

ORIGINAL

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENWOOD COUNTY

Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT

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V.

ANTHONY NATION,

S.C. Supreme Court

APPELLANT

APPELLATE CASE NO. 2011-199726

RECORD ON APPEAL

E. CHARLES GROSE, JR.
Chief Circuit Public Defender, Eighth Circuit
Pro bono counsel

SHANE E. GORANSON
Assistant Public Defender, Eighth Circuit
Pro bono counsel

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorneys for Appellant

MATTHEW BUCHANAN
General Counsel

South Carolina Department of
Probation, Parole & Pardon Services
PO Box 50666
Columbia, SC 29250
(803) 734-9220

Attorney for Respondent

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State of South Carolina)
) In the Court of General Sessions
 County of Greenwood) 2001-GS-24-01076
)
)
 State of South Carolina,)
)
 Plaintiff,)
)
 versus)
)
 Anthony Nation,) Date: September 14, 2011
)
 Defendant.) Abbeville, South Carolina

PROBATION VIOLATION HEARING

B E F O R E:

The Honorable Frank R. Addy, Jr.

A P P E A R A N C E S:

J. Benjamin Aplin, Esquire
 ATTORNEY FOR THE STATE

Charles Grose, Esquire
 Shane Goranson, Esquire
 ATTORNEYS FOR THE DEFENDANT

Probation Agent Jeff Sorrow

PROVIDED FOR: SCCID

FOR COPIES CONTACT: Jo Rice
 jrice@scccourts.org
 Official Court Reporter
 South Carolina Judicial Department

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

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P R O C E E D I N G S

The Court: All right. It's my understanding that this is a Probation Violation involving Anthony Nation. Is that correct, Gentlemen?

Mr. Aplin: Yes, sir.

Mr. Goranson: Yes, sir.

The Court: All right. Let's address the violation, first, and then we will address the ancillary issues along with it.

Mr. Aplin: Thank you, Your Honor. With the Court's permission, I will just proceed like a regular violation and Agent Sorrow will present the facts.

The Court: Sounds good. Mr. Sorrow, happy to hear from you, sir.

Agent Sorrow: Yes, sir. Mr. Anthony Wade Nation was sentenced in Greenwood County July 16, 2003. He was sentenced on a lewd act on a minor charge. He received a 15-year, suspended to 12-year sentence with probation to follow. Mr. Nation began his probation on July 31, 2009. This is the second violation of this case. The first violation was October 4, 2010. He was continued on supervision at that period of time.

This violation originated on May 6, 2011, when I issued the warrant for the following violations: Failure to report monthly as instructed, having last reported on

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

1 February 7, 2011. By having failed to pay supervision fees
2 as instructed, being in arrears at the time. By having
3 failed to maintain a stable residence program. He moved
4 without notification to the agent as verified on 05/06/11.
5 At the time of the issuance of the warrant, his whereabouts
6 were unknown.

7 The Court: All right. The previous violation, what
8 were the, again, what were the allegations in that
9 violation?

10 Mr. Sorrow: On the previous violation?

11 The Court: And did that go to a hearing or was it done
12 simply in court?

13 Mr. Sorrow: No. It was a paperwork review.

14 The Court: Paperwork review.

15 Mr. Sorrow: Yes, sir.

16 The Court: Okay.

17 Mr. Sorrow: Signed by Your Honor.

18 The Court: I noticed that from the violation report.

19 Mr. Sorrow: Yes, sir.

20 The Court: That was kind of why I was asking. But the
21 underlying problem was arrearage?

22 Mr. Sorrow: Well, no, sir. On the previous violation?

23 The Court: Right.

24 Mr. Sorrow: The previous violation, I have the facts
25 from that here as they were reported on the warrant:

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

1 Again, failing to pay supervision fees. He, at that time,
2 had failed to make any payments on his court ordered
3 surcharge, failed to make any payments on his court ordered
4 Public Defender fund and he failed to follow the advice and
5 instructions of the agent. He was arrested at that time on
6 the warrants and again, as stated earlier, he was continued
7 under supervision.

8 The Court: All right. How long, supposedly, has he
9 absconded?

10 Mr. Sorrow: The last face to face visit that I had
11 with him was in February of 2011. The warrant was issued
12 in May of 2011.

13 The Court: All right. And Mr. Grose, Mr. Goranson,
14 y'all are representing Mr. Nation. Is that right,
15 Gentlemen?

16 Mr. Goranson: Yes, sir.

17 The Court: All right.

18 (Judge Addy administers the oath to Mr. Nation)

19 The Court: Are you Anthony Wade Nation?

20 Mr. Nation: Yes, sir.

21 The Court: Mr. Nation, have you received a copy of the
22 violation report and have you been served with a copy of
23 the violation warrant concerning this?

24 Mr. Nation: Yes, sir.

25 The Court: And have you reviewed that with your
PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

1 attorneys?

2 Mr. Nation: Yes, sir.

3 The Court: Do you admit or do you deny that you are in
4 willful violation of the terms and conditions of your
5 probation?

6 Mr. Nation: I deny it.

7 The Court: All right. Mr. Goranson, be happy to hear
8 from you, sir.

9 Mr. Goranson: Thank you, Your Honor. I would like to
10 call his mother to the stand, Melissa Nation.

11 The Court: All right. Ma'am, if you will come
12 forward.

13 (After being duly sworn by the Clerk of Court, Melissa
14 Nation testified as follows:)

15 The Court: Just state your full name, please, ma'am.

16 Ms. Nation: Melissa Renee Nation.

17 Direct Examination of Melissa Nation by Mr. Goranson

18 Q Ms. Nation, where do you live?

19 A [REDACTED], Waterloo, South Carolina.

20 Q And who lives with you?

21 A My husband and my son.

22 Q How old is your son?

23 A Fifteen, or he will be next Friday, the 23rd.

24 Q Okay. And were you living there in February?

25 A Yes, sir.

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - MELISSA NATION

8

1 Q What about, in April?

2 A Yes, sir.

3 Q In March?

4 A Yes, sir.

5 Q And May?

6 A Yes, sir.

7 Q Was Anthony Nation living with you at the time?

8 A No, sir.

9 Q Where was he living?

10 A [REDACTED], Abbeville, South Carolina.

11 Q Were there times he came to stay with you?

12 A Yes, sir.

13 Q What's the longest he would stay with you?

14 A A couple of weeks. You know, he'd be staying there a
15 couple of weeks, but we would be taking him back and
16 forth, you know, changing clothes and so forth, you
17 know, getting different things that he needed from his
18 residence.

19 Q And why would he stay with you?

20 A He would help his father do different things, like
21 they worked on a motor for a vehicle and then, we heat
22 with wood, and so they would go cut some trees and
23 bring them in and cut them up with a shingle, I mean,
24 with a wood splitter once they got it to the
25 residence, but they'd cut it up in big pieces, you

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - MELISSA NATION

9

1 know, to get it on the truck so they could handle it
2 and then they would bring it there and split it the
3 rest of the way and then, you know, just doing
4 different things in the yard and stuff like that to
5 help his father.

6 Q Are you a wealthy family?

7 A No, sir.

8 Q And Mr. Nation is not here today. Correct?

9 A No, sir. He just got work last week, so he had to be
10 at work, because we have some bills we have to pay.

11 Q And would it help you if Anthony could live with you?

12 A It would. I mean, since they work together and the
13 jobs are, like where they work is in Anderson and, you
14 know, all over because they do roofing, and so
15 financially, it would be much a help for everybody to
16 go together and with the gas prices like they are, you
17 know, I mean, Anthony being with us already and going
18 to work together, you know, it would be much, you
19 know, a help, you know, because we've spent so much
20 money in the past, you know, in gas, but we have tried
21 to do that as much as possible, you know.

22 Q And so, that's a bond for the family and it would
23 really help.

24 A Yes.

25 Mr. Goranson: Just one moment.

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - MELISSA NATION

10

1 The Court: Yes, sir.

2 Mr. Goranson: No further questions.

3 Mr. Aplin: Thank you, Your Honor.

4 Cross examination of Ms. Nation by Mr. Aplin

5 Q Hello, Ms. Nation. You were saying, and correct me if
6 I'm wrong, but it sounded like your son would come
7 over to your house for maybe a week here, a week there
8 and stay there overnight during those times?

9 A Yes, sir.

10 Q And you would go back and forth and get clothes and
11 things for him?

12 A Yes, sir.

13 Q Okay. And you mentioned another -- you have a son
14 who's 15 that lives at the house?

15 A Well, he will be 15 the 23rd.

16 A Was Anthony Nation, did he ever kind of look after the
17 14-year-old while you were busy, while you were out of
18 the house, and things like that?

19 A No, sir. I mean, we would, you know, make
20 arrangements, you know, for either one of us to be
21 there or something or him be with other friends, you
22 know.

23 Q Okay. And do you know or did you, maybe, drive him to
24 report to the probation office during these months we
25 are talking about?

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - MELISSA NATION

11

1 A I didn't, but you know, he would be here to be able to
2 come, you know. He would say he would walk up here or
3 what-have-you. You know, that's what we were told.
4 That's all I know.

5 Q So you don't know whether he reported in March or
6 April or May of 2011 to Agent Sorrow?

7 A I mean, personally, we didn't take him, but we may --
8 my cousin did go to take him and then that's when they
9 showed him with a warrant and everything, so as far as
10 the other months, you know, I can't really say yay or
11 nay, because I wasn't actually here.

12 Q Okay. And one final question: You love your son very
13 much.

14 A I mean, I try to treat him as my own. I mean, He's my
15 step-son but, you know, I treat him as my own, you
16 know, as I do my husband's other kids as well, you
17 know.

18 Q You'd do whatever you could to help him out?

19 A Yes. In the past, I took him to a lot of the meetings
20 and things that he was ordered to go to like parenting
21 classes and so forth.

22 Q Thank you, Ms. Nation.

23 The Court: Thank you, Ma'am. You can step down.

24 Mr. Goranson: We would call one more witness, Tim
25 McCurry.

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - TIM MCCURRY

12

1 (After being duly sworn by the Clerk of Court, Tim
2 McCurry testified as follows:)

3 Direct examination of Tim McCurry by Mr. Goranson

4 Q Mr. McCurry, state your full name for the record.

5 A Timothy Mobley McCurry.

6 Q And what do you do?

7 A Well, since this rheumatoid, I don't do much on my
8 own, but I still rent property. I don't do any work
9 for myself, anymore.

10 Q Do you rent property to Mr. Nation?

11 A Yes, sir.

12 Q Where is that property?

13 A It's [REDACTED] [REDACTED].

14 Q And how long has he been living there?

15 A He's been living there since he was paroled. I'm not
16 sure of the date. That was part of his original
17 parole, that he have a place to live, you know, so
18 that's when I rented him the trailer.

19 Q Do you charge him rent?

20 A Yes.

21 Q How much is rent?

22 A One fifty a month.

23 Q And does he always pay?

24 A Well, when he's working he pays, but when he didn't
25 have work, I always had something for him to do. He's

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - TIM MCCURRY

13

1 put on several roofs for me, did carpentry work,
2 mechanic work. I've always got something for him to
3 do around the property.

4 Q So, some months he wouldn't have money for rent and so
5 he would have to work for you?

6 A Right.

7 Q And how is that door secured on that trailer?

8 A It's a hasp. I put a hasp on it with a padlock and
9 you can bolt it from the inside with a latch bolt, a
10 dead bolt, and then when you leave the trailer, you
11 just have to put the padlock on it and that's it. I
12 let them furnish their own lock.

13 Q Did you evict Mr. Nation?

14 A Naw.

15 Q Did you kick him out?

16 A Naw.

17 Q If you had wanted, if you had needed to get in there,
18 what would you have done with the lock?

19 A Cut it off with bolt cutters. I could pick it, too.
20 I'm a locksmith, but I'd probably just cut it off.

21 Q And did you talk to Agent Sorrow at any time in the
22 Spring?

23 A Yes. I think so. Jeff just is a, I talked to him
24 when -- I can't remember whether I called him or he
25 called me or something, but I'm vague on it, but I

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - TIM MCCURRY

14

1 knew that somehow I found out that they had put a
2 warrant out on Tommy and I believe I said, "Maybe I'll
3 round him up and get him down there." So, I went to
4 the trailer and he was out there and so I told him, I
5 said, "You better get up to the probation office." I
6 said, "They've got a warrant out on you." And I had
7 loaded him up to take him down there and the deputy
8 pulled in and the deputy said, "Well, take him on in,
9 but he thought better of it and said since he had that
10 warrant, he better take him on in, he might get in hot
11 water, so they carried him on in there. We were
12 driving out of the drive at the time.

13 Q Would that have been May 6th?

14 A That sounds about right.

15 Q Okay. And do you recall telling Agent Sorrow that you
16 hadn't seen Mr. Nation for a couple of weeks at a
17 time?

18 A Yeah. Yeah. He was in and out, you know, and I would
19 go by, if I'd go by because I needed him to do some
20 work, you know, if he was there, I'd get him. If he
21 wasn't, I, you know, didn't, but I'd ride by there,
22 because I didn't have any other way to contact him
23 except just go out there and see if he was there.

24 Q So, he didn't have a phone?

25 A No. Sometimes he was working and sometimes, you know,

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - TIM MCCURRY

15

1 he'd be out of work. He was working for a mechanic at
2 one time. Sometimes I'd catch him there.

3 Q Okay.

4 Mr. Goranson: Just one second. Nothing else.

5 The Court: Mr. Aplin?

6 Mr. Aplin: Thank you, Your Honor.

7 Cross examination of Tim McCurry by Mr. Aplin

8 Q Good afternoon, Mr. McCurry. A couple of questions
9 for you: Do you know anything about whether Mr. Nation
10 reported like he was supposed to for those three
11 months to his probation agent?

12 A No, sir. If I had, I would have made sure he got down
13 there.

14 Q Okay.

15 A I've had other guys that worked for me that were on
16 parole that I would make sure they got there, too.

17 Q And when you talked to Agent Jeff Sorrow, this was
18 after the warrant had been issued?

19 A I believe so. I believe that's the reason that I went
20 out there looking for him, you know. I believe that's
21 right. I can't say for sure.

22 Q So, you went out there looking for Mr. Nation. He was
23 at the trailer at that time when you talked to him?

24 A Yeah. That's why I loaded him up to take him down
25 here to see Jeff and then, like I say, the deputies

PROBATION VIOLATION HEARING FOR ANTHONY NATION FOR SCCID

TESTIMONY - TIM MCCURRY

16

1 beat me to it.

2 Q When the deputy came in, do you know if he ran like a
3 check on his computer in the car or anything to see if
4 there were any outstanding warrants or...

5 A I don't think so. The deputy just stepped out of the
6 car and like I say, we was loaded up and driving out
7 and I stopped and, you know, he got out of his car and
8 he said, you know, he had a warrant for Tony and I
9 told him I was taking him down to the probation
10 office, like I said, he was going to let me take him
11 on and then he said, "Well, I better just take him on
12 in," so he got out of my car and got in with the
13 deputy.

14 Q Do you recall the deputy saying anything about an
15 outstanding warrant from Horry County?

16 A No, sir.

17 Q Okay. Did Mr. Nation say to you, when you found him
18 back at the trailer, where he'd been? Did he tell you
19 where he came from?

20 A No. I never knew he -- I never asked him anything
21 like that. He was either there or he wasn't.
22 Sometimes he was working. I didn't keep track of him,
23 you know.

24 Q So, you don't recall telling Agent Sorrow that Mr.
25 Nation said he'd just returned from Waterloo?

TESTIMONY - TIM MCCURRY

17

1 A I don't know. I'm not sure. I may have. If he had
2 told me that, I may have told Jeff that, you know.

3 Q Okay. Thank you.

4 Mr. Aplin: No further questions.

5 The Court: Thank you, sir. You can step down.

6 Mr. McCurry: Yes, sir.

7 The Court: Anything else, Mr. Goranson?

8 Mr. Goranson: Not from the defense, Your Honor.

9 (Mr. Goranson, Mr. Grose, and Mr. Aplin have a
10 discussion off the record)

11 Mr. Goranson: We were just looking at the arrest
12 warrant here, Your Honor, with the probation violation, and
13 this says -- to avoid any implication that there had been
14 some knowledge of the existing warrant. It wasn't issued
15 until May 6th.

16 The Court: May 6th. All right.

17 Mr. Goranson: So, it was not outstanding very long.
18 He was arrested on May 6th.

19 The Court: All right. Anything else from the State or
20 from the defense on this?

21 Mr. Aplin: No, Your Honor, unless I'm permitted to ask
22 Mr. Nation some questions.

23 The Court: All right. I, normally, at this point in
24 time I would ask -- normally, I would ask Mr. Goranson what
25 your position is with respect to the violation or at least

1 the violation that's alleged. I think the most substantial
2 violation is simply the failure to come in and report to
3 the agent for a couple of months. It would appear that
4 he's been around here and as soon as the warrant was
5 issued, they were able to locate him, but apparently, there
6 was some issue with his reporting. Would y'all care to
7 address that or would you care to speak to that?

8 Mr. Goranson: Your Honor, Mr. Nation is not disputing
9 that he missed two reports.

10 The Court: All right. Okay. Anything else?

11 Mr. Aplin: No, Your Honor.

12 The Court: For purposes of these proceedings, I do
13 find that Mr. Nation is in willful violation of the terms
14 and conditions of his probationary sentence. I will be
15 considering the potential penalty. I know that there are
16 certain ramifications for finding that he is in willful
17 violation of the terms and conditions of his probation.
18 Would someone care to enlighten me as to my possible
19 options at this particular point in time and the
20 ramifications of finding that he is or that he has
21 willfully violated his probation?

22 Mr. Aplin: Well, Your Honor, obviously, the first
23 thing is the split sentence. He served 12 of the 15 years,
24 so he still has a 3-year, potential revocation, time
25 hanging over his head. In addition, under §23-3-540 of the

1 S.C. Code of Laws, which is sometimes referred to as
2 "Jesse's Law", subsection (c) of that provision requires
3 that the Court impose lifetime GPS monitoring or active
4 electronic monitoring or whatever you want to call it as a
5 result of a violation of probation.

6 The Court: All right. Mr. Goranson, I assume that you
7 and Mr. Grose are in agreement that the code section
8 requires lifetime GPS monitoring and, of course I assume
9 that you have no issues, whatsoever, with the requirements
10 of that section or any other concerning Mr. Nation or how
11 it might apply to him. Is that correct?

12 Mr. Goranson: Your Honor, we do have several
13 objections to that code section, among others.

14 The Court: All right. Very good. Let me hear from
15 you at your leisure.

16 Mr. Goranson: I just wanted to make sure that the
17 Court has received a copy of our memo.

18 The Court: It was emailed to me about a month or so
19 ago and I have reviewed it. Yes.

20 Mr. Goranson: And there is also an appendix mailed to
21 you this week with some apologies with the late timing on
22 that.

23 We would object, as set forth in our brief, to
24 lifetime GPS monitoring as well as lifetime residency
25 restrictions and I can get into the reasons for that. I

1 think we do need to take some testimony. I'm prepared to
2 call a couple of witnesses in order to elicit that
3 testimony.

4 The Court: All right.

5 Mr. Aplin: Your Honor, I have one preliminary matter.

6 The Court: Sure.

7 Mr. Aplin: I would move that at this proceeding that
8 we are limited to only arguments dealing with the Global
9 Positioning Satellite System and the monitoring. The
10 residency restrictions simply aren't germane to this
11 proceedings. They weren't alleged as a violation. Those
12 aren't being imposed as a result of the probation
13 violation. The only action that's being caused by this
14 probation violation is the requirement that he be placed on
15 GPS monitoring. The residency restrictions are a part of
16 the Code change. It's just a part of the law. They apply
17 to him, they apply to everybody regardless of whether they
18 have committed a violation or not. I believe the
19 appropriate venue would be to file some sort of declaratory
20 judgment action challenging the constitutionality of the
21 residence restrictions themselves. I would submit that GPS
22 is the only issue that we should be talking about here
23 today and to the extent they want to proffer the other
24 information or do want to raise that issue, I'm, because
25 it's not germane to our agency or our department or really

1 these proceedings, I'm not really ready to respond to the
2 claims about residency itself, but I am prepared to address
3 all the issues with the GPS monitoring.

4 The Court: All right. Mr. Goranson, the residency
5 restrictions, what restrictions are implicated by the
6 Court's finding that he's in willful violation of his
7 probationary sentence?

8 Mr. Goranson: Well, I think the main problem with
9 those, Your Honor, is that this is being imposed after he
10 already pled guilty, after he's been convicted, and as the
11 sentencing court, Your Honor, you have the authority to
12 look at the sentence as it occurred in 2003.

13 The Court: The residency restrictions are contained in
14 what section or subsection, rather? Do you have those?

15 Mr. Goranson: Yes, sir. §23-3-535.

16 The Court: When did those go into effect? Do you
17 recall?

18 Mr. Goranson: I think they went into effect in 2008.

19 Mr. Grose: Your Honor, it's also an issue of when they
20 went into effect, when SLED started saying they were
21 enforcing them, because it was a provision in the statute
22 that SLED had to have the appropriate technology and I
23 believe their website says that they started doing that
24 sometime earlier this year. They had the technology in
25 place and so I guess there could be some dispute, but the

1 key is, is that when he was sentenced, they were not, in
2 effect, the statute did not exist.

3 Mr. Aplin: Your Honor, just to follow what Mr. Grose's
4 was saying. It was an issue of technology. The statute
5 included the provision: This part of it takes effect when
6 SLED has the ability to map all the GPS points and actually
7 has mapping software and know where the residents really
8 are and they certified that all 46 counties were online,
9 ready to use that mapping software, as of February 14th of
10 this year. So, it's my understanding that that's what they
11 gave us as a live date for those residency restrictions
12 being in place.

13 The Court: And he was convicted of lewd act. Right?

14 Mr. Aplin: That's correct.

15 The Court: Does this apply to it?

16 Mr. Goranson: I believe it applies to everyone on the
17 Sex Offender Registry.

18 The Court: I'm looking at subsection (b) of 535.

19 Mr. Aplin: Your Honor, I would like to mention, I
20 think there's a list of only five or six offenses that
21 those residency restrictions apply to and I don't remember
22 whether lewd act was on that list or not, but it's fairly
23 limited. It's not everyone on the registry.

