released convicts are arrested again and 40% are re-incarcerated. *Id.* Moreover, 38% of murderers sentenced in 1992 were on parole when they killed and the habitual offender commits on average more than 200 felonies per year. *Id.* William F. Weld, *Getting Tough Only Way to Control Mayhem*, MASS. LAW. WKLY, Feb. 26, 1996, at A11. Weld states that "[t]he average American is more than twice as likely to be a victim of a violent crime as to be injured in a car accident; 10 times more likely to suffer on the hands of a criminal than to have a heart attack; as likely to be murdered as to die of AIDS." *Id.*; Doris Sue Wong, *Senate Votes to Put Sex Offenders on Parole*, BOSTON GLOBE, Nov. 14, 1997, at B3. In hopes that supervision provides better deterrence, the Massachusetts states legislature has voted unanimously on a bill placing convicted sex offenders on parole. *Id.* Massachusetts Senator Bill Beating cited as support an Arizona study reporting that recidivism rates among sex offenders on life time probation dropped from 40% to 1.5%. *Id.*

See N.Y. CORRECT. LAW § 168, Legislative Findings and Intent of L.1995, c.192. § 1, eff. Jan. 21, 1996 (citing legislature's purpose for NYSORA, as found in preamble to statute).

Compare Clarence Page, *More Jails? Less Schools? Way To Go!*, DES MOINES REG., Dec. 29, 1997, at 11 (quoting statistics showing that 60% of released convicts are arrested again and 40% are re-incarcerated and 38% of murderers sentenced in 1992 were on parole when they killed and habitual offender commits on average more than 200 felonies per year) with Shari P. Geller, *Zero Tolerance For Child Molesters; Sexual Predators: Why Do We Release Convicted Pedophiles so They Can Do it Again and Again? Make it a One Strike Offense*, L.A. TIMES, Dec. 16, 1996, at B5 (stating that recidivism rate of released sex offenders within three years of release from prison is as high as 75%) and Joe Lambe & Tony Rizzo, *States Get Tougher On Sex Crimes: Public Outcry About Short Sentences Leads to Laws Requiring Longer Jail Time*, KAN. CITY STAR, Aug. 3, 1997, at A1 (citing recidivism rates among pedophiles and sadists to be as high as 65%).
The judiciary, namely the United States Supreme Court, must establish the parameters of community notification statutes for different classes of offenders. In balancing the community's right to know with the offender's right to privacy, the line should be drawn where discretion begins.

CONCLUSION

This Note proposes that released violent offenders be subject to similar registration and notification provisions as Level I and Level II released sex offenders. The compilation of relevant information and the distribution of such information to local law enforcement agencies would serve valuable pur-


150 See Rafshoon, supra note 85, at 165 (noting that government interest must be compelling to violate offender's right to privacy).

151 See generally Lori Sabin, Doe v. Poritz: A Constitutional Yield to an Angry Society, 32 CAL. W. L. REV. 331, 355-56. (1996) (wondering where line will be drawn on which convicted criminals will have their privacy invaded by notification laws).

152 See Esposito, supra note 141, at 161 (noting registration requirements imposed on individuals convicted of certain drug offenses, "habitual sexual offenders" and "arsonists exhibiting compulsive behavior"); Rasmusen, supra note 142, at 538 (noting that some states have notification requirements for offenses such as adultery, bigamy and voyeurism).

153 See Greissman, supra note 26, at 220 n.85. In the context of a Level One offender, callers cannot obtain any information unless they first provide particular, specified information that reasonably identifies the offender. Id.; see also Doe III, 120 F.3d at 1269. A recorded message informs the caller only that the offender is listed in the central registry and that the offender's risk level is Level One. Id.; Sorensen, supra note 17, at 26. New Yorkers can call (900) 288-3838 to check a name against the New York State Sex Offender Registry. Id.

154 See Esposito, supra note 141, at 161 (noting registration requirements imposed on individuals convicted of certain drug offenses, "habitual sexual offenders" and "arsonists exhibiting compulsive behavior"); Rasmusen, supra note 142, at 538 (noting that some states have notification requirements for offenses such as adultery, bigamy and voyeurism).

155 See N.Y. CORRECT. LAW § 168-1 (6)(c) & 168-q(1). The subdirectory contains the offender's name, exact street address, photograph and physical description. Id. Also contained in the subdirectory is general background information relating to the crime for which he was convicted such as modus operandi, type of victim, and any special conditions of his parole or probation. Id. To have access to this subdirectory, a person must make a written request expressing a purpose, and such requests are kept on record. Id.

156 See N.Y. CORRECT. LAW §168-b (1)(b) (McKinney Supp. 1997) (listing requirements for registration); see also Doe III, 120 F.3d at 1267 (listing some of requirements for registering); Doe II, 940 F. Supp. at 607 (discussing legislative intent for passage of such registration laws); Doe I, 919 F. Supp. at 695 (listing registration requirements and information that must be provided). See, e.g., CONN. GEN. STAT. ANN. § 54-102r(b) (West 1996)(requiring registration within five days of release); ARK. CODE ANN. § 12-12-906 (Michie Supp. 1995)(requiring registration within 60 days of release).
poses without unconstitutionally infringing on an offender's protected privacy interests.

To subject released violent offenders to the extensive notification provisions applicable to Level III sex offenders, however, seems both impractical and unlawful. Problems arise from the fact that there exists no way to target which specific groups or individuals would be particularly vulnerable to attack by these released violent offenders. In contrast, victims of sex offenses are more easily categorized into identifiable groups.

Despite the legitimacy of the compilation and dissemination of registration information to local law enforcement agencies having jurisdiction, problems arise in allowing this data to be further disseminated to "vulnerable entities." Because NYSORA does not define this term, judicial discretion must draw the line.


The preamble to NYSORA states:

The legislature finds that the danger of recidivism posed by sex offenders, especially those sexually violent offenders who commit predatory acts characterized by repetitive and compulsive behavior, and that the protection of the public from these offenders is of paramount concern or interest to the government. The legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations and quickly apprehend sex offenders are impaired by the lack of information about sex offenders who live within their jurisdiction and that the lack of information shared with the public may result in the failure of the criminal justice system to identify, investigate, apprehend and prosecute sex offenders.

The system of registering sex offenders is proper exercise of the state's police power. Registration will provide law enforcement with additional information critical to preventing sexual victimization and to resolving incidents involving sexual abuse and exploitation promptly. It will allow them to alert the public when necessary for the continued protection of the community.

Id.; see also Doe III, 120 F.3d at 1265 (noting goals of NYSORA as community protection and augmented law enforcement); Doe II, 940 F. Supp. at 606-07 (noting that legislatures articulated these two goals in enacting such laws); Doe I, 919 F. Supp. at 694-95 (discussing law enforcement agencies' efforts to protect their communities and apprehend sex offenders).

158 See Wayt, supra note 9, at 142 (describing that offenders have interest in remaining anonymous in order to rebuild their lives and that there is interest in avoiding hostile community reaction to their presence); Patricia Alex, Experts Question Rush to Change Sex-Offense Laws, RECORD, Aug. 11, 1994, at B-7 (noting concerns of legal experts as to community notification of sex offenders as possible violation of offender's right to privacy, due process, and freedom from cruel and unusual punishment).

159 See N.Y. CORRECT. LAW § 168-l (6)(c) & 168-q(1). The subdirectory contains the offender's name, exact street address, photograph and physical description. Id. Also contained in the subdirectory is general background information relating to the crime for which he was convicted such as modus operandi, type of victim, and any special conditions of his parole or probation. Id. To have access to this subdirectory, a person must make a written request expressing a purpose, and such requests are kept on record. Id.

160 Cf. Bruce Cadwallader, Judge Refuses to Enforce Sexual Predator Law, COLUM. DISP., Mar. 21, 1997, at 1C. Ohio's new sexual predators law, H.B. 180, defines "neighbor" as one "adjacent" to the sexual predator. Law enforcement officials have been left to their
This Note submits that notification provisions for violent offenders be limited to compilation and dissemination to local law enforcement agencies. If information is to be further disseminated, this Note proposes that guidelines be established, setting forth criteria to be evaluated in determining what entities receive the registry information. Further, standards should be established to govern the distribution of information "at [the] discretion" of these entities. It is at this point where an actionable privacy invasion may arise. The state’s interest becomes less compelling as the information travels further, subject to fewer procedural safeguards for offenders’ rights.

*Maria Orecchio & Theresa A. Tebbett*