24 The Court: Looking under subsection (b), it states
25 that, it would appear to me, it only relates to a sex

TESTIMONY - CHARLES GROSE

23

1 offender who's been convicted of CSC with a minor, first,
2 second; assault with intent and kidnapping of a child and,
3 well, trafficking of persons under the age of 18.

4 Mr. Goranson: Your Honor, if that statute doesn't
5 apply, obviously, we don't have an issue with residency
6 restrictions.

7 The Court: I mean, I simply don't see lewd act
8 included in there. So, I have to conclude that that
9 section doesn't apply because he was convicted of lewd act.
10 I think that's where we are. All right.

11 On the other issues, Mr. Goranson, do you want to
12 speak to those or do you want to go ahead and call
13 Mr. Grose as a witness and take testimony?

14 Mr. Goranson: Yes. I think we can have Mr. Grose come
15 to the stand and I'll ask him some questions.

16 The Court: All right. If you'll come on up, please.

17 (After being duly sworn by the Clerk of Court, Charles
18 Grose testified as follows:)

19 Direct examination of Charles Grose by Mr. Goranson

20 Q Would you state your name for the record.

21 A I'm Charles Grose.

22 Q And what do you do, Mr. Grose?

23 A I'm the Circuit Public Defender for the Eighth
24 Judicial Circuit.

25 Q And how long have you held that title?

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1 A Since 2008, when the Circuit Defender System was
2 implemented in this circuit and before that, I was a
3 public defender for Greenwood and Abbeville.

4 Q How long did you hold that position?

5 A I started that in 1999.

6 Q Have you worked with Mr. Nation?

7 A Yes. I represented Mr. Nation when he was originally
8 charged with this offense through his guilty plea.

9 Q What was he charged with?

10 A He was charged with criminal sexual conduct with a
11 minor, second degree, and committing or attempting to
12 commit a lewd act on a minor under the age of 16.

13 Q And what did you do in the course of representing him?

14 A Well, we got the discovery and we tried to negotiate
15 the case with the solicitor's office.

16 Q Did you research the law?

17 A Yes.

18 Q And what was your understanding of the collateral
19 consequences?

20 A Right. It was, with, I guess with all offenses, but
21 particularly with sex offenses, there's been some sort
22 of game changing events and one of the game changing
23 events was in 1996 when the legislature made certain
24 offenses no parole and strikes, either two strikes or
25 three strikes could be enhanced for a life sentence.

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1 Another game changing event was when the, you know,
2 GPS and more enhanced sex offense, sex offender
3 conditions were added later, so in 2002 or whenever it
4 was when we did it, 2002, 2003, when we did Mr.
5 Nation's guilty plea, at the time, what we were
6 looking at was criminal sexual conduct with a minor,
7 second degree, which would be a strike, and also an
8 85% minimum service offense, where lewd act was not.
9 Lewd act is an offense that can be suspended. I don't
10 think it required 85% and it's not a strike. After,
11 years after his guilty plea was when, you know, they
12 changed the law. We knew that a sex offender had a
13 collateral consequence. The sex offender registry was
14 a collateral consequence at the time of the plea, but
15 it wasn't until later when some of these restrictions,
16 like the GPS and residency restrictions, then became
17 an issue.

18 Q Just to be clear, when did this act allegedly take
19 place?

20 A I believe this was in 2008, but the law would reflect
21 that and as we just discussed, it was different
22 effective dates for some of the provisions.

23 Q If I show you this document -- I'm looking at the
24 indictment for criminal sexual conduct with a minor,
25 committing or attempting to commit a lewd act on a

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1 child under the age of 16, for Anthony Nation's case.

2 If I show you this indictment, would you remember it?

3 A I believe so.

4 (Mr. Goranson hands document to the witness)

5 A Yes. That looks like it.

6 Mr. Goranson: At this time, I would like to have this
7 indictment, two page indictment, moved into evidence. It's
8 already been marked as...

9 Mr. Grose: Defendant's exhibit No. 3.

10 The Court: Without objection?

11 Mr. Aplin: No objection.

12 The Court: Very good. In evidence.

13 (Whereupon, an indictment is entered into evidence as
14 Defense Exhibit No. 3, without objection.)

15 Q There are two counts in this one indictment.

16 A Yes.

17 Q What do you understand about the relationship of those
18 facts?

19 A Well, I think, if I understand your question right,
20 both of those charges went to the same underlying
21 facts, so they were charging the same conduct.

22 Q And what were those facts, basically?

23 A Basically, that he had had sexual relationship,
24 probably consensual, with somebody who was not old
25 enough to give consent.

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1 Q What -- Had you known that lifetime GPS monitoring was
2 a potential collateral consequence, how would that
3 have changed your negotiations?

4 A Well, I think it would have -- it would have changed a
5 lot of things. In particular, two things: One, is
6 that it would have changed the conversations that Mr.
7 Nation and I were having at the time, because while
8 the collateral consequences are sometimes viewed as
9 separate from the sentence, the, you know,
10 professional standards that we try to follow indicate
11 that we should be discussing those with people,
12 particularly with something like this and Mr. Nation
13 and I would have discussed the sex offender, like I
14 said, the Sex Offender Registry. He knew when he pled
15 guilty that was going to be a consequence. If
16 something like this is in effect, the GPS is in
17 effect, then that adds an additional level to the
18 conversation that you have to have, because, you know,
19 at the time, my advice would have been to, you know,
20 try it -- my recollection of it is that we had some
21 say and there was some discussions about which charge
22 he ultimately pled to. There was a -- we were not
23 able to negotiate the case the way that we had hoped,
24 but there were, you know, a lot of, a long period of
25 negotiations prior to going to court and so, at the

1 time, we would have been looking at, you know, an
2 offense that was a strike that was 85% and carried up
3 to 20 years versus an offense that was not a strike,
4 was up to 15 years and was not 85% and, of course, you
5 also get some distinctions in probation with community
6 supervision that we would have discussed. Now, that
7 whole equation has changed, because you know when you
8 are looking at criminal sexual conduct with a minor,
9 second degree, you're still looking at 20 years at 85%
10 and a strike. But with lewd act, while you're still
11 looking at the same penalty, you're looking at that
12 mandatory lifetime GPS, which would not apply for
13 criminal sexual conduct with a minor, second degree.
14 And so, there's a balancing that has to take place as
15 far as if somebody has a choice of whether or not to
16 plead for one of those, where you take into account
17 what could happen to you for the rest of your life
18 versus, you know, the strike and the penalty that you
19 would serve longer on, potentially, because it carries
20 more time and is 85%. Particularly, in a case like
21 Mr. Nation's where the ultimate plea was, you know,
22 straight up with the judge setting the sentence and
23 so, you're putting different limits on what the judge
24 can do by which charge you're able to pick. The other
25 thing that, you know, potentially could have come into

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1 play. I said a minute ago we weren't able to
2 negotiate this case the way we wanted to. A lot of
3 times these collateral consequences come into play in
4 the negotiations and the negotiations are different.
5 For example, I remember when they made assault and
6 battery with intent to kill 85% and a strike. Before
7 that, you would see a lot of sentences where people
8 pled guilty to assault and battery with intent to kill
9 and I know a guy that even got a suspended sentence
10 and even got put on probation. After that happened,
11 It became much more common to negotiate those offenses
12 to a lesser included assault and battery of a high and
13 aggravated nature. Had this GPS, lifetime GPS, been
14 in place at the time, it would have entered into,
15 potentially entered into negotiations. And I can't go
16 back, just like I couldn't look forward and predict
17 that the legislature was going to change it, you can't
18 look back and say how that would change the
19 negotiations, but it would have added an additional
20 negotiating factor into it, whether or not he was
21 ultimately convicted of lewd act or CSC, second. He
22 could have ended up being convicted of ABHAN and not
23 gotten some of those consequences, but still have
24 gotten sex offender registry and still could have
25 gotten prison time, so it would have changed the whole

1 equation and how Mr. Nation and I talked about the
2 case and how we talked about it with the solicitor's
3 office and the third thing, it could have, you know,
4 what could have added into the equation was, you know,
5 more of the discussions about what Mr. Nation's
6 chances of re-offending were, because as time has gone
7 by and sex offense laws have gotten stricter and the
8 collateral consequences greater, it's become much more
9 common to have people go through a formal sex offender
10 evaluation and one of the documents that the probation
11 department has provided to you and Mr. Nation getting
12 ready for this was the internal assessment that he's
13 not likely to re-offend and so there could have been
14 that additional level at the time where we could have
15 gotten a more comprehensive evaluation and what
16 probation has done, even at this point, as I said,
17 that's become much more the standard, given the
18 serious consequences, collateral consequences of pleas
19 in certain sex offenses.

20 Q All those discussions you talked about, all those
21 things you just talked about, those are things you are
22 called to discuss with clients as a result of the ABA
23 performance standards or ...

24 A Right. There's, you know, going back to Strickland v
25 Washington and more recently, Padilla versus Kentucky,

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1 the standards that guide criminal defense lawyers come
2 from multiple sources. They come from the NLADA
3 performance standards, the American Bar Association,
4 the criminal justice standards. It's been a number of
5 years, but the justice department has published a
6 compendium of standards from around the states. Judge
7 Ralph King Anderson, on behalf of the Commission on
8 Indigent Defense, has summarized the criminal practice
9 standards in South Carolina and you can look at other
10 bar publications or seminar materials and that sort of
11 thing and like Padilla v Kentucky pointed out, it
12 dealt with immigration consequences to a plea and
13 talked about how, you know, certain collateral
14 consequences, in particular, can be sort of a game
15 changer on whether somebody would want to enter a plea
16 or not enter a plea. They need to know about it. In
17 the Padilla case, he went from being a legal immigrant
18 having legal status, to somebody who's being deported
19 and so the certain, particularly certain types of
20 consequences like GPS or something that the standards
21 would include what needs to be discussed because of
22 the long-ranging consequences to the client and to the
23 potential that those consequences could have in a
24 decision to be made whether to plead guilty or go to
25 trial or how they negotiate the case. That it is

1 something that they need to be informed of before they
2 go forth.

3 Q So, and I think you just said this, it might have
4 refocused plea negotiation options, but he may have
5 decided to go to trial if he had known about these.

6 A I think he might have decided to go to trial or we
7 would have had additional considerations in how we
8 negotiated the plea. I mean, you can't go back very
9 easily and say how the case would have come out
10 differently, but there would have been a whole host of
11 dynamics that went into the preparation of going to
12 court under the current law now, as opposed to how it
13 was when he went to court back in the early part of
14 the last decade.

15 Q Is there anything else you wanted to add?

16 A Not unless you have any other questions.

17 Q That's all the questions I have right now.

18 Mr. Aplin: Thank you, Your Honor.

19 Cross examination of Charles Gross by Mr. Aplin

20 Q Mr. Grose, I just have a few things I want to ask you.
21 After you represented Mr. Nation in this case in a
22 plea, what was the maximum punishment for criminal
23 sexual conduct with a minor, second degree?

24 A I believe it was 20 years.

25 Q Twenty years. And you said that would have counted as

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1 a, was it a most serious offense or serious offense?

2 A I believe it was a most serious offense, but it would
3 have been a strike.

4 Q It would have been a strike and it was an 85% service
5 crime.

6 A Right.

7 Q And what was the maximum punishment for lewd act?

8 A Fifteen years.

9 Q So, it was five years shorter?

10 A It was five years shorter and the effective service
11 would be less. For example, if he was sentenced to
12 15 % for both, or fifteen years for both, serving 85%
13 would be longer than what he would be required to
14 serve assuming that he got his, you know, kept his
15 good time credits and earned his work credits.

16 Q Right. Because he wouldn't have necessarily have
17 served 85%. It could have added up to 60%, 65%,
18 somewhere with good credits.

19 A Well, that would have been for the lewd act.

20 Q For the lewd act.

21 A Well, for the criminal sexual conduct, he would have
22 to serve 85%.

23 Q So, if you are comparing those two offenses, if you
24 add a requirement of GPS monitoring, lifetime GPS
25 monitoring, on top of all the other consequences that

1 go with a lewd act conviction or potential
2 consequences as far as the sentence goes, which one
3 would you say is more severe?

4 A You know, I don't know if I can answer that question
5 entirely. Let me add one other thing, too. You and I
6 are aware from being involved in the Leroy Greer case,
7 that back in this of period time, a 10-year sentence
8 for criminal sexual conduct with a minor could have
9 actually been a 20-year sentence, but the State
10 Supreme Court changed the interpretation of how you
11 calculate the or handle the revocations to community
12 supervision.. That would have been something else we
13 would have taken into account back then. You know,
14 now, you know, I think that there is a decision that
15 each person is going to have to make. If you plead
16 guilty to criminal sexual conduct with a minor and get
17 a 20-year sentence, you know after that, after Greer,
18 the most you're going to get is 20 years. But if you
19 plead guilty to lewd act with a minor and you get a
20 15-year sentence, you know that the government is
21 going to be involved in your life with the GPS
22 monitoring for the rest of your life and some of the,
23 some of what Mr. Goranson has found out in this case
24 is, is that, you know, that you, that not only are you
25 wearing the bracelet, which really is a permanent mark

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1 that somebody can look at and see, the bracelet
2 requires being recharged. Apparently, there's some
3 anecdotal evidence that sometimes that takes up to 6
4 hours a day to charge. You are constantly being
5 tracked. I've not seen it, but we've learned that
6 Mr. Sorrow, for example, can sit at his desk and see
7 everybody on a computer screen that's under
8 monitoring. I would have to tell people that with
9 technology and the way it's advancing, it's probably
10 not going to be long before you, you can get an "app"
11 on your phone to see who's on the sex offender
12 registry. It's probably not going to be long that you
13 can get an "app" where you can see where the sex
14 offenders are. You know, as part of getting ready for
15 this case, I signed up to get the notifications of the
16 sex offenders who live or move within two miles of my
17 house, and so I now on my phone get emails from SLED
18 and the Greenwood Sheriff telling me whenever there's
19 a change in something like that. You know, I
20 understand that GPS has the ability to track and know
21 that you are in a car and even if you are speeding.
22 So, my opinion is, is that lewd act with lifetime GPS
23 for a man as young as Mr. Nation, it's much more
24 serious, much more long lasting, much more of an
25 intrusive penalty than criminal sexual conduct with a

1 minor, second degree, because it does not have the GPS
2 as a mandatory requirement.

3 Q And, of course, you are talking about someone in the
4 circumstance who would have committed their offense
5 after 2006. So, just the mere lewd act plea itself
6 would trigger the lifetime GPS.

7 A Right. Well, right after, well, 2006, 2008, whenever
8 the statute went into effect, it would trigger it. It
9 was not triggered when Mr. Nation was pleading.

10 Q Right. And it's not triggered as a result of entering
11 a plea in this case, either. Correct?

12 A I think it is. I think it's a matter of semantics. I
13 think you are going to argue that it's triggered
14 because he violated probation and he, essentially,
15 missed two appointments with Mr. Sorrow. That was the
16 finding here today. But it would not be triggered,
17 but for the offense, and what is significant is, I
18 think, is Mr. Nation doesn't get a jury trial before
19 he gets his sentence extended to the rest of his life
20 and he doesn't have notice of it before he's convicted
21 or before whatever happens triggers it, takes place.
22 All this is discussed in more detail in our
23 memorandum.

24 Q And I did read a copy of that, as well. The -- but
25 you would agree that the way the statute reads, the

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1 triggering event is the probation violation itself.

2 A No. There again, I think we are talking about
3 semantics. The probation violation is part of that,
4 but the triggering event would not be triggered but
5 for the conviction of lewd act. If you, if he'd been
6 convicted of criminal sexual conduct with a minor,
7 second degree, and we were here on a community
8 supervision revocation, it would not be triggered yet
9 under the same exact set of facts. So, I don't think
10 you can look at it and say it's just the probation
11 violation. I also think the probation violation, the
12 fact that the legislature put that in as one of the
13 things that can trigger it to happen was a recognition
14 by them that it was punitive and having made that --
15 because they could apply the sex offender register
16 retroactively, because it was more of a civil
17 consequence. But this was more of a punitive aspect
18 of it and they chose not to apply it entirely
19 retroactively, but that's the effect to Mr. Nation.

20 Q Okay. And I understand what you are saying. You are
21 saying there are two parts to it, two things that
22 effect that trigger, but would you not also have to
23 agree, that if there had not been a finding of a
24 probation violation, he would not be placed on
25 lifetime GPS?

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1 A I would have to agree with that, but I would also have
2 to agree that he would still be living -- because of
3 the conviction, and since the statute went into place,
4 he would still be living under the potential
5 consequence of that as long as he was on probation.
6 You know, the first probation violation in this case,
7 he was actually found not to be in violation. I don't
8 know if that ruling came out on the record entirely,
9 earlier today, but, so yeah, the violation triggers
10 it, but even if he had not been violated today, he
11 would still be living under the fear or the stress of
12 that potential consequence that he was not aware of
13 when he pled guilty.

14 Q Right. You mentioned a prior violation. Did you
15 represent him on the prior violation?

16 A No. You know, I think that our office has a file on
17 that, but my understanding was, and we probably got
18 notice of it. I could be wrong, you know, but it was
19 done on paper and I think that was just something that
20 Mr. Sorrow and Mr. Nation worked out. And to be quite
21 honest, I don't want to get Mr. Sorrow in trouble or
22 reveal any dirty secrets, but it probably was done
23 somewhat as a favor to him because of this whole GPS
24 thing and the recognition of how serious that is.

25 Q Because there was a finding of no violation, the

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1 statute didn't begin at that episode.

2 A Right.

3 Q So, as far as you know, no one from your office had
4 conversations with Mr. Nation at the time that
5 violation was pending about this whole GPS issue?

6 A As far as I know, we didn't. From looking at our
7 computer system, it looks like we were notified and
8 paperwork was sent to us, but it was resolved without
9 going to court or without us getting involved in it.

10 Q Okay. Well, and I hate to kind of ask you a
11 hypothetical, but we're talking about lots of looking
12 into the future and looking into the past, if you had
13 been involved with him at that time, would you have
14 advised him of the consequences of him committing the
15 probation violation? In other words, would you have
16 told him, "Listen, you know, if you commit another
17 probation violation, it's going to trigger lifetime
18 GPS placement."

19 A Yeah, I think that I would have. I think I would also
20 have talked with him about, you know, the fact that
21 for that to happen, that there were certain challenges
22 that probably should be made to it. I would also have
23 advised him of what the law says, what, you know, how
24 it's being implemented and the constitutional concerns
25 that I have about it. I wouldn't have advised him in

1 a way to suggest it was okay to violate probation, but
2 I would want him to know that that's something that
3 could be challenged.

4 Q Could be challenged. Are you, can you or any other
5 person, as far as you know, predict with 100% accuracy
6 whether someone is going to re-offend as a sex
7 offender?

8 A You know, if I had a crystal ball, I'd like to look
9 into it and answer a lot of these questions and I
10 think that the people, the professionals who testify
11 on this would make that exact point, but they are also
12 able to take into a whole host of considerations that
13 are beyond my training and expertise and make a
14 prediction, you know. So, while, no, I can't say
15 that, I can say that there are people who are better
16 qualified than me to maybe make that prediction even
17 though it's not 100% and I also believe that there are
18 studies that indicate that people who are sex
19 offenders but don't have some sort of pedophilia-type
20 disease actually re-offend and their recidivism rate
21 is lower than the other crimes, so I think it's, you
22 know, a lot of the views in society out there about
23 the rate of a sex offender re-offending is actually
24 wrong if you look at the literature and so I feel
25 comfortable saying that if someone like Mr. Nation is

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1 evaluated and doesn't have a disease or some type of
2 pedophilia, which he would have had to have gone
3 through the sexual violent predator screening before
4 he got out, that he's at a much lower rate as a
5 general statement of re-offending, than somebody who
6 goes to jail for larceny or forgery or something like
7 that.

8 Q Sure. And like you said, there are experts who know
9 more about it than you or I would ever know about
10 recidivism and rates of re-offending, but the bottom
11 line is, nobody can guarantee that an individual would
12 not re-offend.

13 A No. Nobody can guarantee that, but I think the point
14 that I was trying to make is, is that this is
15 something that could have gone into our negotiations
16 at the time. Because really, at the time, there
17 wasn't much difference between a plea to lewd act and
18 a plea to ABHAN if the judge ordered ABHAN, sex
19 offender registry. And now, that would have been
20 something that, you know, if you had experts say that
21 he wasn't likely to re-offend, that is something that,
22 you know, could have been considered to avoid this
23 collateral consequence and used as a negotiation chip
24 with the State that we just didn't know about at the
25 time, because this law didn't exist at the time.

1 Q Sure. And I mean, that's exactly what you've already
2 testified to, that you can't look back and know what
3 you would have done, just that it would have changed
4 the conversation and the negotiations.

5 A It would have been a complete game changer. I mean, I
6 can, you know, tell you -- and the point is, I think
7 that, you know, he had the right, before something
8 like this is added to him, he has the right to have
9 the game changed so that all that can be considered.

10 Q Well, at some point you talked about the underlying
11 crime and you used the term that it was consensual,
12 that the person was not of age to consent to the
13 sexual contact. At the time that you were negotiating
14 the plea with the solicitor and working on those
15 issues, did you feel like Mr. Nation was a predator or
16 someone who had major issues with possibly re-
17 offending or did you feel, like you testified, that it
18 was a consensual act and that the age limit was the
19 problem?

20 A I felt like it was a consensual act, the age limit was
21 a problem and that really, in my opinion, and
22 obviously we didn't prevail on my opinion, he should
23 have gotten ABHAN and probation and no sex offender
24 registry for this offense, but for whatever dynamics
25 were going on at the time, we were unable to work that

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1 out and, you know, had we done this same plea in front
2 of a different judge it might have come out
3 differently as well.

4 Q So, he's a guy who's not a hardened criminal, didn't
5 have this serious criminal history that you were
6 worried was going to be this person with a criminal
7 mind who's going to cause more problems down the road.
8 That's not something that was in the top of your mind
9 or...

10 A No. And I think, you know, history has -- while he's
11 been under your department's supervision has kind of
12 bared that out. I mean, I heard some mention about a
13 warrant, but that was a 30-day offense. There's been
14 no other sex offender violations. He's not been out
15 there committing any serious crimes that endangered
16 the community safety.

17 Q So, along those lines, you would say he's the kind of
18 person who can follow rules, follow instructions and
19 pretty much stay to the straight and narrow.

20 A Yes. But if you suggest that he follow the rules of
21 lifetime GPS, I wouldn't quite carry it that far.

22 Q No, no, no. I'm not suggesting that. The point I'm
23 getting at is, at the time of the plea, if you had
24 known, even with lewd act, that down the road
25 somewhere, if he's on probation and he commits a

1 violation and he might end up with lifetime GPS, is it
2 possible you may have counseled him down that road
3 anyway knowing he's going to follow the straight and
4 narrow, not a hardened criminal, but he would be able
5 to follow the rules of probation and make it through
6 without a violation.

7 A Well, to, I see what you're coming at. My general
8 philosophy is, is that you want to avoid that lifetime
9 GPS and as a last consequence and I think the point
10 I'm trying to make is that had we known it was a
11 consequence, that's a decision that he could have
12 made. That, the fact that that was in place may have
13 also opened some other doors for other avenues, like
14 in ABHAN without that potential. You know, I tell a
15 lot of people that, while you believe that you are not
16 likely to violate your probation, you can't know that
17 and part of the reason why, with all due respect, is
18 your agency can be very hyper technical about how the
19 violations occur and that varies from county to
20 county, even within this circuit. There's no
21 consistency. I mean, I've had agents try to violate
22 people before not calling when they got locked up in
23 jail, but the agent wouldn't accept a collect call if
24 they'd made it. So, it can get very highly technical
25 and so what we're here right now having this

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1 conversation on a finding of him having missed two
2 reports, which while I understand how seriously your
3 department, how seriously the Court looks at reporting
4 and that is something that I try to stress, it is
5 certainly not the same as having committed another or
6 having committed a violent felony like murder or armed
7 robbery or another sex offense.

8 Q Sure. And I don't mean to suggest that it's
9 equivalent, but just pointing out that -- I know I'm
10 not testifying, but I asked you the question that you
11 would agree, again, going back and not knowing exactly
12 what would have been done, it's possible that the
13 outcome could have been a lewd act, even knowing
14 everything else.

15 A It's possible, but it's also possible the result could
16 have been very different and the point is, and I keep
17 making it over and over again and I'll say it and shut
18 up, but he didn't get to make that choice, is the
19 point.

20 Q Two last things: One is, would you agree that under
21 the statute that exists, if he was here saying having
22 pled to criminal sexual conduct with a minor, second
23 degree, that Judge Addy would have the authority to,
24 in his discretion, impose GPS based on that probation
25 violation anyway?

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1 A No. I would think that that would be unconstitutional
2 anyway, because that is a punitive measure that would
3 extend, would change his sentence. Judge Addy can
4 change conditions of probation and I think that, even
5 here today, for there to be a basis for it and I don't
6 think there is a basis for it, if we were not talking
7 about the GPS law, then Judge Addy could have ordered
8 continued probation, he could order some type of
9 monitoring whether it is electronic monitoring
10 supervision, that is something that your department
11 uses and has used for a long period of time, but Judge
12 Addy, if we weren't looking at this statute, Judge
13 Addy could not do that and extend it beyond the period
14 of his sentence, either the five years of probation
15 or, you know, or prison. Obviously, we would be
16 talking about a period of probation. So, were we here
17 on the other, on criminal sexual conduct, and were
18 there a basis and Judge Addy ordered some sort of
19 supervision during probation, we would not have an
20 issue with that. The issue is, is extending it beyond
21 the end of the probationary period when the sentence
22 would be over.

23 Q And so, if I understand you correctly then, there are
24 constitutional challenges whether it's a discretionary
25 placement for CSC with a minor, second or if it's a

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1 mandatory placement for lewd act. If it's going to
2 lifetime GPS, you would still have some constitutional
3 challenges to that.

4 A Absolutely. We just knew that they were in play here
5 because of the mandatory language of lewd act.

6 Q Sure. And I think you anticipated my last question,
7 and I won't make you repeat it, but you said that you
8 would agree that Judge Addy, as a condition of
9 probation for the duration of this probation case,
10 would have the authority to impose GPS monitoring.

11 A Yeah. I believe that that would be the case. Now, I
12 would, maybe this is getting more into Judge Addy's
13 discretion. I think that there would need to be some
14 sort of basis for that, which I don't think exists on
15 these facts. I mean, while it's discretionary, I
16 would argue that this would not be an appropriate case
17 for it. The fact that -- I mean, what Mr. Nation, Mr.
18 Goranson and I are here complaining about today is the
19 fact that this is going to be for the rest of his
20 life, even when the sentence is satisfied, however
21 it's ultimately satisfied, through him completing
22 probation or through completing the suspended portion
23 of the sentence that the Court could impose.

24 Q Okay. Thank you, Mr. Grose. I think that's all I
25 have.

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1 The Court: Anything on redirect?

2 Mr. Goranson: No further questions.

3 The Court: All right. Thank you, sir. Mr. Goranson?

4 Mr. Goranson: Agent Sorrow.

5 The Court: I tell you what, before we swear him in,
6 let's take a few seconds, take a brief break. I see some
7 fidgeting.

8 (Brief break)

9 The Court: We're back on the record.

10 (After being duly sworn by the Clerk of Court, Jeff
11 Sorrow testified as follows:)

12 Direct examination of Jeff Sorrow by Mr. Goranson

13 Q Would you state your name for the record.

14 A Jeff Sorrow.

15 Q And what do you do, Agent Sorrow?

16 A I'm a probation and parole agent.

17 Q How long have you been doing that?

18 A Going on 18 years.

19 Q Are you familiar with Mr. Nation's case?

20 A I'm his agent.

21 Q You are his supervising agent?

22 A Yes.

23 Q Have you had any training dealing with GPS monitoring?

24 A Yes.

25 Q How much training?

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1 A , We have gone through the courses on installation,
2 computer programs, pretty much everything that we do
3 with GPS, both myself and the other agent, Agent
4 Sears, we have completed that training.

5 Q And if you could explain to us a little bit about how
6 that software works for monitoring.

7 A Be a little more specific.

8 Q Okay. Let's start with this: When somebody goes on GPS
9 monitoring, what do you do?

10 A If they've been ordered, for example, a release
11 certificate to wear the GPS monitor, they come into
12 our office. We put the ankle monitor on them. It's a
13 device that is attached to the ankle with a strap. We
14 enter all the information into a computer system which
15 then will track the monitor. I guess that's what
16 you're talking about.

17 Q Right. And so, if you have somebody on monitoring,
18 you can pull them up on a computer screen.

19 A That's correct. What we will do is set up an
20 inclusion zone, exclusion zones. That is our terms for
21 where they're supposed to be or where they can go.

22 Q Okay. And can you see it realtime, what's going on
23 with the person?

24 A Pretty much.

25 Q I think we looked at one monitor and you had a person

1 going back and forth between Calhoun Falls.

2 A That's correct.

3 Q And you could tell how fast they were going.

4 A That's correct.

5 Q And you could tell if someone is at home.

6 A Yes.

7 Q Or at the grocery store.

8 A Yes.

9 Q Okay.

10 A I think what you're getting at is, the computer
11 program, what it picks up from the satellite is, it
12 can give you the closest, nearest address to the
13 individual.

14 Q Once a minute. Right?

15 A I don't know the exact time range.

16 Q Okay. Do you get alerts sometimes with the GPS?

17 A We do get alerts.

18 Q What would be -- why might you get an alert?

19 A Well, if a battery goes dead, if the battery is
20 getting low, if you had an exclusion zone set up and
21 say a person was nearing or had entered it, you would
22 be alerted to that by our command center in Columbia
23 that monitors these devices 24-hours-a-day.

24 Q Okay. And you mentioned a weak battery or a dying
25 battery, how long do those batteries take to charge?

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1 A I think the three hours is what the standard charge
2 would be.

3 Q Three hours that somebody has to sit next to a wall,
4 plugged into a wall.

5 A That's correct.

6 Q And have you seen anything higher than that?

7 A Yes. Sometimes, as the batteries age, sometimes they
8 get weaker. You have to charge them more often. We
9 often encourage people that we supervise, if they have
10 some time to charge that thing between their normal --
11 they are given a charging schedule, but if they have
12 some time where they are watching television or
13 something, just plug it in to kind of give it a boost.

14 Q So, you have a charging schedule that they are
15 supposed to follow?

16 A That's correct.

17 Q Okay. Have you seen charges as long as six hours a
18 day? Have you seen that?

19 A I don't know that I would say six hours a day.

20 Q Well, I mean, what's the most you've known someone
21 have to charge?

22 A Well, it depends. I mean, you know, they have a
23 regular charging schedule that we set up in the
24 computer and we usually do that with a time that's
25 convenient for the person wearing the device. If that

1 device gets weak, then we often call them, tell them
2 to plug in, charge it up, whatever, and I, personally,
3 have not seen one for six hours.

4 Q But three hours a day is average?

5 A That's average.

6 Q What size device are we talking about here?

7 A I'd say a device that would fit in the palm of your
8 hand. The strap is made two inches wide.

9 Q What's it made out of?

10 A Plastic.

11 Q Do you have to take that off to get in the shower?

12 A No.

13 Q All weather?

14 A That's right.

15 Q And how much does it cost per month?

16 A It's \$20.00 a week for wearing the GPS and, usually,
17 in most cases, you'd be under supervision and that
18 would be potentially a fee of \$20.00 a week, so let's
19 say an average of \$40.00 a week.

20 Q And for -- so, once they are done with supervision,
21 and they are under GPS monitoring, it's \$20.00 a week.

22 A Right.

23 Q For the rest of their life.

24 A Right.

25 Q Let's switch gears here. When you make assessments as

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1 to the likelihood of re-offending, there are certain
2 tests you can do, I guess, when somebody comes on
3 probation. What are those tests?

4 A Well, we have a standard form for sex offenders, which
5 is referred to as the *Static 99*. It's just a series
6 of questions that are based on a number system.
7 Depending on what you answer, you get a score from
8 zero to whatever and when we add up those numbers when
9 the test is over, it will give you the level of
10 supervision that we will supervise a sex offender.

11 Q Okay. I have a printout from when we talked earlier
12 today. Would you recognize it if I showed it to you?

13 A Yes. I would.

14 Mr. Goranson: May I approach the witness?

15 The Court: Yes.

16 (Mr. Goranson hands document to the witness)

17 Q Is that the *Static 99* for Anthony Nation?

18 A It is.

19 Q I'd like to move to have this entered as Defense
20 Exhibit No. 1.

21 Mr. Aplin: No objection.

22 The Court: Without objection, Defense No. 1 is in
23 evidence.

24 (Whereupon, a *Static 99* is entered into evidence as
25 Defense Exhibit No. 1, without objection)

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- 1 Q And what were the results of Mr. Nation's *Static 99*?
- 2 And I'll hand this back to you.
- 3 A Are you referring to his score?
- 4 Q Yes, sir.
- 5 A His total score was a zero, which would put him
- 6 classed as one of the, I guess, the lowest level sex
- 7 offenders that we would have.
- 8 Q And who did that test?
- 9 A That test was given in Greenwood. I believe Austin
- 10 McDaniel conducted that test when he was originally
- 11 released.
- 12 Q Okay. And you may not be familiar with this, but do
- 13 you know if he also was screened for sexual violent
- 14 predator before he was released?
- 15 A I'm not familiar with that.
- 16 Q So, if Judge Addy were to continue Mr. Nation on
- 17 probation, that would be intensive supervision.
- 18 Correct? And order the GPS monitoring.
- 19 A If he were to continue ---
- 20 Q Yes.
- 21 A --- on supervision. I don't believe that he would
- 22 continue to wear the GPS monitor.
- 23 Q Well, let's just say he was ordered to do the GPS
- 24 monitoring and continue probation. How much would
- 25 that be a week?

TESTIMONY - JEFF SORROW

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1 A It would be \$40.00 a week.

2 Q Forty dollars a week. So, \$160.00 a month.

3 A Yes.

4 Mr. Goranson: No further questions at this time.

5 Mr. Aplin: Thank you, Your Honor.

6 Cross examination of Jeff Sorrow by Mr. Aplin

7 Q Agent Sorrow, the GPS tracking itself, those computer
8 points and everything that you get, does GPS work
9 inside of a building?

10 A It uses a tower configuration, a triangulation based
11 on cell signals.

12 Q Okay. So, it's not actually a GPS signal beaming up
13 to a satellite once a person is indoors.

14 A That's correct.

15 Q Does it still get actual tracking points or does it
16 just tell you that they're in that particular
17 building?

18 A I think what you're asking is if it shows that they
19 are home and as long as there is some sort of signal
20 that is being transmitted, then, yes. And often, if a
21 signal is lost, it could be as simple as plugging a
22 device in, to load a series of points that had been
23 tracking earlier or walk outside and let the satellite
24 pick it up.

25 Q Okay. And I think you were asked before about someone

1 traveling between here and Calhoun Falls or something
2 like that and you were able to track the points on the
3 computer to see the speed they are traveling and where
4 they were going pretty accurately. Right?

5 A Yes.

6 Q Do you get that same kind of accurate tracking within
7 someone's house? Can you see them going from one
8 place to another inside that house?

9 A No.

10 Q Okay. The *Static 99* score, does that mean that
11 Mr. Nation's not going to re-offend?

12 A No.

13 Q And the, what is the standard supervision fee for a
14 person on probation?

15 A \$50.00 per month.

16 Q So, when they are on intensive and GPS, do they also
17 pay the \$50.00 a month on top of the...

18 A They do not.

19 Q Okay. So, it would be \$160.00 a month versus the
20 \$50.00 a month just a standard probationary that he
21 would be paying.

22 A That's correct. If you wear the GPS device, you pay
23 \$45.00 a week. I don't think you would necessarily
24 have to be on intensive supervision for that device.
25 On standard supervision, it's still much like a

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1 tracking case.

2 Q Okay. So, if you were on standard supervision and had
3 the GPS device, you are paying \$20.00 a week for the
4 device and then \$50.00 a month ---

5 A Correct.

6 Q Okay.

7 Mr. Aplin: No further questions.

8 Mr. Goranson: Nothing further from the defense.

9 The Court: Thank you, sir. You may step down.

10 Anything else, Mr. Goranson?

11 Mr. Goranson: No further witnesses.

12 The Court: Anything from the Department?

13 Mr. Aplin: No witnesses, Your Honor.

14 The Court: All right. As I said when we were on the
15 record, I have had a chance to review the brief that was
16 filed by Mr. Nation in opposition to the implementation of
17 lifetime GPS monitoring. Gentlemen, correct me if I'm
18 wrong, but my understanding of the law is that once in
19 violation that's found to have been willful, the law
20 requires the Court to impose lifetime GPS monitoring. Is
21 that your reading of the law?

22 Mr. Aplin: It is, Your Honor.

23 Mr. Goranson: Yes. It is, Your Honor.

24 Mr. Grose: Well, I will just add, that's the reading
25 of the statute, but I think the Court can also enforce the

1 State and Federal Constitutions. I believe you don't have
2 to do it if you rule that Mr. Nation's rights have been
3 violated.

4 The Court: All right. So, with that qualification,
5 however, the Statute, I believe, does read that imposition
6 of lifetime GPS is mandatory. Would either side care to
7 speak? I imagine I can anticipate the side that probation
8 would say, but there is a provision of that law, I believe,
9 that allows Mr. Nation, after 10 years, to petition for
10 removal of the lifetime GPS requirement. Is that correct?

11 Mr. Aplin: Your Honor, it's actually not for his
12 offense. If you look at the document that I handed up,
13 subsection (h), the last sentence of that statute says that
14 a person may not petition the Court if the person is
15 required to register pursuant to this article for
16 committing criminal sexual conduct with a minor in the
17 first degree or committing or attempting to commit a lewd
18 act upon a child under the age of 16.

19 The Court: I stand corrected, then. I apologize. So,
20 basically, this is truly lifetime GPS monitoring without
21 any possibility for Mr. Nation, as this law applies to Mr.
22 Nation, there's no possibility of his getting off of it.
23 Would that be correct?

24 Mr. Goranson: There's no opportunity to consider any
25 of his individual circumstances, there's no discretion,

1 other than what Mr. Grose argued earlier. It must be
2 imposed.

3 Mr. Aplin: Your Honor, I apologize when you asked me
4 earlier, I did have one exhibit that I wanted to hand up
5 and I've given a copy to Mr. Goranson. It's, essentially,
6 just all of the department's policies, procedures, forms
7 that we use for GPS folk. They are just blank forms. They
8 don't apply to Mr. Nation specifically, but I thought it
9 would be useful for the Court to see these to see how the
10 department implements the actual use of the GPS device.

11 The Court: All right. Very good. Without objection?
12 Y'all are okay to make that a part of the record?

13 Mr. Goranson: No objection.

14 (Whereupon, a 29-page document is entered into
15 evidence as State's Exhibit No. 1, without objection)

16 The Court: All right. Anything further? Anything
17 else that needs to be put on the record at this point in
18 time, Gentlemen?

19 Mr. Goranson: We had just one more thing, Your Honor,
20 the sentencing sheet that's been marked as a Defense
21 Exhibit. It's the original sentencing sheet and so if I
22 could just put that into evidence. The file is in
23 Greenwood. I'll give it to you so you can have it.

24 Mr. Aplin: No objection, obviously, Your Honor.

25 Mr. Aplin: One more thing I did want to point out and

1 I know you don't have the benefit of the State having
2 submitted a pre-hearing brief like you do from the other
3 side and I, of course, would be happy to submit something
4 if you want something post-hearing. I finally was able
5 this past week to sit down and draft an outline of what I
6 would argue if I needed to argue and I can turn that into a
7 sort of a brief format if you need. I could submit it
8 after the hearing. Also, just the one point that I know
9 was argued in their brief and been brought up is that the
10 device itself being like a scarlet letter, it's a brand, a
11 sign that this person has problems that everybody knows
12 about it, that it really shows up and that the size of it
13 and puts that person out there almost like they're being
14 condemned if the public knows they have the device on and
15 just for the record, I just wanted to point out that I've
16 been wearing a GPS device this whole time we've been in
17 court. I don't believe anybody noticed it or pointed it
18 out and I'm going to take it off my ankle. I'm going to
19 hand it up just so you can look at the weight of it, the
20 size of it and see what the device is really like.

21 The Court: All right. Please. And you are correct in
22 that I did not notice that you were wearing that. Had you
23 been at a swimming pool, perhaps I would have.

24 Mr. Grose: Which is, I think, one of the points we
25 made in the brief.

1 The Court: Certainly.

2 Mr. Aplin: Your Honor, unfortunately, I can't let you
3 keep this, because it's about a \$400.00 device, but if
4 you'd like to look at it. (Mr. Aplin hands GPS device to
5 Judge Addy)

6 The Court: All right. I've examined the device. It
7 seems to have about the same weight as, perhaps, a cell
8 phone or an I-phone, about one-and-a-half inches wide and I
9 suppose about two-and-a-half to three inches long and about
10 maybe an inch, and inch-and-a-half thick.

11 Mr. Aplin: And, Your Honor, there was testimony about
12 the charging. There's a little plug on the front where the
13 cord goes in to charge the battery.

14 The Court: I see that. All right. I do conclude that
15 while, perhaps, it would not be terribly comfortable to
16 wear, it would not be all that uncomfortable to wear at the
17 same time. It certainly, probably, would be noticeable,
18 but I imagine it would be something that one would adjust
19 to. All right. Anything further?

20 Mr. Goranson: I didn't know if you wanted us to
21 supplement our memo or argument set forth. I certainly be
22 happy to include some of the facts that we've talked about
23 here, testimony-wise here today.

24 The Court: I mean, if you think the record is

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1 protected by the memo being submitted, again, I've reviewed
2 your memo and I've taken into account all the arguments
3 that you have made.

4 Mr. Goranson: I was just saying a couple of things.
5 One, it sounded like it costs more to be on GPS monitoring
6 than it does on standard supervision, about \$80.00 a month
7 versus \$50.00 a month for supervision. Two, I would not
8 like that thing on my leg for the rest of my life and I
9 don't know when they get taken off, if ever. They may have
10 five minutes a year or every couple of years with that
11 thing off, but I don't think we had any testimony about
12 that, but I'd just like the Court to consider that.

13 The Court: All right. Nothing else from the State at
14 this point?

15 Mr. Aplin: No, Your Honor.

16 Court's Ruling

17 The Court: Well, I do find that the GPS monitoring is
18 mandatory, that there is no discretion or this Court has no
19 discretion, rather. Having found that Mr. Nation is in
20 willful violation for having missed two of his appointments
21 with his probation officer, I'm forced to conclude that the
22 statute requires me without any discretion to require that
23 he be subject to the GPS monitoring for the rest of his
24 natural life. If I had discretion, I perhaps would be

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1 inclined to use it under these circumstances according to
2 the facts as they were presented to me, but I must conclude
3 that I have no discretion, zero, none as to whether or not
4 I should impose GPS monitoring, therefore, I do order it
5 imposed. There is a presumption that the statutes in this
6 state are constitutional and I do not find that any of the
7 arguments of defense counsel, although very well made and
8 very articulate I do not find that they have merit or that
9 this Court should otherwise deviate from the explicit black
10 letter law of the statute. I have no options, therefore, I
11 do require GPS monitoring. With respect to the violation
12 itself, I believe he's been jail for, according to my math,
13 111 days as of today. I do take missing appointments
14 rather serious and you missed at least two and I found that
15 he did miss two reports so, just revoke five months, give
16 him credit for the time that he's served of 111 days and
17 he's, I imagine he's very close to having satisfied that,
18 but that would be an appropriate sentence in line with what
19 I and other judges give for those kinds of violations and
20 continue him on probation. Good luck. Gentlemen.

21 Mr. Goranson: Thank you, Your Honor.

Mr. Aplin: Thank you, Your Honor.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE

Be it known that I, the undersigned Jo Rice, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before the Circuit Court for Greenwood County, South Carolina, so given on September 14, 2011 to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand
and seal this 29th day of November, 2011.

Jo Rice
Jo Rice
Official Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

THE STATE)

v.)

Anthony Nation,
Defendant)

Indictment Number: 2001-GS-24-1096

Memorandum in Opposition to Revocation of
Probation and Motion to Declare Portions of the
Sex Offender Registry Unconstitutional

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
JUL 11 2001

When Anthony Nation pleaded guilty to committing a lewd act on a minor, he knew he would have to register as a sex offender for the rest of his life. He had no idea what else South Carolina had in store for him. While Nation was confined to the Department of Corrections, the General Assembly decided to banish him to remote locations of the state. Now that Nation is serving the probationary portion of his sentence, the Department of Probation, Parole, and Pardon Services (SCDPPPS) asks this Court to brand Nation with a "scarlet letter" he must wear for the rest of his life or go back to prison.

Nation respectfully requests this Court to continue him on probation. Nation further moves this Court to declare certain portions of the Sex Offender Registry to be unconstitutional. Specifically, Nation challenges the following provisions:

- The lifetime Residency Restrictions contained in S.C. Code Ann. (1976) §23-3-535; and
- The Lifetime Global Positioning Satellite (GPS) monitoring contained in S.C. Code Ann. (1976) §23-3-540.

Nation does not challenge the Sex Offender Registry as it existed at the time of his guilty plea. Rather, Nation moves this Court to allow him the freedom to choose where to live and to be free from the invasion of privacy and constant humiliation of GPS monitoring. Accordingly, the following dates are relevant:

- December 1, 1999 to January 31, 2000 – Incident dates.
- July 16, 2003 – Guilty plea and sentencing date.
- June 7, 2005 – General Assembly approves lifetime GPS monitoring to become effective when SCDPPPS receives the necessary funds. 2005 Act 141.
- June 16, 2008 – General Assembly adds lifetime Residency Restrictions to Nation's sentence by statute. 2008 Act 333.
- February 14, 2011 – Effective date Residency Restrictions. *See* 2008 Act 333 §4 (effective 90 days after SLED certifies sex offender mapping software has been implemented).
- May 2011 – SCDPPPS asks the Court to add lifetime GPS monitoring to Nation's sentence.

This memorandum of law will review the factual and procedural background of Nation's case, outline the evolution of this state's Sex Offender Registry, and argue why these provisions are unconstitutional.

I. Factual and Procedural History.

Between December 1, 1999 and January 31, 2000 Nation had consensual sex with a fifteen (15) year old female. Nation was twenty-nine (29) at the time of the incident. The victim reported the incident to the Greenwood County Sheriff Department on February 22, 2001. On October 8, 2001, the Greenwood County Grand Jury indicted Nation for second degree criminal sexual conduct with a minor and committing a lewd act on a child under the age of sixteen (16). *See* Indictment Number 2001-GS-24-1096. Both charges were based on the same underlying facts.

On July 16, 2003 Nation pleaded guilty to lewd act. The Honorable William P. Keesley sentenced him to fifteen (15) years in the Department of Corrections suspended on the service of twelve (12) years to be followed by five (5) years probation. The state dismissed the criminal

sexual conduct charge. At the time of Nation's guilty plea, both charges required identical Sex Offender Registry conditions. Second degree criminal sexual conduct with a minor, however, carried a potential penalty of twenty (20) years imprisonment¹ without the possibility of parole while lewd act was punishable by a parole eligible fifteen (15) years imprisonment. SC Code §16-3-655(C)(3) and §16-15-140. More significant than the parole eligibility, lewd act offered the greater potential to reduce the amount of time actually served by earning good time credits and work credits. *See* SC Code 24-13-100 *et. seq.* (second degree criminal sexual conduct with a minor is a no parole offense whereas lewd act is parole eligible). Accordingly, at the time, second degree criminal sexual conduct with a minor carried the harsher potential penalties.

Nation was released from prison in 2009, registered as a sex offender, and completed six months of intensive supervision. In a prior violation hearing involving allegations of missed reports, the Honorable Frank R. Addy, Jr. found Nation was not in willful violation of his probation. Judge Addy continued his probation. In May 2011, SCDPPPS arrested Nation and alleged he violated his probation by failing to report during March and April 2011. SCDPPPS now asks this Court to find Nation in violation of his probation and order GPS monitoring for the rest of Nation's life. To do so would violate the United States and the South Carolina Constitutions. Following a discussion of the history of South Carolina's Sex Offender Registry, each constitutional argument will be addressed below.

II. History of South Carolina's Sex Offender Registry.

When South Carolina first enacted a sex offender registry in 1994, the legislative intent was "to promote the State's fundamental right to provide for public health, welfare and safety of

¹ Actually, at the time of Nation's guilty plea, a person sentenced for a no parole offense, such as second degree criminal sexual conduct with a minor, faced the potential of being incarcerated for almost twice the time actually ordered by the judge. *State v. Mills*, 360 S.C. 621, 602 S.E.2d 750 (2004) overruled by *State v. McGrier* 378 S.C. 320, 663 S.E.2d 15 (2008).

its citizens.” 1994 Act 497, Part II §112A (S.C. Code §23-3-400). The registry was “not intended to violate the guaranteed constitutional rights of those who have violated our nation’s laws.” *Id.* “[T]he General Assembly . . . intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the General Assembly’s intention to create a non-punitive act.” *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). In fact, the sex offender registry was not public, and the South Carolina Law Enforcement Division (SLED) was responsible for maintaining the “confidentiality of the data and information maintained in the registry,” although the information would be available to law enforcement. *Id.* (S.C. Code §23-3-410, 420, 490).

Although Sex Offender registration in South Carolina has always been for life, 1994 Act 497, Part II §112A (S.C. Code §23-3-460), our Supreme Court traditionally considered the requirement to be non-punitive. *Walls, supra*; *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003) (since sex offender registration is non-punitive, no liberty interest is implicated regardless of the length of time registration is required); and *In re Ronnie A.*, 355 S.C. 407, 410, 585 S.E.2d 311, 312 (2003) (held requiring a juvenile to register as a sex offender does not violate due process, at least in situations where the juvenile’s “registry information will not be made available to the public because of appellant’s age at the time of his adjudication.”).²

Since our Court’s decisions in *Walls*, *Hendrix*, and *Ronnie A.* in 2002 and 2003, South Carolina’s Sex Offender Registry has become increasingly punitive. The General Assembly, in fact, enacted these punitive provisions not only after the incident date in this case but also after

² Initially, the Sex Offender Registry applied only to “convictions,” and not juvenile adjudications. 1994 Act 497, Part II §112A (S.C. Code §23-3-430). See *State v. Ellis*, 345 S.C. 175, 179, 547 S.E.2d 490, 492 (2001) (a juvenile adjudication is not the same as a conviction). When the General Assembly began requiring juveniles adjudicated of certain offenses to register as sex offenders, the juvenile’s information remained confidential. 1996 Act 444 §16 (S.C. Code §23-3-430, 490). It wasn’t until 1998 that the General Assembly authorized release of juvenile sex offender information under certain circumstances. 1998 ACT 384 §1 (S.C. Code §23-3-490).

the trial court imposed sentence on Nations. At the time of Nation's guilty plea, second degree criminal sexual conduct with a minor carried harsher penalties than lewd act. *See* Section I, *supra*. This situation is no longer the case.

In 2005, the General Assembly began requiring lifetime GPS monitoring for an offender convicted or adjudicated delinquent of certain offenses, including first degree criminal sexual conduct with a minor and lewd act. 2005 Act 141 §8 (S.C. Code §23-3-540). Act 141 recognized the punitive nature of the new requirement. Since §23-3-400 was not reaffirmed in the Act, there was no ongoing declaration of a non-punitive intent. In fact, the General Assembly never included such a declaration in any of the subsequent amendments to the GPS requirement. *See* 2006 Acts 342 and 346, 2008 Act 335, and 2010 Act 289. The new penalty expressly applies only to new sentences and subsequent violations of probation, parole, or community supervision for people who had already been convicted and sentenced. Any ambiguity about the new punishment applying only to future convictions and supervision violations was clarified in 2006. *See* 2006 Act 346 §3.

Also in 2005, the General Assembly began restricting residency by prohibiting sex offenders "from living in campus student housing at a public institution of higher learning supported in whole or in part by the State." 2005 Act 94 §2 (S.C. Code §23-3-465). In 2008, the General Assembly prohibited sex offenders convicted of certain offenses from residing "within one thousand feet of a school,³ daycare center,⁴ children's recreational facility, park, or public playground." 2008 Act 333 §1 (S.C. Code §23-3-535). Neither of these Acts declared the new

³ The South Carolina Department of Education lists 1218 public schools in the state. <http://www.scag.gov/wp-content/uploads/2011/03/8th1.pdf> (last viewed June 29, 2011).

⁴ The South Carolina Department of Social Services lists fifteen (15) licensed child care facilities in South Carolina, nineteen of which are in Abbeville County. <http://childcare.sc.gov/main/general/facilities/search/index.aspx> (last viewed July 7, 2011).

restrictions to be non-punitive. To the contrary, 2009 Act 77 §1 added S.C. Code §23-3-535(E) and expressly declared the Residency Restriction requirements to be “penalties.”⁵ According to the State Law Enforcement Division, the Residency Restrictions became effective on February 14, 2011.⁶

Likewise, the actual registration requirement has become harsher. Initially, a sex offender was required to register annually in the offender’s county of residence. 1994 Act 497, Part II §112A (S.C. Code §23-3-460). Both of these requirements have been expanded. Offenders are now required to register biannually and, in some cases, quarterly. In addition to the county of residence, offenders must register in any county where the offender works, attends school, or owns property. S.C. Code §23-3-460.

III. Arguments.

A. Lifetime GPS monitoring and Residency Restrictions Violate the *Ex Post Facto* Clauses of the United States and South Carolina Constitutions:

The *ex post facto* clause prohibits “every law that aggravates a crime, or makes it greater than it was when committed” and “every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.” *Tennessee v. Rogers*, 532 U.S. 451, 456 (2001). In analyzing *ex post facto* claims the Court must determine whether the intent of the legislature is to impose retroactive punishment, or if the statute in question is so punitive in effect as to negate the state’s attempt to deem it a civil regulation. *Smith v. Doe*, 538 U.S. 84, 92 (2003). The “clearest proof” of punitive effect is required when the General

⁵ S.C. Code §23-3-355 was subsequently amended by 2010 Act 289. As discussed previously, this Act did not contain any non-punitive declaration. Section 23-3-355(E)’s declaration that the residency restriction requirements are “penalties” remains in place.

⁶ http://www.communitynotification.com/cap_main.php?office=54575 (last viewed June 29, 2011).

Assembly's express or implied intention is to enact a law that is civil in nature. *State v. Walls*, 348 S.C. 26, 31 (2002) (internal citation omitted).

When the General Assembly initially enacted the Sex Offender Registry, the registry was "not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws." S.C. Code §23-3-400. Our Supreme Court, accordingly, held the Sex Offender Registry to be a non-punitive statute that was civil in nature. *Walls, supra, Hendrix, supra, and Ronnie A., supra*. As outlined in Section II, *supra*, the General Assembly did not repeat the non-punitive declaration when adding the additional penalties to the Sex Offender Registry that Nation now challenges.

The intent of the legislature in this case is clear: lifetime GPS monitoring and Residency Restrictions are punitive measures. *See* Section II, *supra*. Because the General Assembly intended these provisions to be punitive, it is only necessary to prove that the act is being applied retroactively to Nation and disadvantages him. *See Walls, supra*.

Both the Supreme Court of the United States and the Supreme Court of South Carolina have held that the penalty for a violation of probation or community supervision relates back to the original offense for purposes of punishment. *Johnson v. United States*, 529 U.S. 694, 699 (2000) ("Penalties for violations of the terms of supervised release...are attributed to the original conviction rather than to the violation."); *State v. McGrier*, 378 S.C. 320, 331, 663 S.E.2d 15(2008) (CSP violation is not a second conviction, it is an addition to original sentence). If penalties were not attributed to the original conviction, then a person would be entitled to counsel and a trial by jury where the state would have to prove guilt beyond a reasonable doubt. *Johnson*, 529 U.S. at 700. *See McGrier*, 378 S.C. at 331, 663 S.E.2d at 21 ("[U]nder the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence must be found by a

jury, not a judge, and established beyond a reasonable doubt, not merely by preponderance of the evidence.”).

Therefore, no further *ex post facto* analysis is necessary. *Smith v. Doe*, 538 U.S. 84, 92-93 (2003) (“a conclusion that the Legislature intended to punish would satisfy an *ex post facto* challenge without further inquiry into its effects...”). However, Nation provides such analysis for the Court. An analysis of the statute’s effects further reveals its punitive nature.

In order to determine whether the Act is punitive in effect the Court should look to the factors listed in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). These factors are:

Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions. Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face.

Id. at 168-169 (footnotes omitted). Each of these factors will be discussed below.

1. Affirmative Disability or Restraint.

Residency Restrictions and Lifetime GPS Monitoring involve affirmative disabilities or restraints. Sections 23-3-465 and 535 prohibit Nation from living in certain locations and, accordingly, limit the right to travel. See *Kent v. Dulles*, 357 U.S. 116, 125-126 (1958) (“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without the due process of law under the Fifth Amendment. . . . It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads.”). Being monitored via GPS is having a pair of eyes watching every movement at all times. The GPS device transmits once per minute every

hour of every day. Carrying around the eyes of the government disables a person from feeling free to move about as he or she wishes and surely represents an affirmative burden on liberty. Whereas most people have one final and sure retreat, a sanctuary from the evermore crowded and jostling world, not even the offender's home provides him a reprieve from prying government eyes.

Nation, furthermore, faces a lifetime of forced submission to the government. He will have to report to have the GPS ankle monitor attached to his body. He must report periodically and be subjected to forced touching while the device is inspected and maintained. Additionally Nation will *never* be free from having that device cinched around his leg. He will *always* have to carry it because the requirement extends beyond the sentence originally imposed by the court for the rest of Nation's life. *Duncan v. State*, 391 S.C. 350, 353, 705 S.E.2d 489, 491 (Ct. App. 2011) ("the trial court did not have the discretion to terminate Duncan's electronic monitoring because electronic monitoring is required 'for the duration of the time the person ... remain[s] on the [Registry].'"). Wherever Nation goes he will carry with him SCDPPPS, SLED, and the shame of wearing the "scarlet letter" around his ankle. This weight is far heavier than the historical ball and chain. If Nation does not submit, then he faces indictment, prosecution and imprisonment. There is simply no other context, *other than punishment*, in which the State seeks to physically attach something to a person, without consent, and without consideration of individual circumstances, that may never be removed without facing severe criminal sanctions. The wearing of the ankle monitor, the forced reporting to several offices, and public exposure of his isolated incident represent an ongoing humiliation and ongoing control over Nation's life.

2. Traditional forms of punishment.

Residency Restrictions and Lifetime GPS Monitoring have the same traits as traditional forms of punishment. Residency Restrictions are banishment. Preventing an offender from living within 1,000 feet of so many different places effectively forces the person to the fringes or outskirts of the community. Residency Restrictions in more urban counties actually could result in a person being forced to live in a very small pocket of the community, effectively banishing the offender from the rest of the county. Banishment is no longer permissible in South Carolina. *VanName v. VanName*, 308 S.C. 516, 519, 419 S.E.2d 373, 374 (Ct. App. 1992) (“There was a time when judges in criminal cases would require a defendant under a suspended sentence to live outside the county or state, but such is no longer permitted. Forcing a person to live in a particular area encroaches upon the liberty of an individual to live in the place of his or her choice.”). Banishment is still a permissible punishment in some states. *E.g. Adams v. Georgia*, 241 Ga.App. 810, 527 S.E.2d 911 (Ga. App. 2000).

While lifetime GPS monitoring is a relatively new punishment, it bears striking resemblance to branding. Branding, which is mutilation, is no longer allowed as punishment. *See State v. Brown*, 284 S.C. 407, 411, 326 S.E.2d 410, 412 (1985) (“Castration, a form of mutilation, is prohibited by [S.C. Const.] Article I, § 15). However, “[i]t should be noted that a statute need not fit within the historical category of punishment to be considered effectively equivalent to the historical punishment. If that were the case, then the [legislature] could fashion punishments in “new and heretofore unforeseen ways” and the *ex post facto* clause would not be able to respond to modern attempts at punishment. *Consol. Edison Co. of New York v. Pataki*, 292 F.3d 338, 351 (2nd Cir 2002) (citing *Nixon v. Administrator of General Services*, 433 U.S. 425, 475, 97 S.Ct. 2777, 2806). But here the sanction resembles branding. The offender

subjected to lifetime GPS monitoring is forced to wear an ankle bracelet for the rest of his life. Emperor Constantine had any Roman subjects who had been condemned to the arena or to the mines branded on the hands and lower legs.⁷ The monitor will always be visible as a “scarlet letter.”

Nathaniel Hawthorne’s 1850 novel *The Scarlet Letter* describes how people who were found guilty of adultery were forced to wear a scarlet letter “A” on their clothing. The effect was to shame the adulterer and invite prejudice and scorn. See *The Scarlet Letter*, Nathaniel Hawthorne, 1850; *Husband v. Wife*, 301 S.C. 531, 532, fn.1, 392 S.E.2d 811, fn.1 (Ct. App. 1990). In this case the GPS monitoring device will invite similar scorn and shame upon Nation. In *Husband v. Wife*, *supra*, the court recognized the inherent prejudice in being branded with such a scarlet letter. *Husband*, 301 S.C. at 532.

The conditions South Carolina imposes on Nation are a major departure from the earlier forms of Sex Offender Registries. In *Smith v. Doe*, 538 U.S. 84 (2003), the Supreme Court observed that some sex offenders might have been denied employment or housing because of the publicly available information. However, the offenders were free “to move where they wish and to live and work as other citizens” and there was no intent “to humiliate the offender.” “Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act’s registration and dissemination provisions, but from the fact of conviction, already a matter of public record.” *Id.* 538 U.S. at 99-101. Here, Nation will never again be free to live where he wishes and is subject to the consequences identical to branding and the “painful impact” that flow from being forced to wear the “scarlet letter.”

⁷ *The Theodosian Code and Novels and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography*, by Clyde Pharr with Theresa Sherrer Davidson. The Lawbook Exchange, Union, New Jersey 2001, p. 255.

3. Finding of *scienter* as a result of conviction.

Residency Restrictions and lifetime GPS monitoring can only come after a finding of *scienter* as a result of the conviction, in this case for lewd act. Both penalties are imposed as part of the sentence. Although the state might attempt to portray the lifetime GPS as new penalty for the probation violation, the sentence for violation of probation relates back to the original conviction. *McGrier, supra*.

4. Traditional aims of punishment.

Residency Restrictions and Lifetime GPS Monitoring promote traditional aims of punishment. Significantly, Residency Restrictions and electronic monitoring are traditional instruments in sentencing. S.C. Code Ann. §24-21-430 establishes the standard conditions of probation. These include allowing the probation agent to perform home visits, submit to curfews, pay fines and fees, and “submit to intensive surveillance which may include surveillance by electronic means.” Additionally, to implement these statutory conditions, SCDPPPS has developed standard conditions of probation that prohibit someone under supervision “from changing his residence or employment without the consent of the agent.” *State v. Hicks*, 382 S.C. 370, 379, 675 S.E.2d 769, 773 - 774 (Ct. App. 2009) *vacated by State v. Hicks*, 387 S.C. 378, 692 S.E.2d 919 (2010). Maintaining “a suitable residence” approved by the probation agent is condition number nine of the Standard Sex Offender Conditions. Residency Restrictions and GPS monitoring are just like probation, parole, and community supervision. The person is forced to pay fees monthly, report periodically, and follow other rules.⁸ In fact, Nation would not be challenging these forms of supervision but for that fact he will be subject to these penalties for the rest of his life.

⁸ Report any internet usage, report screen names, report job changes, report job status changes, report moving, report changing appearance, report changes in schools, report where one owns property, report where one makes extended visits, there are probably more. See SCDPPPS Standard Sex Offender Conditions..

Residency Restrictions and Lifetime GPS Monitoring, additionally, promote the traditional aims of punishment – retribution and deterrence. These penalties are retribution because of exiling the person to certain portions of the state and the public humiliation, like branding, resulting from these lifetime conditions. The penalties are a deterrent because a person knows that wherever he or she goes, the State is watching. For those subject to lifetime monitoring, many of which are not threats to reoffend, they are subjected to this heavy handed, obtuse, invasion of privacy. They are subjected to an affirmative burden on their liberty, permanently attached to their leg, and it is retribution.

5. Sanction applies to a crime.

The behavior to which the sanction applies is already a crime. Nation pleaded guilty to committing a lewd act, and the plea judge sentenced him to a term of incarceration followed by probation. SCDPPS alleges Nation violated this probation. The possible sentence for a violation of probation relates back to the original crime for which the plea judge placed Nation on probation. *See Johnson and McGrier, supra*. Because the express terms of §23-3-535(E)(1), the General Assembly intended the Residency Restriction requirements to be “penalties.” Under §23-3-540, lifetime GPS monitoring is one method of monitoring the Residency Restrictions imposed on a person convicted of committing a lewd act.

6. No rational purpose for the penalties other than punishment.

There is no rational purpose, other than punishment, that can be attributed to the Residency Restrictions and Lifetime GPS Monitoring. As discussed throughout this brief, Residency Restrictions and Lifetime GPS Monitoring go far beyond the original aims of the Sex Offender Registry. Neither condition is necessary for law enforcement and the community to

have information about where a sex offender lives. Rather, these provisions are intended to take away basic and fundamental rights of the person subjected to the conditions.

A close analysis of this case, moreover, underscores the irrational approach employed by legislature. Recall that the state, based on the same underlying conduct, initially charged Nation with both second degree criminal sexual conduct with a minor and lewd act. At the time, second degree criminal sexual conduct with a minor was considered to have the more severe punishment. That is not the case anymore because second degree criminal sexual conduct does not require mandatory lifetime GPS monitoring. In 2003, on the advice of counsel, Nation chose to plead guilty to lewd act. Had Nation chose to plead guilty to second degree criminal sexual conduct with a minor, then he would not be facing mandatory, lifetime GPS monitoring.

7. The penalties are excessive in relation to the purpose.

Residency Restrictions and Lifetime GPS Monitoring are excessive in relation to that purpose, especially when there has been absolutely no individualized determination as to whether or not the offender poses a danger to the community. In a case where a sex offender was made to wear a GPS monitor for the duration of his probation the Massachusetts Supreme Court found that the offender's right to be free from *ex post facto* laws was violated. The Court found that a statute retroactively requiring sex offenders to wear GPS devices was excessive "to the extent that it applies without exception...regardless of any individualized determination of their dangerousness or risk of reoffense." *Comm. v. Cory*, 454 Mass 559, 572, 911 N.E.2d 187 197 (Mass. 2009).

SCDPPPS might advance community safety as one alternative purpose for these penalties. To do so ignores the history of the Sex Offender Registry, which began as a non-public registration requirement designed to provide law enforcement with information and tools

needed in investigating criminal offenses. Furthermore, a review of scholarly material on Residency Restrictions shows that such restrictions are counterproductive to producing safer communities and therefore the alternative purpose is invalid. *See* Colo Dep't of Pub. Safety, "Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community" 4 (2004) (residency restrictions prevent living in certain areas, not being in certain areas); Minn. Dep't of Corr., *Level Three Sex Offenders Residential Placement Issues: 2003 Report to the Legislature* 9 (2003) ("No basis in fact to statement that residency restrictions provide safety" and "[s]ex offenders with more stable residences are less likely to reoffend."); Jill Levenson, *Sex Offender Residence Restrictions: Sensible Crime Policy or Flawed Logic?*, 71 Fed Probation 2 at 5 (Dec 2007) (Sex offenders with social bonds to communities through stable employment and family relationships had lower recidivism rates than those without jobs or significant others."); The Impact of Sex Offender Residence Restrictions: 1000ft From Danger or One Step From Absurd? Jill S. Levenson & Leo P. Cotter. *International Journal of Offender Therapy and Comparative Criminology* 49 (2). 2005. (Blanket restrictions may fail to address individual risk factors that are related to potential offending patterns," "[a] more individualized approach to sex offender management can enhance public safety while promoting successful reintegration).

8. Other jurisdictions.

In addition to the factors from *Kennedy*, several states have already found that enforcing retroactive residency restrictions results in an *ex post facto* law. *R.L. v. Mo Dep't of Corr.*, 245 S.W.3d 236 (Mo. 2008) (1000 ft sex offender residence statute was a retroactive law in violation of state of constitution); *Doe v. Schwarzenegger*, 476 F.Supp. 2d 1178, 1181 (E.D. Cal. 2007) (applying sex offender residency law retroactively "would raise serious *ex post facto* concerns");

Doe v. Baker, 2006 WL 905368 at 4 (N.D. Ga. April 6, 2006) (A law that would make it impossible for a registered sex offender to live in a community would in all likelihood constitute banishment which would result in an *ex post facto* problem if applied retroactively to those convicted prior to its passage.); *Mikaloff v. Walsh*, 2007 WL 2572268 at 3 (N.D. Ohio Sept. 4, 2007)(Ohio law prohibiting sex offenders from residing within 1000 ft. of a school violated *ex post facto* clause because it “restricts where offenders can live in a manner similar to probation and parole, prototypical punishments).

B. Double Jeopardy.

The Fifth Amendment prohibition against double jeopardy “protects against a second prosecution for the same offense after acquittal. . . . a second prosecution for the same offense after conviction. . . . [a]nd . . . multiple punishments for the same offense.” *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). The Fifth Amendment prohibition against double jeopardy is applicable to the states through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 89 (1969). The South Carolina Constitution extends these same protections. S.C. Const. Art. I, §12; *State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997). As discussed in Section II and III, *supra*, South Carolina Residency Restrictions and Lifetime GPS Monitoring are penalties. These punishments did not exist at the time Nation committed his offense. The General Assembly created these penalties after the plea court sentenced Nation. Even after Nation completes the sentence imposed by the plea judge, these additional penalties will continue. Residency Restrictions and Lifetime GPS Monitoring, therefore, violate the prohibition against double jeopardy.

C. Cruel and Unusual Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const., S.C. Const. Am. VIII;⁹ Art. I, §15. The cruel and unusual punishment clause requires that the duration of a sentence not be grossly disproportionate with the severity of the crime. *State v. McKnight*, 352 S.C. 635, 652, 576 S.E.2d 168, 177 (2003). The same clause also prevents inhuman and barbarous penalties. *Stockton v. Leeke*, 269 S.C. 459, 462 (1977). For example, in the seminal case on this issue, imprisonment of 12 to 20 years for falsifying a public document was held to constitute cruel and unusual punishment. *Weens v. United States*, 217 U.S. 349, 54 L.Ed.2d 793, 30 S.Ct. 544 (1910). Similarly, a sentence of life imprisonment without possibility of parole for the crime of forcible rape has also been held unconstitutional as to juvenile defendants. *Workman v. Commonwealth*, 429 S.W.2d 374 (Ky. 1968). The “proportionality” bedrock of Eighth Amendment jurisprudence is an equally important a principle to “evolving standards of decency” when determining whether a sentence constitutes cruel and unusual punishment. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007) (upholding 30-yr sentence for 12-year-old who killed his grandparents with shotgun, then lied about it, after finding other courts had given similar sentences).

“Although there are decisions to the effect that the provision against cruel and unusual punishment is applicable solely to the kind of punishment, and not to its amount or duration, according to the weight of authority, the punishment for a crime, while not cruel and unusual in kind, may be so severe as to fall within the meaning of this provision.” *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273, 275 (1948).

⁹ The Eighth Amendment to the United States Constitution is applicable to the states by reason of the Fourteenth Amendment. *Robinson v. U.S.*, 370 U.S. 660, 8 L.Ed.2d 758, 82 S.Ct. 1417 (1962).

Furthermore, the Eighth Amendment prohibition against cruel and unusual punishment should be read as placing a limit on the retributive aspects of punishment. Lifetime GPS and Residency Restrictions are effectively retributive punishments (because they serve hardly any other purpose) and are so retributive and disproportionate to the sentence that they amount to cruel and unusual punishment. See “The Constitutional Right Against Cruel and Unusual Punishment” by Youngjae Lee, New York University Public Law and Legal Theory Working Papers. 3-15-2005.

The Court noted the test used in its previous opinions on Eighth Amendment challenges to penalties in *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) and *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). This test first involves a comparison of the gravity of the offense with the severity of the sentence. *Harmelin* at 1005. When this comparison “leads to an inference of gross disproportionality,” the court should then compare sentences imposed for the same crime in other jurisdictions to see if that comparison “validate[s] an initial judgment that [the] sentence is grossly disproportionate.” *Id.*

In a fifty state survey approximately ten (10) states have provisions for mandatory lifetime monitoring for sex offenders. However, of those ten states only two have provided for lifetime monitoring for a crime fitting Nation’s conviction. S.C. Code (Ann.) §23-3-540, Kansas §22-3717(u) (An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.).

The other states will not require lifetime GPS monitoring in Nation's case. Florida Code § 775.082(3)(a)(4)(lifetime probation or community control¹⁰ for offenders convicted of offense against those 11 or younger); Georgia Code § 42-1-14 ((e) Any *sexually dangerous predator* shall be required to wear an electronic monitoring system); Indiana Code § 11-13-3-4(J)(1)((j) As a condition of parole, the parole board:(1) shall require a parolee who is a *sexually violent predator* under IC 35-38-1-7.5; to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, subject to the amount appropriated to the department for a monitoring program as a condition of parole.); Louisiana Code §§ 14:78.01(d)(3)(lifetime monitoring for offender convicted of aggravated incest on victim younger than 13), 14:81.2(E)(2)(offender convicted of molestation on victim less than 13 years old), 14:81.1(E)(3)(offender convicted of pornography involving victim under 13 years old), 14:43.1(C)(3)(offender convicted of sexual battery on victim less than 13 years old is to be monitored for life), Michigan Code §750.520n (offender convicted of criminal sexual conduct on victim younger than 13 to be monitored for life); Missouri §217.735 (mandatory lifetime monitoring for offender convicted of prior sex offense and convicted of sex offense against victim less than 14 years old); Montana Code §§ 45-5-503(4)(lifetime monitoring for offender convicted of sex without consent on victim less than 12 years old), 45-5-625(lifetime monitoring for conviction of sexual abuse of child under 12 where offender is over 18 years old), 45-5-507 (offender to be monitored for life when convicted of incest where victim is 12 years old or younger and offender is over 18 years old), 46-18-222 (a safety valve that allows a judge to suspend mandatory minimums (arguably including lifetime monitoring)); North Carolina §14-27.4A(Offender convicted of sex offense on victim less than 13 years old); 14-208.40 (Offender designated sexually violent predator); Oregon §144.103 (lifetime

¹⁰ Florida Code 775.082(3)(a)(4) does not specify use of GPS monitoring.

monitoring for sex offenses involving a victim less than 12 years old (and other circumstances not at issue in this case)); Rhode Island §11-37-8.2.1 (lifetime monitoring for offender convicted of molesting child 12 years old or younger and for persons designated sexually violent predators); Wisconsin Code §301.48(2)(m) (offender can step down to passive tracking after completing sentence), 301.48(6)(providing for petition to be relieved of tracking), 301.48(6)(b)(2)(a person may not petition for relief from tracking if offender committed another crime while being tracked).

In this case Nation, if found in willful violation of probation, is punished for the rest of his life for missing two appointments with his probation agent. Ordinarily, the most time Nation would be facing would be the suspended portion of his sentence. In this case, three years is all that remains of the original sentence. Instead, at 39 years old Nation is facing the rest of his life with lifetime monitoring. Such a punishment is grossly disproportionate to the reason the state argues it is imposing this punishment.

However, the inquiry is not complete by simply considering the gravity of the offense as compared with the punishment or at comparing the penalties of other jurisdictions. The Eighth Amendment is also violated when the penalty imposed for a particular offense is **greater** than a sentence that could be imposed for a more serious crime. For example, in Oregon, a defendant sentenced to life imprisonment for assault with intent to rape successfully argued that the penalty constituted cruel and unusual punishment when the maximum punishment for statutory or forcible rape was 20 years imprisonment. *Cannon v. Gladden*, 203 Or. 629, 81 P.2d 233 (1955). Courts in additional states have also held penalties to violate the Eighth Amendment when they were greater than penalties for more serious crimes. See *State v. Blackmon*, 260 N.C. 352, 132 S.E.2d 880 (1963) (holding a penalty of 20 to 30 years for possession of burglary tools was unconstitutional as

it provided for a time of imprisonment three times as long as the penalty that could be imposed for the crime of housebreaking); *Roberts v. Collins*, 404 F.Supp. 119 (D.C. Md. 1975) (finding 20-year sentences for the lesser-included offense of simple assault unconstitutional when the maximum penalty for the more aggravated offense of assault with intent to murder was 15 years); *People v. Schueren*, 10 Cal.3d 553, 111 Cal. Rptr. 129, 516 P.2d 833 (1973) (finding a term of six months to life, which could exceed 14 years, for assault with a deadly weapon unconstitutional when the charge of assault with a deadly weapon with intent to commit murder carried a term of one to 14 years); *Buchanan v. State*, 68 S.W.3d 136 (Tex. App. 2001) (“a prohibition against grossly disproportionate punishment survives under the Eighth Amendment apart from any consideration of whether the punishment assessed is within the range established by the legislature”).

In this case CSC with a Minor 2nd degree carries more potential prison time yet does not require lifetime monitoring. SC Code 16-3-653; SC Code 23-3-540(G)(1)(b).

Where the judge has no discretion to hear evidence about offender’s individual circumstances, the mandatory lifetime electronic monitoring requirement, with no means to petition the court for release from the monitoring requirement, is unconstitutional as applied to Nation when there is no evidence to suggest that Nation is at a high risk to re-offend. When the legislature takes away a judge’s discretion in such a highly subjective area with a highly burdensome punishment, an unbalanced and unstable justice system results. State v. Kimbrough, 212 S.C. 348, 357 (1948)(Trial judge’s sound judgment on sentencing “vitally affects the stability of free institutions”). While electronic monitoring itself may not be considered cruel and unusual, the duration of lifetime electronic monitoring for Nation is so severe as to constitute a violation of the prohibition against cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Article I, § 15 of the South Carolina Constitution. A lifetime of

probation is a severe penalty, a lifetime of probation is more than the legislature allows. Given the isolated nature of the incident and the strong potential for rehabilitation among offenders, a lifetime punishment is disproportionate to the severity of the crime.

1) Lifetime GPS monitoring is a punishment that is disproportionate to the severity of the crime.

As established above lifetime GPS monitoring is a punishment. Section III, *supra*. Lewd Act on a Minor carries a maximum penalty of 15 years and a fine in the discretion of the court. SC Code 16-15-140. The General Assembly has limited the maximum amount of time a person can serve on probation to 5 years in South Carolina. SC Code 24-21-440. Lifetime GPS monitoring puts a person on probation for the rest of their lives without any way to have the necessity of monitoring reviewed or terminated. A punishment that lasts for the rest of the life of the offender, even where not cruel and unusual in kind, is cruel and unusual in duration.

Nation had consensual sex with a fifteen year old female. There has been no determination that Nation now poses a danger to anyone.. Nation was screened for Sexually Violent Predator (SVP) evaluation before being released from prison and it was determined that he did not need to be classified as an SVP. SC Code 44-48-30 *et seq.* Nation is being punished for the rest of his life for having consensual sex, twice, with one fifteen year old female.

2) Residency Restrictions

Residency Restrictions are penalties according to the plain language of the statute. They apply for the duration of the offender's life and there is no way to have the restrictions lifted or eased. Residency Restrictions share common elements with two types of punishments: probation and banishment. *See* Sections II and III, *supra*. Inflicting these punishments on an offender for the rest of his or her life is a punishment grossly disproportionate to the crime.

As discussed above in Section III (D). Lifetime imposition of Residency Restrictions violates Nation's substantive due process rights in multiple ways. Additionally, scholarly research shows that banishing an offender and separating him or her from his family causes instability in an offender's life and actually raises the possibility for reoffense. Nation was sentenced to the maximum period under the statute. As noted above he was given a 15 year sentence which was suspended to 12 years incarceration to be followed by three years of probation. Where Nation was convicted at age 32 and faces lifetime banishment for an isolated, nonviolent incident, and has no significant prior criminal history the punishment is disproportionate to the severity of the crime.

3) Sixty Dollars Per Month In Addition to Other Fees and Fines for the Rest of Nation's life is Cruel and Unusual Punishment.

In a *good* month Nation makes \$300. He also gets food stamps. Of that money he earns he owes \$50 for basic supervision fees, and other monies for court costs and assessments. He also has to pay \$150 a month to rent a trailer because he cannot live with his parents as a result of this conviction. Many months of the year Nation will not make \$300. He may not even make any money in some months because he does yard work and construction- work that depends on favorable weather conditions (and they are also subject to the whims of the economy). Having to pay at least 18% of his income for the rest of his life for GPS monitoring is Cruel and Unusual Punishment.

D. Procedural Due Process

South Carolina denied Nation procedural due process by imposing additional post-sentence penalties. Procedural Due Process is required where government action deprives a citizen of liberty or property. There are three requirements for compliance with procedural due process "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce

evidence; and (4) the right to confront and cross-examine witnesses.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Additionally,

Procedural due process requirements are not technical; no particular form of procedure is necessary. [D]ue process is flexible and calls for such procedural protections as the particular situation demands. The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur.

Sloan v. S.C. Bd. of Physical Therapy Examr’s 370 S.C. 452, 484, 636 S.E.2d 598, 615 (2006). (internal citations omitted). “Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses.” *Moore v. Moore*, 376 S.C. 467, 473, 657 S.E.2d 743, 746(2008) (internal citations omitted).).

When Nation plead guilty, he did not have notice that South Carolina would impose restrictions on where he could live for the rest of his life and that a court could order lifetime GPS. “[T]he imposition of a sentence which exceeds the defendant’s original term of incarceration involves a situation where the defendant has not received notice that the terms of his original sentence would be modified and a greater punishment imposed.” *State v. McGrier*, 378 S.C. 320, 329, 663 S.E.2d 15, 20 (2008).

Had South Carolina provided notice of these punishments, Nation might have exercised his right to a jury trial. As discussed in Section III(A)(1), *supra*, Nation has a liberty interest in choosing where to live. The state has taken that right from Nation without offering him a jury trial. Additionally, the state seeks to track Nation every minute for the rest of his life without providing him a jury trial. Ironically, if Nation’s lawyer been on notice of the GPS provisions, then lifetime GPS monitoring could have been completely avoided by recommending a plea to second degree criminal sexual conduct with a minor. Even though that charge is traditionally considered more serious, it does not require mandatory lifetime GPS monitoring.

Now, SCDPPPS seeks to impose these penalties without affording Nation his constitutional rights. He will not have a jury trial. South Carolina does not require SCDPPPS to follow the same discovery rules that ordinarily apply in a criminal prosecution, *State v. Hill*, 368 S.C. 649, 630 S.E.2d 274 (2006), or offer the person an opportunity to confront and cross-examine witnesses. *State v. Pauling*, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006).

Under a much different factual scenario, in *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003), the Supreme Court considered a procedural due process challenge to a state sex offender registry. Connecticut required all sex offenders to register and made the registration information available to the public through the internet, regardless of whether the person was currently a danger. Connecticut's sex offender registry, in fact, informed the public that that state had "made no determination that any individual included in the registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law." *Id.* 538 U.S. at 5. Retroactive inclusion on Connecticut's registry, however, did not include any Residency Restrictions or GPS monitoring. In fact, in *Smith v. Doe*, decided the same date as *Connecticut Dept. of Public Safety v. Doe*, observed that branding, public shaming, humiliation, and banishment "involved more than the dissemination of information. They either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community." *Smith*, 538 U.S. at 98.

Since Residency Restrictions and GPS monitoring involve more than dissemination of information, South Carolina must provide Nation with a jury trial before the state can impose these conditions.

E. Substantive Due Process

In order to comply with the requirements of substantive due process Nation should have a full hearing to determine whether or not he should be subject to lifetime GPS monitoring and Residency Restrictions. Imposing lifetime GPS monitoring implicates myriad fundamental rights and is unconstitutional under the 14th Amendment of the United States Constitution where the Circuit Court Judge has no discretion to hear and weigh evidence on whether Nation should be deprived of his constitutional rights. SC Code 23-3-540(C).

Substantive due process protects citizens against arbitrary or capricious actions by the government regardless of the procedures used to carry out that action. *In Re Care and Treatment of Luckabaugh*, 351 S.C. 122, 140 (2002). Because the Circuit Court judge has no discretion under the South Carolina Code to forgo lifetime GPS monitoring or Residency Restrictions or even order a lesser period of monitoring upon a violation of probation the judge cannot even consider evidence that such drastic measures are unnecessary. *See Cleveland Board of Education v. Laflour*, 414 U.S. 632 (1974) (A state may not presume a teacher incapable of continuous service in the classroom merely because she is four or five months pregnant or has a child under age three). As a result of imposition of Lifetime GPS Monitoring and Residency restrictions Nation will be denied rights enumerated below. This process amounts to a complete denial of substantive due process.

No person should be deprived of life, liberty or property without due process of law. U.S. Const. Amend XIV, sec 1; S.C. Const. Art. I, §3. A violation of substantive due process arises whenever a person is deprived of life, liberty, or property in an arbitrary or capricious manner, regardless of whether or not the process is ostensibly fair. *Luckabaugh*, 351 S.C. at 140.

Substantive due process “allows a court to examine the constitutionality of the underlying statute as opposed to merely the process by which it is applied to each individual.” *Id.*

States are permitted to infringe on basic liberty interests, but only “in certain narrow circumstances.” *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding statute permitting civil commitment of sexually dangerous persons, but only where state provided a full-blown, individualized trial on the issue of future dangerousness).¹¹ The hallmark of a permissibly narrow infringement in instances where the person’s liberty is severely damaged is an individualized assessment to ensure the State does not step beyond what is strictly necessary. See *United States v. Loy*, 237 F.3d 251, 269 (3d Cir. 2001) (a state may not restrict a sex offenders’ parental rights without first determining in an individualized hearing that the parent’s custody threatens the child’s safety).

There are at least two levels of scrutiny applied to substantive due process analysis. See *Luckabaugh*, 351 S.C. at 140. To determine which level of scrutiny is applied the Court looks to the nature of the rights infringed by the statute. If the right is a fundamental right then strict scrutiny applies. *Id.* at 140-141. Strict scrutiny requires a statute to be narrowly tailored to achieve a compelling state interest. *Id.* If a fundamental right is not implicated then the rational basis test is applied. *Id.* Under the rational basis test, a statute must be “reasonably designed to accomplish its purpose.” *Id.* (internal quote omitted).

Heightened scrutiny should be applied because of the fundamental rights involved, including the right to travel, the right to be free from unreasonable searches and seizures, and invasion of privacy. Additionally, Nation will be required to pay a fee for the imposed monitoring on pain of criminal sanctions. This fee implicates the Eighth Amendment’s

¹¹ The civil commitment statute in *Hendricks* was upheld because of the pains Kansas had taken to ensure that it was justified in committing the person under the statute. *Hendricks*, 521 U.S. at 352-53, 357-58.

prohibition against excessive fines. Currently the Code requires that sixty dollars be paid per month by the person being monitored. SC Code 23-3-540(I). Failure to pay carries criminal sanctions and therefore heightened scrutiny should apply.

In *Moore v. Moore*, a Family Court issued an Order of Protection was challenged (along with the underlying statute) as violating substantive due process. *Moore*, 376 S.C. 467, 469-470 (2008). The Court in that case found that a reduction in financial resources and threat of “criminal prosecution or contempt proceedings” resulting from an Order of Protection issued by the Family court infringed upon a constitutionally protected right to property. *Id.* at 474. In this case Nation faces a similar predicament.

Because Nation’s challenge involves fundamental rights and he makes his substantive due process challenge under the United States Constitution strict scrutiny applies. *Luckabaugh*, 351 S.C. at 140.

F. The provisions are over broad.

Adding Lifetime GPS Monitoring and lifetime Residency Restrictions to the terms of Nation’s supervision is overly broad because “it involves a greater deprivation of liberty than is necessary to protect the public and prevent recidivism.” *State v. Allen*, 370 S.C. 88, 97-98 634 S.E.2d 653, 657 (2006) (citing *U.S. v. Paul*, 274 F.3d 155, 164-167 (5th Cir 2001)). As discussed in Sections II and II, *supra*, the primary effects are punitive and any residual effects regarding community safety are substantially outweighed by the enormous cost in liberty to Nation, particularly where there has been no individualized determination concerning Nation’s risk of recidivism.

Probation conditions have generally been upheld where they are “related to the crime for which the offender was convicted, [are] intended to prevent future criminal conduct, or bear[] a

reasonable relationship to offender's rehabilitation." *Allen*, 370 S.C. at 99. In this case, these punishments are not simply running with probation for a period of five years or less, they are to extend out for the rest of Nation's life. Conditions of probation which extend past the period of probation in perpetuity have been held unenforceable. *Id.* at 99 (citing *People v. Miller*, 182 Mich. App. 711, 452 N.W.2d 890 (1990)). Lifetime GPS monitoring and residency restrictions imposed beyond the period of probation without any evidence on the effect of recidivism amounts to overbreadth and is unconstitutional.

G. Imposing Lifetime GPS Monitoring Violations Nation's Right To Privacy.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. *State v. Forrester*, 343 S.C. 637, 644, 541, S.E.2d 837 (2000). South Carolina's Constitution not only safeguards a person's right to be free from unreasonable search and seizure but it also places a higher level of protection of privacy. The South Carolina Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated." *Id.* at 644 (emphasis in original). The people in South Carolina have "indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution..." *Id.* South Carolina and other states with a right to privacy provision "imbedded in the search and seizure provision of their constitutions have held such a provision creates a distinct privacy right that applies both within and outside the search and seizure context." *Id.* at 644. South Carolina's Constitution "favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." *Id.* at 645.

The drafters of South Carolina's right to privacy provision "were principally concerned with the emergence of new electronic technologies that increased the government's ability to

conduct searches.” *Id.* at 647. The Court in *Forrester, supra*, also noted that the drafters also intended for this provision to be interpreted and applied in more than just the electronic surveillance context. *Id.* The drafters knew that the provision operated separately from the Fourth Amendment. *Id.*

If this Court forces Nation to comply with lifetime GPS monitoring, then he will be subjected to constant electronic surveillance when he is traveling and when he is at home. Law enforcement will be able to determine when Nation is at home and possibly more, depending on the accuracy of the device. They may be able to determine when Nation is watching TV, in the kitchen making food, in bed asleep, or even in the bathroom. This degree of electronic intrusion into Nation’s home is prohibited without a warrant.

This type of search is more intrusive and less reasonable than conduct prohibited by *Kyllo v. United States*, 533 U.S. 27 (2001). In *Kyllo* law enforcement was suspicious that Kyllo was growing marijuana in his home. Law enforcement used a thermal imager to scan the house. The scan produced a “crude visual image of heat being radiated from the house...it did not show any people or activity within the walls of the structure.” *Id.* at 30. The United States Supreme Court noted that “the device cannot penetrate walls or windows to reveal conversations or human activities” and “no intimate details of the home were observed.” *Id.* If GPS monitoring is imposed on Nation the GPS monitor will penetrate the walls of his home once a minute, every hour of the day. SC Code 23-3-540(P). If the device is as precise as ordinary GPS the intrusion will allow observation intimate human activities.

Such surveillance contravenes the Fourth Amendment of the United States Constitution which “at the very core...stands for the right of a man to retreat into his own home and there be

free from unreasonable government intrusion.” *Id.* at 31 (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

The State may contest that there is no search of the home in this case. Such a position would be untenable. A Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. *Id.* at 33. The GPS monitor gives law enforcement a “crude visual image” but this crude visual image is providing information about the inside of Nation’s home. The thermal imager search prohibited in *Kyllo* was cruder and less intrusive, than the GPS monitoring that the government wants to use to spy on Nation.

The State may also contest that the search is reasonable. It is not a reasonable search it is an ongoing search carried out, supposedly, in the course of investigating crimes. However, Nation is not a suspect in any crime (sex offense related or not) and even when there are no investigations ongoing Nation is subject to constant monitoring. Monitoring Nation’s whereabouts twenty four hours a day for the rest of his life does not fall within any exception to the warrant requirement. There is no consent, no exigent circumstances, and no special needs.

H. Right to Make Decisions Concerning Family

Residency Restrictions already affect Nation’s ability to live with his family. “The institution of the family is deeply rooted in this Nation’s history and tradition,” *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977), and “freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” *Cleveland Bd. of Educ. V. LaFleur*, 414 U.S. 632, 639-40 (1974). Where the “government intrudes on choices concerning family living arrangements, this Court

must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.” *Moore*, 431 U.S. at 499

In this case Nation is prohibited from living with his family until his step brother reaches the age of majority. It should be remembered that Nation has never been accused of having any interest in men or boys at all, much less pleaded guilty to any crime involving a male. Even beyond that time Nation may not be able to live with his own family due to the Residency Restrictions. Nation’s family is poor and will not be able to move to a suitable place in compliance with the registry even when his step brother is grown up. Nation has been denied a fundamental right to cohabit with his family. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619 (1984)(describing the life activities entitled to constitutional protection as “those that attend the creation and sustenance of a family,” including “cohabitation with one’s relatives”).

Where, as here, there has been no individualized determination of whether Nation’s fundamental right to live where and with whom he chooses and there is substantial scholarly research on the ineffectiveness of Residency Restrictions there is no satisfaction of Nation’s due process right to live where he chooses.

I. Free from unreasonable search and seizure

The mandatory order imposing lifetime GPS monitoring on appellant pursuant to S.C. Code § 23-3-540(C) is aimed at protecting against future criminal conduct but not based on specific evidence of a present risk of criminal conduct and, therefore, violates appellant’s right to protection against unreasonable, warrantless search and seizure under the Fourth Amendment to the United States Constitution and Article I, § 10 of the South Carolina Constitution.

Lifetime GPS monitoring of Nation pursuant to § 23-3-540(C) violates appellant’s Fourth Amendment right to be protected from unreasonable searches and seizures. The state will seize

Nation in order to permanently attach the GPS device and then will retrieve his location every minute of the day for the rest of his life. Because the state does not have a particularized basis for believing that Nation will commit or has already committed a crime, the imposition of lifetime GPS monitoring is an unconstitutional use of search and seizure for general crime control.

The stated intention of §23-3-540(C) is to assist law enforcement with the investigation of sex offenses. S.C. Code §23-3-400 One of the clear intentions of continuous, minute-by-minute monitoring using GPS is to assist law enforcement in its investigation into future, uncommitted sex offenses. The Fourth Amendment does not allow law enforcement to use search and seizure in this way. The U.S. Supreme Court has held that a state cannot use a program that seizes people when the primary purpose is general crime control. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37, 121 S.Ct. 447, 451, 148 L.Ed.2d 333 (2000) (“A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing.”). In *Edmond*, the Court rejected a highway checkpoint used by the Indianapolis Police Department for the primary purpose of conducting drug interdiction. *Id.* at 453 – 454. The Court noted that it has “never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.” *Id.* at 454.

The program created by § 23-3-540(C) is aimed at general crime control. It has no specific basis for investigating a crime that is imminent; all crime is in the future—it might happen. The government cannot provide probable cause that a crime has been committed. It cannot even provide articulable facts that a crime is afoot.

Using permanent GPS monitoring amounts to seizing appellant for the purpose of investigating a future crime without probable cause or reasonable suspicion to believe that she

has committed or would even commit the crime. It is like tapping a phone without probable cause or reasonable suspicion because the state “thinks” (but has no evidence) that a person might use the phone to commit a crime.

In addition to the ongoing search, the State will repeatedly subject Nation to unwanted touching. The GPS monitor must be affixed to his leg. He will have to report periodically for the rest of his life for the device to be inspected and maintained.

As discussed in Section II(A)(1), *supra*, the Residency Restrictions also limit the right to travel. *See Kent v. Dulles*, 357 U.S. 116, 125-126 (1958) (“The right to travel is part of the “liberty” of which the citizen cannot be deprived without due process of law under the Fifth Amendment...It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads.”)

J. Equal Protection

S.C. Code 23-3-540(C) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by arbitrarily and unreasonably classifying similarly situated people convicted of sex offenses in order to impose lifetime GPS monitoring upon them. The statute does not classify sex offenders by the level or risk for re-offending they pose. Rather, it classifies them based on the crime they are convicted of, essentially ignoring the possibility that on the same facts a person could be convicted for two or more different crimes. Nation’s case is a good example of such a scenario where Nation was charged with second degree criminal sexual conduct with a minor and lewd act. Had Nation known that lifetime GPS monitoring for lewd act might apply to him years later he might have pled guilty to the criminal sexual conduct charge, which does not mandate lifetime GPS monitoring, or he may have decided to go to trial.

The equal protection clause of the United States Constitution provides that “no state shall...deny to any person within its jurisdiction the equal protection of its laws.” U.S. Const. Am. XIV, §1; see also S.C. Const. Art. I, §3. Where a fundamental right is at stake strict scrutiny should be used in analyzing whether a person is denied equal protection under the law. *Hendrix v. Taylor*, 353 S.C. 542, 549, 579 S.E.2d 320, 323 (2003). Equal protection under the law requires that the law be equally applied to people who are similarly situated. *Town of Iva ex rel. Zoning Administr. v Holley*, 374 S.C. 537, 649 S.E.2d 108 (Ct. App. 2007). A statute cannot classify people arbitrarily or unreasonably. *Id.* The statute must justify treating similarly situated people differently by its purpose; it “must rest this difference [in treatment] upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.” *Id.* at 540-541.

Section 23-3-540 classifies sex offenders by the offense they have committed. S.C. Code §§ 23-3-540(A) through (G). There are two classes: (1) those that commit CSC with a Minor 1st degree or Lewd Act and (2) those that commit any other sex offense. *See id.* For people, such as Nation, who fit into the first class, lifetime GPS monitoring is mandatory. S.C. Code § 23-3-540(A), (C), and (E). Those people who fit into the second class are not ordered to submit to lifetime GPS monitoring unless a court, in its discretion, orders lifetime GPS monitoring. S.C. Code §23-3-540(B), (D), and (F).

Strict scrutiny will be applied to a statute challenged under the Equal Protection Clause if a suspect class is implicated or a fundamental right is abridged. *City of Beaufort v. Holcombe*, 369 S.C. 643, 648, 632 S.E.2d 894, 898 (Ct. App. 2006). If no suspect class is implicated or a fundamental right is not abridged, then the rational basis test is applied. *Id.*

As discussed throughout this brief, lifetime GPS monitoring under 23-3-540(C) infringes on fundamental rights and therefore strict scrutiny applies. The classification by § 23-3-540(C) results in loss of fundamental liberty (as discussed above). The lifetime GPS monitoring statute, §23-3-540(C), fails to meet strict scrutiny because it is not narrowly tailored to achieve the statute's purpose of protecting the public from sex offenders who pose a high risk of re-offending. Instead, it allows for broad imposition of lifetime GPS monitoring on all offenders

Section 23-3-540(C) does not pass the rational basis test under an equal protection analysis. The rational basis test requires that a statute's classification "(1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis." *City of Beaufort v. Holcombe*, 369 S.C. at 648. The classification of sex offenders by § 23-3-540(C) is not reasonably related to protecting the public from those offenders who pose a high risk of re-offending. The statute bases its classification solely on the offense for which the person was convicted of or adjudicated. S.C. Code §23-3-540(A) through (F).

Let us take two people: person A and person B. A has been convicted of Lewd Act. B has been convicted of Criminal Sexual Conduct with a Minor in the 2nd degree. Both A and B pose a low risk of re-offending. The statutory scheme of §23-3-540(C) will subject A to the mandatory procedure; and A will have lifetime GPS monitoring automatically imposed regardless of the level of risk they pose for re-offending. On the other hand, B will be subjected to the discretionary procedure, allowing the trial court to use its discretion and not impose lifetime GPS monitoring on B because B poses a low risk of re-offending. Thus, similarly situated people are treated differently. Section 23-3-540(C) classifies sex offenders based on their underlying offense. The result is that § 23-3-540(C) requires trial courts use different

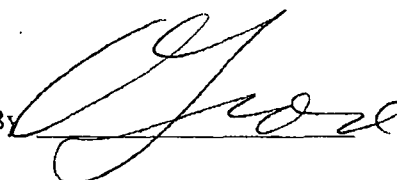
procedures and impose different requirements on sex offenders who pose the same level of risk. That is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. By not creating a special finding of likelihood to reoffend or even allowing the judge to hear evidence on Residence Restrictions and Lifetime GPS Monitoring the Legislature has created an arbitrary scheme that violates Nation's right to equal protection. This scenario is exactly what happened to Nation. The state originally charged him with both second degree criminal sexual conduct with a minor and lewd act. He pleaded guilty to lewd act. Had he plead guilty to the other charge, this issue would never have arisen.

Conclusion

The Court should continue Nation on probation. The Court should also issue an order declaring the lifetime Residency Restrictions and lifetime GPS monitoring portions of the Sex Offender Registry unconstitutional.

IT IS SO MOVED.

Respectfully submitted,

By 

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit

Shane E. Goranson
Assistant Public Defender
Eighth Judicial Circuit

600 Monument St., Box P-133
Greenwood, SC 29646
(864) 229-9505

July 14, 2011
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	
THE STATE	)	Indictment Number: 2001-GS-24-1096
	)	
v.	)	
	)	Appendix to Memorandum in Opposition to
	)	Revocation of Probation and Motion to Declare
Anthony Nation,	)	Portions of the Sex Offender Registry
Defendant	)	Unconstitutional
	)	

The following documents are submitted in support of Mr. Nations' motion to declare certain portions of South Carolina's Sex Offender Registry unconstitutional. The page numbers in the right column correspond with page numbers on the bottom right of each page in the appendix.

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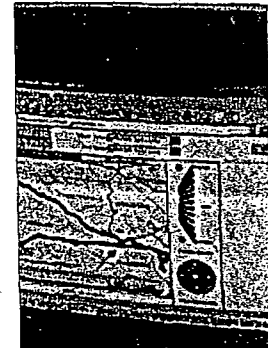
State of South Carolina Department of Probation, Parole and Pardon Services

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Compliant with
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Section 508

Global Positioning Satellite (GPS) Monitoring

SCDPPPS Uses Global Positioning Satellite Technology



On June 8, 2006, Governor Mark Sanford signed Jessie's Law, a bill aimed at protecting our state's children through tougher penalties for sex predators. Named after Jessica Marie Lunsford -- who was murdered in 2005 by a registered sex offender in Florida -- the law imposes a mandatory minimum of 25 years in prison for sex predators and mandates **Global Positioning Satellite (GPS)** monitoring for sex offenders convicted of certain offenses. In addition, the law:

- Gives PPP jurisdiction for all offenders placed on GPS;
- Requires mandatory placement on GPS if convicted of CSC with a minor, 1st or lewd act with a minor (all other offenses are discretionary with the judge);
- Allows for anyone placed on GPS to petition the court after 10 years to be removed from GPS (with the exception of CSC with a minor, 1st and lewd act with a minor); and
- Creates a new criminal offense for willful violations of electronic monitoring.



Jessie's Law



GPS Monitoring



Sex Offender Map

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Facility Search Results

We've found 15 Child Care Facilities in the city of Abbeville.

Provider Name	Street	City	Zip	Distance
Kids Unlimited		Abbeville	29620	~ 0.25 mile(s)
Edith Collins (Child Care Home)		Abbeville	29620	~ 0.61 mile(s)
Paul McNeill (Child Care Home)		Abbeville	29620	~ 0.65 mile(s)
Kathy Smith (Child Care Home)		Abbeville	29620	~ 0.70 mile(s)
Abbeville Learning Center (Head Start)		Abbeville	29620	~ 0.82 mile(s)
Marcia Grimes Cartledge (Child Care Home)		Abbeville	29620	~ 0.84 mile(s)
Edith Yvonne Simpson (Child Care Home)		Abbeville	29620	~ 1.75 mile(s)
Long Cane Elementary		Abbeville	29620	~ 1.80 mile(s)
Veronica Coleman Patterson (Child Care Home)		Abbeville	29620	~ 2.24 mile(s)
Lori A. Noblin (Child Care Home)		Abbeville	29620	~ 3.28 mile(s)
Susan Stoff (Child Care Home)		Abbeville	29620	~ 3.84 mile(s)
Patricia Randall (Child Care Home)		Abbeville	29620	~ 4.42 mile(s)
Deborah P. Chapping (Child Care Home)		Abbeville	29620	~ 5.02 mile(s)
Mary C. Giles (Child Care Home)		Abbeville	29620	~ 10.77 mile(s)
Diamond Hill Elementary		Abbeville	29620	~ 11.83 mile(s)

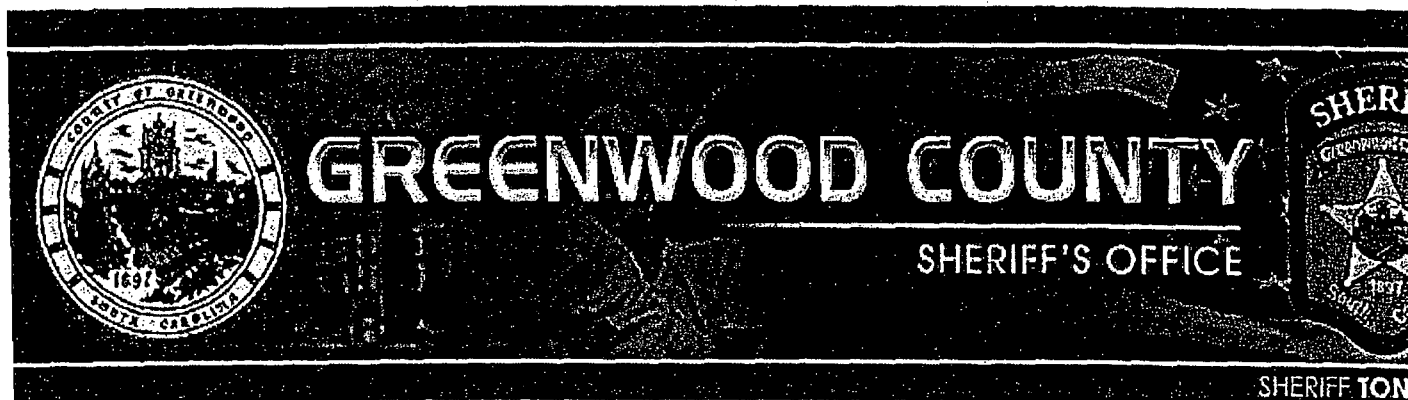


Export Results to Excel

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Thursday, June 30, 2011 1:14 PM
 To: cgrose@pdgreenwood.com
 Subject: New Offender Notification

This message has been scanned by the InterScan for CSC SSM and found to be free of known security risks.



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. Our email serves as your alert to be aware of the presence of the noted offenders.

EMAIL ALERT
THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA

Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public.

Notification Address/Location for search:

Reg # 853254		Greenwood	SC	29649	2 mil
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Offender Information:

1229856	ERIC LAMONT AUSTIN		GREENWOOD	SC	29646	View Rec
1230916	GREGG LEE AUSTIN		GREENWOOD	SC	29646	View Rec
1232919	Sherman Keith Austin		Greenwood	SC	29649	View Rec
1284389	SHERMAN KEITH AUSTIN		GREENWOOD	SC	29646	View Rec
1229378	LUCAS O BELCHER		GREENWOOD	SC	29646	View Rec
1228694	MARCUS BLOCKER		GREENWOOD	SC	29646	View Rec
1229021	MICHAEL BREWER		GREENWOOD	SC	29646	View Rec
769318	PATRICK LEE BROWN		GREENWOOD	SC	29646	View Rec

1229852	JAMES CALHOUN	GREENWOOD	SC	29646	View Re
1229037	WILLIE CLARENCE CARROLL	GREENWOOD	SC	29646	View Re
1230593	STANLEY BERNARD CARTER	GREENWOOD	SC	29646	View Re
1228893	DONALD KEITH CHRISLEY	GREENWOOD	SC	29649	View Re
1230735	JAMES COLEMAN	GREENWOOD	SC	29646	View Re
1230931	RODNEY CURRY	GREENWOOD	SC	29646	View Re
1230505	HEYWARD DAVIS	GREENWOOD	SC	29649	View Re
1228678	THOMAS DAVIS	GREENWOOD	SC	29649	View Re
1230536	EDWARD LEE DEAN	Greenwood	SC	29646	View Re
1229525	RODERICK DEAN	GREENWOOD	SC	29649	View Re
1229962	JAMES ALBERT DEVLIN	GREENWOOD	SC	29646	View Re
1229699	GEORGE OLIVER DIXON	GREENWOOD	SC	29646	View Re
1358259	MATTHEW RYAN DOYLE	GREENWOOD	SC	29649	View Re
1229889	SAMMY LEE ELMORE	GREENWOOD	SC	29646	View Re
1230581	JOSEPH ENGLISH	GREENWOOD	SC	29649	View Re
1284917	RICKY FERGUSON	GREENWOOD	SC	29646	View Re
1230726	ANDRE LAMONT FRANKLIN	GREENWOOD	SC	29646	View Re
1229973	JAMES WILSON GRAY	GREENWOOD	SC	29646	View Re
1233421	ANTAWN MARKISE GRIFFIN	GREENWOOD	SC	29646	View Re
1342186	TONY ANDREW GRIFFIN	GREENWOOD	SC	29646	View Re
1229840	TRAVIS SINTELL GRIFFIN	GREENWOOD	SC	29646	View Re
1227548	WILLIAM STANLEY GRIFFIN	GREENWOOD	SC	29646	View Re
1228492	CHARLIE HOLLOWAY	GREENWOOD	SC	29646	View Re
1230616	DAVID GRANT JAMES	GREENWOOD	SC	29646	View Re
1400355	ALFONZO LOPEZ	GREENWOOD	SC	29646	View Re
1230870	WILLIAM WALTON MASON	GREENWOOD	SC	29646	View Re
1229646	EDDIE JAMES MINYARD	GREENWOOD	SC	29646	View Re
1228466	DAVID MORALES	GREENWOOD	SC	29646	View Re
1228518	RANDY JAY NORDLUND	GREENWOOD	SC	29649	View Re
577695	John Rodderick Palmore	GREENWOOD	SC	29649	View Re
1230326	JOHN RODERICK PALMORE	GREENWOOD	SC	29646	View Re
1346905	MICHAEL ALLEN PAULIN	GREENWOOD	SC	29649	View Re
1230792	ALBERT LEON PAYNE	GREENWOOD	SC	29646	View Re
1357598	Jimmy Roy Rappley	GREENWOOD	SC	29646	View Re
1081269	DAVID GABERIAL ROBERTSON	GREENWOOD	SC	29646	View Re
1229822	SHOCKER ROUNDTREE	GREENWOOD	SC	29646	View Re
1230250	DANIEL ELBERT SHIRLEY	GREENWOOD	SC	29649	View Re
1231056	BRUCE BERNARD SMITH	GREENWOOD	SC	29646	View Re
1230215	RICHARD "J C" SMITH	GREENWOOD	SC	29646	View Re
1229455	BRUCE ALLEN STALNAKER	GREENWOOD	SC	29646	View Re
1229731	AKIVA LAMONT TOLBERT	GREENWOOD	SC	29646	View Re
1228475	ODELL WILLIAMS	GREENWOOD	SC	29646	View Re
1228782	SAMUEL WILLIAMS	GREENWOOD	SC	29646	View Re
1219765	WILLIE LEE WILLIAMS	GREENWOOD	SC	29646	View Re
1230472	ALEXIS EDDIE WILSON	GREENWOOD	SC	29646	View Re
1375874	EVERETT RUSSELL WIND	GREENWOOD	SC	29649	View Re
1228744	GERALD ALAN WOOD	GREENWOOD	SC	29649	View Re

You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Wednesday, July 06, 2011 10:44 AM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. This email serves as your alert to be aware of the presence of the noted offenders.

UPDATE EMAIL ALERT

THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA

This is an update and does not necessarily represent all of the offenders in your area at this time

Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mi
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Offender Information:

1284917	RICKY FERGUSON		Greenwood	SC	29646	View Record
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You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

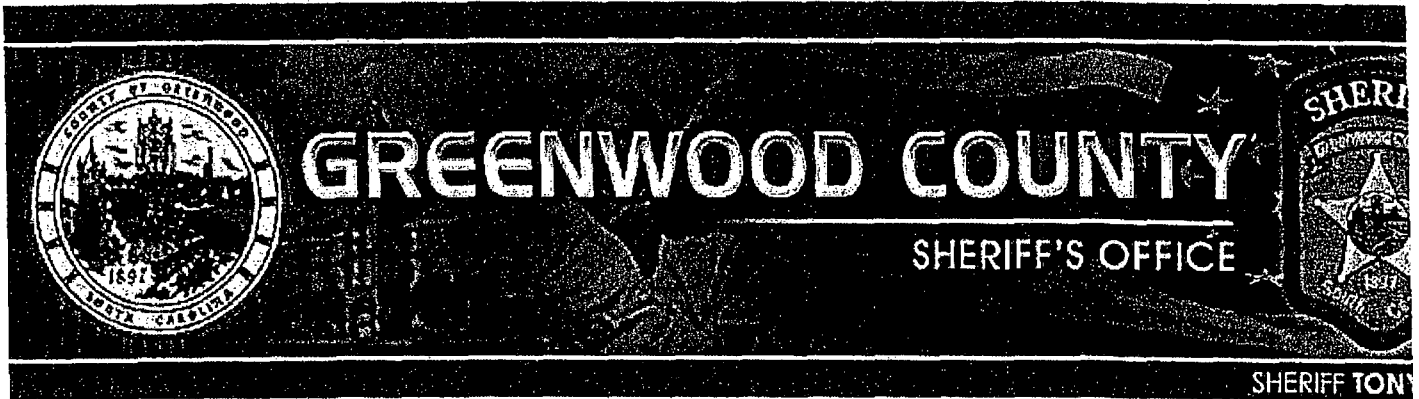
If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Wednesday, July 13, 2011 4:58 PM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. Our email serves as your alert to be aware of the presence of the noted offenders.

**UPDATE EMAIL ALERT
 THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA**

This is an update and does not necessarily represent all of the offenders in your area at this time

Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mi
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Offender Information:

1228567	RANDALL WALTER FAIN		GREENWOOD	SC	29646	View Record
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You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

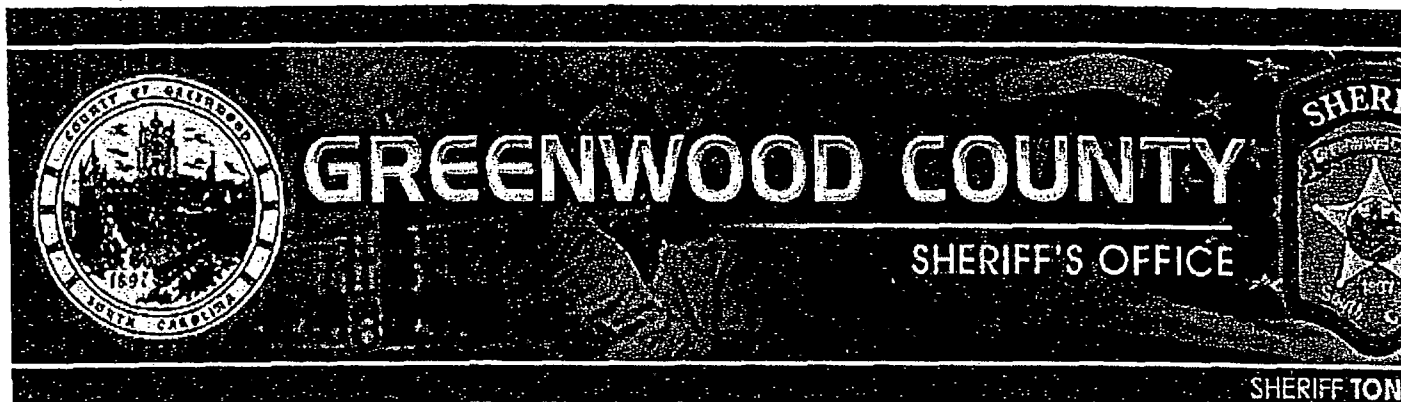
If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Wednesday, July 27, 2011 1:28 PM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. Our email serves as your alert to be aware of the presence of the noted offenders.

**UPDATE EMAIL ALERT
 THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA**

This is an update and does not necessarily represent all of the offenders in your area at this time

Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mil
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Offender Information:

651720	JEREMY DWAYNE ALEWINE		GREENWOOD	SC	29649	View Rec
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You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

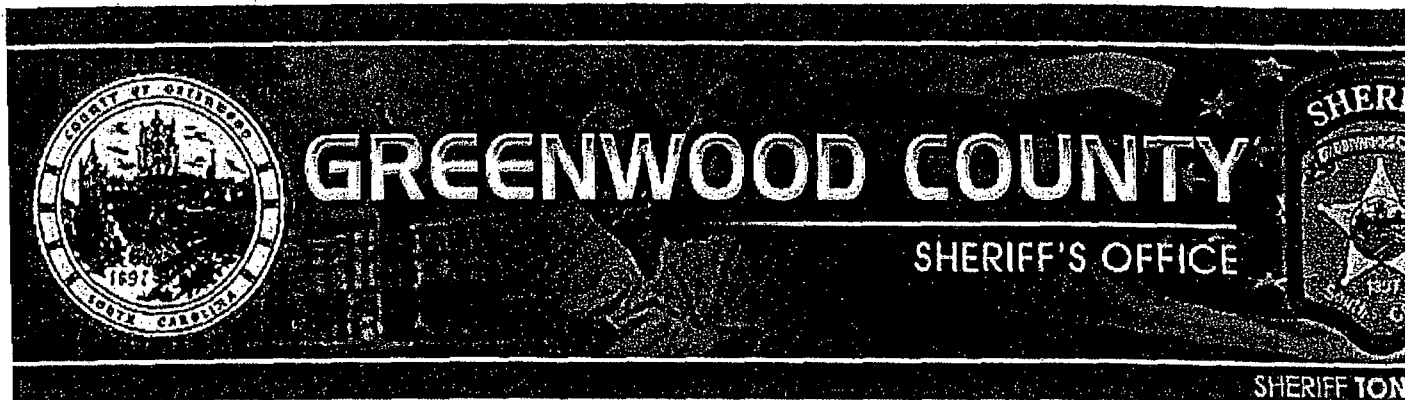
If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Friday, July 29, 2011 3:49 PM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. Our email serves as your alert to be aware of the presence of the noted offenders.

**UPDATE EMAIL ALERT
 THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA**

This is an update and does not necessarily represent all of the offenders in your area at this time

Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mi
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Offender Information:

1228863	JOSHUA CALDWELL		GREENWOOD	SC	29649	View Record
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You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

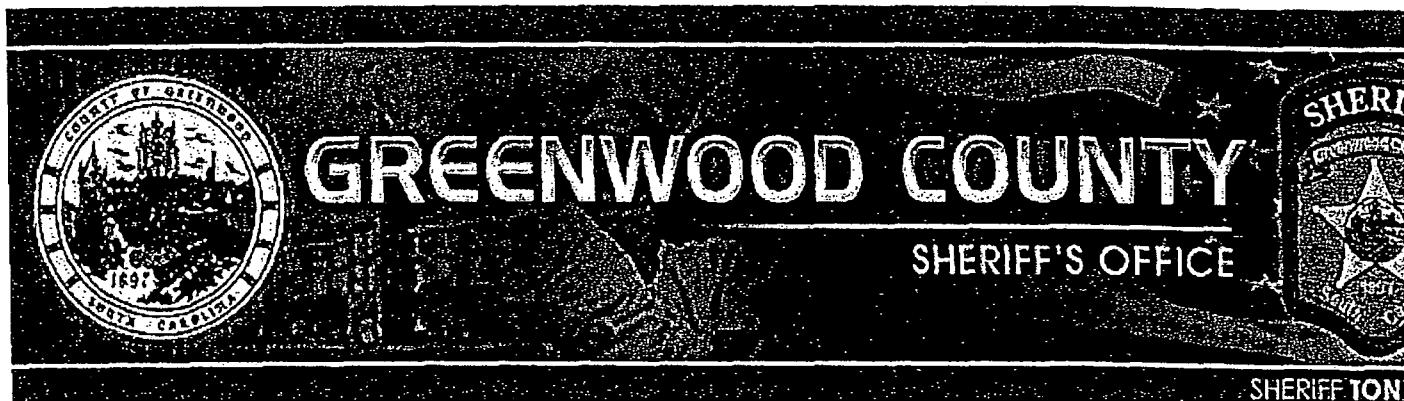
If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Tuesday, August 02, 2011 11:45 AM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. Our email serves as your alert to be aware of the presence of the noted offenders.

**UPDATE EMAIL ALERT
 THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA**

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Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mil
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Offender Information:

651720	JEREMY DWAYNE ALEWINE		GREENWOOD	SC	29649	View Rec
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You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

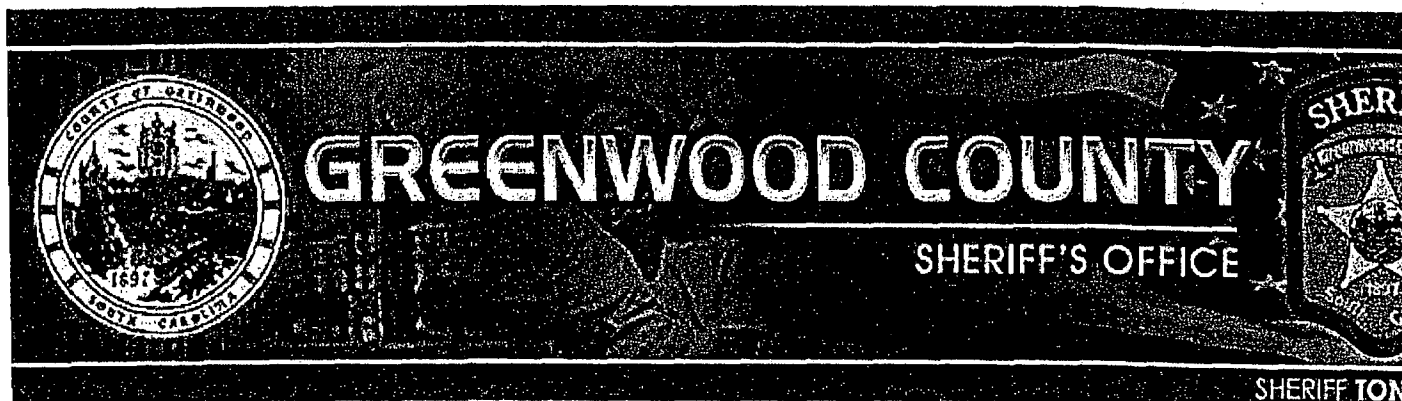
If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Wednesday, August 03, 2011 2:30 PM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. Our email serves as your alert to be aware of the presence of the noted offenders.

UPDATE EMAIL ALERT**THE OFFENDERS LISTED BELOW LIVE IN YOUR AREA**

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Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mi
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Offender Information:

1346905	MICHAEL ALLEN PAULIN		GREENWOOD	SC	29649	View Record
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You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

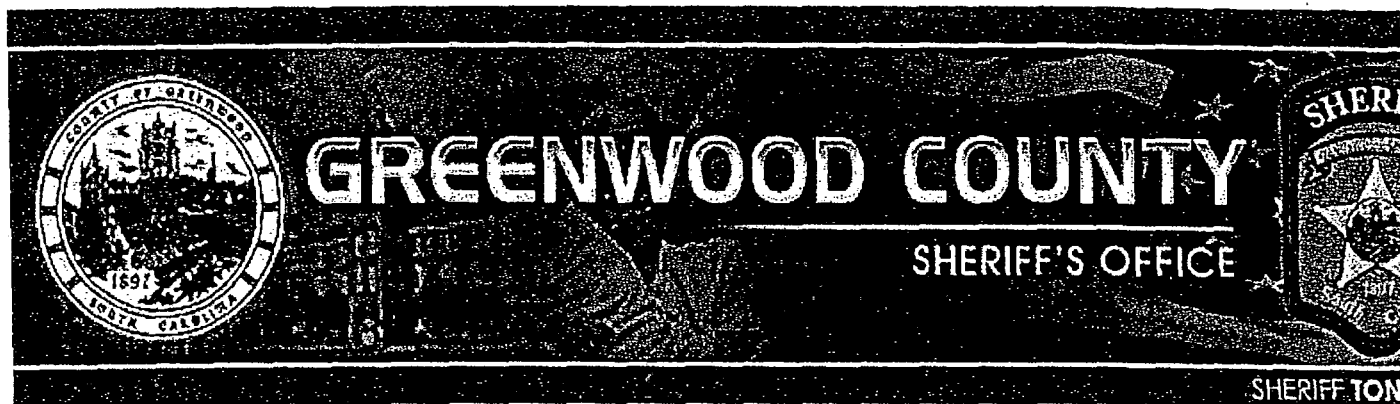
If you wish to update your registration information, please click [here](#) and enter your new information.

If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

Charles Grose

From: Notifications [notifications@icrimewatch.net]
 Sent: Thursday, September 08, 2011 5:24 PM
 To: cgrose@pdgreenwood.com
 Subject: Updated Offender Notification



You have registered the following address to be monitored for the presence of registered offenders in your area. Our indicate that the offender (s) shown below have registered a home address within the indicated distance of your address. This email serves as your alert to be aware of the presence of the noted offenders.

UPDATE EMAIL ALERT

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This is an update and does not necessarily represent all of the offenders in your area at this time

Known offender(s) live in your neighborhood. This information is made available for the purpose of protecting the public

Notification Address/Location for search:

Reg # 853254			Greenwood	SC	29649	2 mi
--------------	--	--	-----------	----	-------	------

Offender Information:

651720	JEREMY DWAYNE ALEWINE		GREENWOOD	SC	29646	View Record
1291702	TIMOTHY OSWALD SESSIONS		GREENWOOD	SC	29649	View Record

You will be emailed again if any new offenders move within the indicated radius of your registered address. If you find this service valuable please tell your friends and neighbors to sign up. You can forward them a copy of this email if you wish.

If you wish to update your registration information, please click [here](#) and enter your new information.

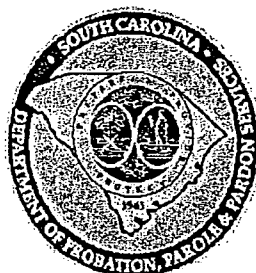
If you do not wish to receive further emails, please click [here](#) to be removed from this mailing list.

For technical questions, click [here](#).

South Carolina Department of Probation, Parole and Pardon Services

Standard Sex Offender Conditions

1. I will register as a sex offender as required by the Code of Laws of South Carolina and as described in the Department's *Notice of Sex Offender Registry*.
2. I will attend, actively participate in, not give cause to be terminated from, and successfully complete any counseling/treatment program, to which I am referred by my agent, which may include polygraph or other treatment related testing, all at my own expense. I waive all rights to confidentiality between myself and my treatment provider, and authorize my treatment provider to disclose to my agent, the Court, the Parole Board, the releasing authority, and/or the hearing officer, information about my attendance and participation in the program. (Must complete Referral Form 1054).
3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail); or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.
4. I will not have any contact with a person under the age of 18, with the exception of my immediate family members and then may only have such contact if approved in advance under conditions set by my treatment provider and my agent. If I have incidental contact with any child, I will be civil and courteous and immediately remove myself from the situation. I will discuss the contact at my next treatment session and will immediately report this contact to my agent.
5. I will not enter into, loiter or work within one thousand (1,000) feet of any area or event frequented by people under the age of 18 including but not limited to: schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, theaters, or and festivals, unless approved in advance by my agent.
6. I will not purchase, possess, or use any sexually stimulating or sexually explicit material or device, nor enter into, loiter or work within one thousand (1,000) feet of any place where such material or device is sold or presented as entertainment. This includes but is not limited to adult book stores, sexually explicit internet sites, television services, or telephone services, sex shops, topless bars, strip clubs, and massage parlors. I will not possess or use a computer or any other electronic device which is enabled with internet access for any reason unless approved in advance under conditions set by my treatment provider and my agent. I understand this means that without prior approval, there may not be a computer of any type in my residence, and that I may not access any computer. If approved to use a computer I must sign the Computer Use Agreement for Sex Offenders (Form 1402). If my employer requires me to use a computer, I will provide a written statement from my employer stating the need for such use.
7. I will permit my agent or a representative of the Department, without a warrant and with or without the assistance of any other law enforcement officer, to search my person, residence, any vehicle I own or have permission to use, and any of my possessions, for the presence of sexually stimulating or sexually explicit materials or devices prohibited by these conditions, and to seize said materials. Such materials seized shall be considered property of the court, Parole Board, or releasing authority, and shall be safely kept by the Department or other law enforcement agency until any violations concerning the seized materials have been addressed.
8. I will abide by all curfews as directed by my agent.
9. I will at all times maintain a suitable residence, approved by my agent, which complies with all conditions of my supervision, which may not be within one thousand (1000) feet of any area frequented by people under the age of 18, including but not limited to schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, or theaters. I will obtain approval from my agent of my residence and employment and shall obtain prior approval from my agent before changing my residence or employment. I will stay at my approved residence every night and will not sleep or stay overnight anywhere else without prior approval of my agent.
10. I will not consume alcoholic beverages and will submit to alcohol testing as instructed by my agent or treatment provider. I agree that any test results may be used as evidence in any hearing for the violation of the conditions of my supervision and I waive any right to challenge the validity of such results.
11. I will comply with the Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense.



SEX OFFENDER MANAGEMENT

**South Carolina Department of
Probation, Parole and Pardon Services**

Post Office Box 50666

Columbia, South Carolina 29250

803-734-9220

www.dppps.sc.gov

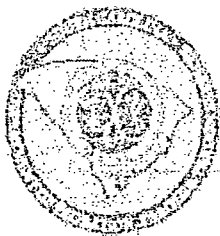
Samuel B. Glover, Director

Teresa A. Knox, Chief Legal Counsel



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Introduction	2
Jessie's Law	3
Penalties	5
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Sex Offender Management Strategies	8
SC Profile of Sex Offenders and Their Victims	10
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INTRODUCTION

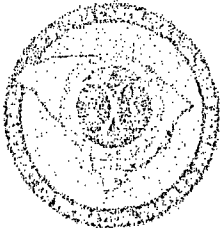
The South Carolina Department of Probation, Parole and Pardon Services is charged with the responsibility of supervising all adult criminal offenders sentenced to probation by the Court of General Sessions. In addition, the Department is responsible for providing supervision to those offenders who have been released to the community by the Parole Board or through other release mechanisms. With these responsibilities, the formal mission of the Department is to:

Prepare offenders under our supervision toward becoming productive members of the community;
Provide assistance to the victims of crimes, the Courts and the Parole Board; and
Protect public trust and safety.

In order to fulfill our mission with the sex offender population, in January 2006 we began using a nationally recognized supervision strategy. This strategy, called the "Containment Approach" consists of three elements. First, it employs the use of external control, that is, the criminal justice system provides external control through close contact with the sex offender's treatment provider. The second element of the Containment Approach is to facilitate internal control through treatment. The offender is taught to achieve personal control of his or her inappropriate sexual impulses, feelings, and behaviors through offense specific treatment which uses a variety of psycho-educational and behavioral modification techniques. This must be achieved by a skilled treatment provider. The third element of this approach is the use of polygraph examinations. This allows for confirmation of what the offender self-reports to the treatment provider. The primary use of the polygraph is to obtain a full disclosure of the offender's sexual history. It may be used periodically by the treatment provider for verification of behavior. In addition to the above supervision strategy, the Department established a higher supervision level and is using a sex offender-specific risk assessment to determine the level of supervision for each offender.

In June 2006, Jessie's law was passed. Named after Jessica Marie Lunsford – who was murdered last year in Florida by a registered sex offender – the law mandates Global Positioning Satellite (GPS) monitoring for sex offenders convicted of certain offenses and provides our Department with jurisdiction of all offenders placed on GPS.

It is our goal to keep the citizens of South Carolina safe through holding sex offenders accountable and addressing the many needs of this population. We are committed to maintaining a sound and structured sex offender management program that will positively impact public safety and provide the offender with every opportunity to succeed. Our clear and consistent policies include comprehensive monitoring of this offender population, with efforts placed on reducing recidivism. Reinforcement from our judicial and local law enforcement partners will strengthen and heighten our effort to uphold community safety.



JESSIE'S LAW

Sex Offender Accountability and Protection of Minors Act of 2006

OFFENSES - §23-3-540 (G)

(1) convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses:

(a) criminal sexual conduct with, a minor in the first degree (§16-3-655(A));

(b) criminal sexual conduct with, a minor in the second degree (§16-3-655(B)). If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from illicit consensual sexual conduct, as contained in §16-3-655(B)(2), provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, then the convicted person is not required to be electronically monitored pursuant to the provisions of this section;

(c) engaging a child for sexual performance (§16-3-810);

(d) producing, directing, or promoting sexual performance by a child (§16-3-820);

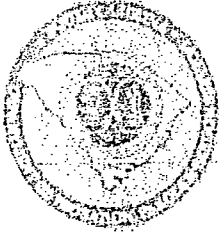
(e) criminal sexual conduct: assaults with intent to commit (§16-3-656) involving a minor;

(f) committing or attempting lewd act upon child under sixteen (§16-15-140);

(g) violations of Article 3, Chapter 15 of Title 16 involving a minor;

(h) kidnapping (§16-3-910) of a person under eighteen years of age except when the offense is committed by a parent; or

(2) ordered as a condition of sentencing to be included in the sex offender registry pursuant to §23-3-430(D) for an offense involving a minor, except that the provisions of this item may not be construed to apply to a person eighteen years of age or less who engages in illicit but consensual sexual conduct with another person who is at least fourteen years of age as provided in §16-3-655(B)(2).



JESSIE'S LAW

PLACEMENT ON GPS

Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere:

CSC with a minor, 1st degree and lewd act upon child are mandatory GPS.
§23-3-540(A)

All other offenses listed in §23-3-540(G) are at the discretion of the court.
§23-3-540(B)

Violation of a term of probation, parole, community supervision, or a community supervision program:

CSC with a minor, 1st degree and lewd act upon child are mandatory GPS.
§23-3-540(C)

All other offenses listed in §23-3-540(G) are at the discretion of the court and agency with jurisdiction. §23-3-540(D)

Violation of provision of sex offender registry article:

CSC with a minor, 1st degree and lewd act upon child are mandatory GPS.
§23-3-540(E)

All other offenses listed in §23-3-540(G) are at the discretion of the court.
§23-3-540(F)

DURATION OF GPS §23-3-540(H)

For as long as the offender is required to register as a sex offender.

For offenses other than CSC with a minor, 1st degree and lewd act upon child
- After 10 years, an offender may petition the court to be released from GPS.
If denied, the offender may refile a new petition every 5 years.

PPP JURISDICTION §23-3-540(H) & (J)

"The person shall abide by other terms and condition set forth by the Department of Probation, Parole and Pardon Services with regard to the active electronic monitoring device and electronic monitoring program."



PENALTIES

§23-3-540(I) The person shall follow instructions provided by the Department of Probation, Parole and Pardon Services to maintain the active electronic monitoring device in working order. Incidental damage or defacement of the active electronic monitoring device must be reported to the Department of Probation, Parole and Pardon Services within two hours. A person who fails to comply with the reporting requirement of this subsection is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

§23-3-540(L) A person who intentionally removes, tampers with, defaces, alters, damages, or destroys an active electronic monitoring device is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

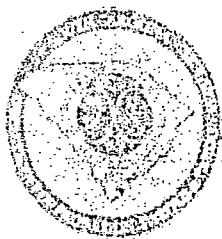
§23-3-540(M) A person who completes his term of incarceration and the maximum term of probation, parole, or community supervision and who wilfully violates a term or condition of electronic monitoring, as ordered by the court or determined by the Department of Probation, Parole and Pardon Services is guilty of a felony and, upon conviction, must be sentenced in accordance with the provisions of Section 23-3-545.

§23-3-545

(A) If a person is convicted of wilfully violating a term or condition of active electronic monitoring pursuant to section 23-3-540(M), the court may impose other terms and conditions considered appropriate and may continue the person on active electronic monitoring, or the court may revoke the active electronic monitoring and impose a sentence of up to ten years for the violation.....A person who is incarcerated for a revocation pursuant to the provisions of this subsection is not eligible for parole.

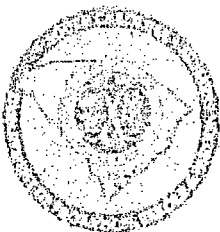
(B) If a person's electronic monitoring is revoked by the court and the court imposes a period of incarceration for the revocation, the person must be placed back on active electronic monitoring when the person is released from incarceration.

(C) A person may be sentenced for successive revocations, with each revocation subject to a ten-year sentence. The maximum aggregate amount of time the person may be required to serve when sentenced for successive revocations may not exceed the period of time the person is required to remain on the sex offender registry.



STANDARD SEX OFFENDER CONDITIONS OF SUPERVISION

1. I will register as a sex offender as required by the Code of Laws of South Carolina and as described in the Department's *Notice of Sex Offender Registry*.
2. I will attend, actively participate in, not give cause to be terminated from, and successfully complete any counseling/treatment program, to which I am referred by my agent, which may include polygraph or other treatment related testing, all at my own expense. I waive all rights to confidentiality between myself and my treatment provider, and authorize my treatment provider to disclose to my agent, the Court, the Parole Board, the releasing authority, and/or the hearing officer, information about my attendance and participation in the program. (Must complete Referral Form 1054).
3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.
4. I will not have any contact with a person under the age of 18, with the exception of my immediate family members and then may only have such contact if approved in advance under conditions set by my treatment provider and my agent. If I have incidental contact with any child, I will be civil and courteous and immediately remove myself from the situation. I will discuss the contact at my next treatment session and will immediately report this contact to my agent.
5. I will not enter into, loiter or work within one thousand (1,000) feet of any area or event frequented by people under the age of 18 including but not limited to: schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, theaters, or and festivals, unless approved in advance by my agent.
6. I will not purchase, possess, or use any sexually stimulating or sexually explicit material or device, nor enter into, loiter or work within one thousand (1,000) feet of any place where such material or device is sold or presented as entertainment. This includes but is not limited to adult book stores, sexually explicit internet sites, television services, or telephone services, sex shops, topless bars, strip clubs, and massage parlors. I will not possess or



STANDARD SEX OFFENDER CONDITIONS OF SUPERVISION

use a computer or any other electronic device which is enabled with internet access for any reason unless approved in advance under conditions set by my treatment provider and my agent. I understand this means that without prior approval, there may not be a computer of any type in my residence, and that I may not access any computer. If approved to use a computer I must sign the Computer Use Agreement for Sex Offenders (Form 1402). If my employer requires me to use a computer, I will provide a written statement from my employer stating the need for such use.

7. I will permit my agent or a representative of the Department, without a warrant and with or without the assistance of any other law enforcement officer, to search my person, residence, any vehicle I own or have permission to use, and any of my possessions, for the presence of sexually stimulating or sexually explicit materials or devices prohibited by these conditions, and to seize said materials. Such materials seized shall be considered property of the court, Parole Board, or releasing authority, and shall be safely kept by the Department or other law enforcement agency until any violations concerning the seized materials have been addressed.

8. I will abide by all curfews as directed by my agent.

9. I will at all times maintain a suitable residence, approved by my agent, which complies with all conditions of my supervision, which may not be within one thousand (1000) feet of any area frequented by people under the age of 18, including but not limited to schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls; or theaters. I will obtain approval from my agent of my residence and employment and shall obtain prior approval from my agent before changing my residence or employment. I will stay at my approved residence every night and will not sleep or stay overnight anywhere else without prior approval of my agent.

10. I will not consume alcoholic beverages and will submit to alcohol testing as instructed by my agent or treatment provider. I agree that any test results may be used as evidence in any hearing for the violation of the conditions of my supervision and I waive any right to challenge the validity of such results.

11. I will comply with the Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense.



SEX OFFENDER MANAGEMENT STRATEGIES

These protocols only apply to those offenders on active supervision convicted of offenses which require sex offender registration. The following supervision protocols will be automatically ordered by the agent at the beginning of supervision.

SUPERVISION:

The offender will be interviewed by Department personnel after sentencing. The agent will explain the Standard Sex Offender Conditions of Supervision to the sex offender, answer any questions, have the offender sign and date the conditions, and provide the offender with a copy.

The agent will make an initial home visit within two weeks of receiving a new sex offender case.

The agent will then administer the Static 99 Risk Assessment within two weeks after receiving the case. The offender will be supervised at the Sex Offender Intensive (S.O. Intensive) level of supervision until the Static 99 is completed and the supervision level in the guidelines below can be applied.

If the sex offender's score on the Static 99 is six or higher (6+), the offender will be supervised under the Containment level of supervision. These offenders will be supervised at the Containment level for a least one year and can be reduced to the S.O. Intensive level only with the approval of a supervisor. If reduced to the S.O. Intensive level of supervision, these offenders will remain there for one year and can be reduced to the S.O. High level only with the approval of a supervisor. The offender will also be required to pay Intensive supervision fees.

The Static 99 suggests that these sex offenders pose the greatest risk to the community; therefore, the Department subjects them to the most scrutiny. The offenders on the Containment level will be required to report monthly and the agent will complete three home visits, one employment verification and one treatment provider contact per month.

If the sex offender's score on the Static 99 is two to five (2-5), the offender will be supervised under the S. O. Intensive level of supervision. These offenders will be supervised at this level for at least one year and can



SEX OFFENDER MANAGEMENT STRATEGIES

be reduced to the S.O. High level only with the approval of a supervisor. This entails the offender reporting monthly and the agent completing two home visits, one employment verification and one treatment provider contact per month. The offender will also be required to pay Intensive supervision fees.

If the sex offender's score on the Static 99 is zero to one (0-1), the offender will be supervised under the Sex Offender High (S.O. High) level of supervision. These offenders will be supervised no lower than the S.O. High level for the duration of supervision. This entails the offender reporting monthly and the agent completing one home visit, one employment verification and one treatment provider contact per month.

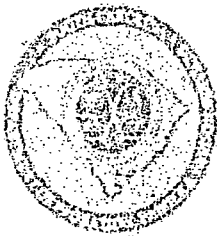
TREATMENT:

All registered sex offenders will be required to attend and complete treatment as directed by the agent. The length of the treatment will be determined by the provider and the progress of the offender.

As a tool with treatment, polygraph examinations will be completed for those current sex offenders or new admissions who score 4 or higher on the Static 99. These examinations will provide a "full sexual history disclosure" and will assist with the treatment program. Subsequent polygraph examinations could be requested by the supervising agent or the treatment provider as to ensure compliance with treatment and/or to test the truthfulness of the offender during treatment.

VIOLATIONS:

Any violation committed by a sex offender, except a purely financial violation, will be addressed as a community safety violation and will require a mandatory staffing with a supervisor. Sex offenders that abscond supervision will be subject to an enhanced Sex Offender Fugitive Investigation process. This includes placing the offender in the National Crime Information Center (NCIC). The case information will also be forwarded to the Regional Organized Crime Information Center (ROCIC) where the information will be accessed against an assortment of national data bases to possibly obtain the whereabouts of the absconded offender. Once this has been completed, the case will be assigned to a central office agent for further investigation.



SOUTH CAROLINA PROFILE OF SEX OFFENDERS AND THEIR VICTIMS

SEX OFFENDERS

- 8,540 on the SC Sex Offender Registry
- 999 active sex offenders under PPP supervision
- 977 males; 22 females
- 342 black; 646 white; 11 other
- Average age = 37
- Average Grade Completed = 11th

VICTIMS OF SEXUAL ABUSE

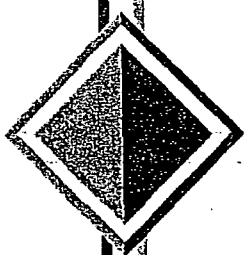
- Most are known or related to their attackers
- Most are children
- 2/3 of offenders convicted of sexual abuse nationwide offended against children and 72% of registered sex offenders in SC offended against children
- 90% of children under 12 who are sexually assaulted know their attackers
- 66% of adult victims know their attackers

Offense Statute	Offense Description	Class	Level	Violent
159 16-03-0655	Criminal sexual conduct with minors (DNA if after 6/30/95) (no longer used)(see 385, 396, 397)	UNC		N
3022 16-03-0655 (A) (2)	CSC w/ minor - victim under 16 and offender w/ previous record under 23-03-0430 (c) or (d)	FEL	A	Y
385 16-03-0655(1)	Criminal sexual conduct with minor - victim under 11 yrs of age - First degree	FEL	A	Y
396 16-03-0655(2)	CSC w/ minor - victim 11 to 14 yrs of age inclusive - 2nd deg. (SR unless ordered not by judge)	FEL	C	Y
397 16-03-0655(3)	CSC w/ minor - victim under 16 - 2nd degree (SR unless ordered not by judge)	FEL	C	Y
253 16-03-0656, 0652(2)	Assault with intent to commit criminal sexual conduct - First degree	FEL	A	Y
254 16-03-0656, 0653(2)	Assault with intent to commit criminal sexual conduct - Second degree	FEL	C	Y
255 16-03-0656, 0654(2)	Assault with intent to commit criminal sexual conduct - Third degree	FEL	E	N
399 16-03-0810, 0653(2)	Engaging child under 18 for sexual performance	FEL	C	Y
413 16-03-0820, 0654(2)	Produce, promote or direct sexual performance by a child under 18	FEL	E	N
9525 16-03-0910	Kidnapping - Violent/ Parolable	UNC		Y
9501 16-03-0910	Kidnapping - Other (formerly 9001) Parolable	UNC		N
948 16-03-0910	Kidnapping, if sentenced for murder (Exempt/Violent)	FEL		Y
95 16-03-0910	Kidnapping (SR if victim >= 18 unless judge order not)	FEL	A	Y
103 16-15-0140	Lewd Act, committing or attempting lewd act upon child under 14 (no longer used)(see 2468)	FEL	D	N
2468 16-15-0140	Lewd Act, committing or attempting lewd act upon child under 16 (after 6/4/96)	FEL	D	N
372 16-15-0305, (H)	Dissemination, procuring or promoting obscenity/unlawful	FEL	F	N
1210 16-15-0315	Requiring receipt of obscene material as precondition of sale of other material (Misdemeanor)	UNC		N
373 16-15-0325	Participation in preparation of obscene material prohibited	MISD	C	N
374 16-15-0335	Unlawful to hire person under 18 to violate obscenity statutes	FEL	F	N
2999 16-15-0342	Criminal solicitation of a minor	FEL	E	N
375 16-15-0345	Unlawful to disseminate obscene material to person under 18 yrs of age	FEL	F	N
376 16-15-0355	Disseminating obscene material to a minor 12 years or younger	FEL	E	N
377 16-15-0365	Exposure of private parts in a lewd and lascivious manner (Misdemeanor)	UNC		N
320 16-15-0380	Photographing minor for obscene film or photo - 3rd off. (no longer used)	UNC		N
318 16-15-0380	Photographing minor for obscene film or photo - 1st off. (no longer used)	UNC		N
319 16-15-0380	Photographing minor for obscene film or photo - 2nd off. (no longer used)	UNC		N
378 16-15-0385(A)(B), (D)	Disseminating harmful material or exhibiting harmful performance to minors	FEL	E	N
1211 16-15-0387	Employing person under 18 to appear in public in state of sexually explicit nudity (Felony)	FEL	E	N
379 16-15-0395(D)	Sexual exploitation of a minor - First degree	FEL	C	N
276 16-15-0400, 16-15-0420	Dissem. of sex. oriented material to minor - 2nd off. (no longer used)(see 378)	UNC		N
275 16-15-0400, 16-15-0420	Dissem. of sex. oriented material to minor - 1st off. (no longer used)(see 378)	UNC		N
277 16-15-0400, 16-15-0420	Dissem. of sex. oriented material to minor - 3rd off. (no longer used)(see 378)	UNC		N
380 16-15-0405(D)	Sexual exploitation of a minor - Second degree	FEL	E	N
381 16-15-0410(C)	Sexual exploitation of a minor - Third degree	FEL	E	N
382 16-15-0415	Promoting the prostitution of a minor	FEL	C	N
383 16-15-0425(C)	Participation in the prostitution of a minor	FEL	F	N
209 16-15-0430, 0320	Importing for sale, distrib. of obscene materials - 3rd or sub. offense (no longer used)	UNC		N
208 16-15-0430, 0320	Importing for sale, distrib. of obscene materials - 2nd off. (no longer used)	UNC		N
207 16-15-0430, 0320	Importing for sale, distrib. of obscene materials - 1st off. (no longer used)	UNC		N

The GPS requirements of Jessica's Law only apply to these offenses if they are committed against a Minor.

Note in order for an offender to fall under the GPS provisions of Jessica's Law he/she must be required to register on the sex offender registry. If an offender has been convicted of one of the above offenses but a judge has made a finding on the record that the offender does not have to register, then that offender is not required to be placed on GPS monitoring under Jessica's Law.

High Tech Community Justice Global Positioning Satellite Technology



What is GPS?

GPS is a system that can pinpoint within 15 meters a person's position on Earth using 24 Global Positioning Satellites (GPS) in orbit at 11,000 nautical miles above the Earth. The satellites are owned and operated by the Department of Defense and continuously transmit signals which can be detected by anyone possessing a GPS receiver.

GPS and the Criminal Justice System:

Throughout the world, criminal justice agencies have begun using GPS to monitor targeted offenders. In many states, this technology is used to monitor sex offenders convicted of specific crimes for varying lengths of time.

In the commercial field of offender tracking there are two types of GPS. Passive GPS, which provides information regarding the whereabouts of an offender during the previous 24-hour period. This information is collected throughout the day and is then transmitted via land line telephone to a main computer which then downloads the information to the supervising Agent. Active GPS also provides information regarding the whereabouts of an offender however, this information is automatically uploaded to the main computer via cell technology periodically throughout the day. The active GPS unit can also be "pinged" by the supervising Agent at any time, provided that there is adequate cell coverage, so that the offender's location can be ascertained very rapidly.

What Are the Advantages of GPS in Community Supervision?

- GPS is a relatively inexpensive alternative to incarceration for high risk offenders.
- GPS allows offenders an opportunity to continue working in the community, paying taxes, supporting their families and living at home.
- Using GPS, Agents can create an "electronic perimeter" around specific areas designating them as "off limits" to offenders. These are called "exclusion zones" or "hot zones."
- Victims can be notified when offenders enter their established perimeters.
- The features and reliability of GPS equipment can be a deterrent to future criminal activity.



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Results Driven Supervision



From the 1998 annual report

Results-driven parole supervision protects the community

Parole supervision is making a quantum leap into the new century. With tougher parole standards, enhanced surveillance techniques, stronger community alliances, and expanding electronic communication between law-enforcement agencies, Georgia's parole supervision provides structure and control unimaginable even a decade ago. The agency has created a results-driven model for parole supervision which simultaneously places more responsibility on the parolee while supplying him with more life-coping skills. The new methodology is based on the latest research on crime deterrence and reflects the agency's insistence for greater accountability to the public. Inherent in the descriptive label "results-driven" is a pledge to Georgians that community safety is the result they can expect.

No agency is better equipped to make good on that promise. Georgia Parole's Field Operations Division is one of only four community supervision units in the country accredited by the American Correctional Associations Commission on Accreditation for Corrections, the sole accrediting authority for adult parole agencies. Measured under CAC's standards that include quality supervision, victim notification, training, and program evaluation, the Division scored 98 on its most recent re-accreditation — a near-perfect score reflecting the agency's continual push for excellence.

More than 320 parole officers operating from 50 parole offices around the state carry out the agency's strict demands for supervising offenders in the community. These officers, all college graduates, many from law enforcement backgrounds, undergo eight weeks of intensive training to qualify as

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certified state peace officers before assuming management of caseloads averaging 60 parolees. Highly educated and well-trained, they work with a special commitment: the communities they protect are their own.

Most offenders come home

Most offenders — in fact, 90 percent — will return to Georgia's communities, either as parolees or "max-outs" who have served their entire sentences. With stricter sentencing they return later, but they still return. After longer confinements, they return punished, but with diminished work and social skills. When offenders leave prison they collect a \$25 check and a bus ticket home. That hometown serves as context for their six-to-twelve month readjustment to society. Employers, neighbors, indeed, all community residents become participants in what criminal justice researchers recognize as a difficult and potentially dangerous period — the transition from prison to society.

Stress intensifies during transition

Offenders with the strongest will and best motives can falter during this difficult passage from prison back to the real world. Most have limited education, few vocational skills, and minimal, if any, support networks. Often their strongest social skills are those developed to survive in prison, the antithesis of healthy community life. Drug and alcohol addictions, dormant during incarceration, may reemerge. Finding a job, reestablishing family ties, avoiding former associates — while positive behavior — is stressful. Moreover, nearly 15 percent of offenders suffer from mental health disabilities which require immediate attention, often including medication. Collectively, these stressors occurring during the offender's most vulnerable period can trigger a downward spiral in attitude and behavior which may — without intervention — lead to more criminal behavior.

Parole establishes transition structure

The immediate goal of parole supervision is to protect the community during the offender's readjustment phase. Parole officers, cross-trained in counseling, substance abuse treatment, interpersonal communication, and law-enforcement functions, establish structure for the parolee and then vigilantly monitor his activities. Parolees needing higher level transitional structure are placed on electronic monitoring surveillance as well.

Parolee '98 employment rate was a remarkable 87.8 percent

The ultimate goal of parole supervision is to stabilize the offender with employment skills, substance abuse recovery,

and life-coping skills so that he develops more control over his life, does not re-offend, and contributes to society as a citizen and taxpayer. Georgia parole supervision operates with an urgent and intense agenda, recognizing that the best window of opportunity for such change will slam shut once the parole term expires.

Georgia's parole officers work with mental health professionals to develop parolee treatment plans. Nearly 15 percent of offenders suffer from mental health disabilities which require immediate attention, often including medication.

Research shows four main factors affect criminal behavior

National research, confirmed by Georgia research, identifies certain factors that affect parole failure or success. The unalterable factors, such as crime type and age, are considered during the parole selection process. The four alterable factors: *education, substance abuse, thinking skills, and employment* — are targets of intervention for the Parole Board's results-driven field supervision.

Parole officers create an individualized supervision plan for each parolee, addressing those four tracks with short and long-term goals and consequences. Likewise, chief parole officers establish district-wide goals to raise parolee employment levels, reduce substance abuse relapse, alter offender cognitive skills, and elevate parolee education levels. These cumulative results determine whether programs and practices are accomplishing the agency goals to improve public safety in Georgia's communities.

Many of these factors have always been addressed by parole supervision, but not with the concerted focus of results-driven supervision. Parole officers in some areas of the state were also hampered by the limited availability of appropriate community resources, such as mental health counseling, to address their parolees' needs. Now the agency has expanded its search for those resources while developing its own-in-house programs to target the four critical factors for parole success and public safety.

Education and counseling services offered on-site

For instance GED classes are now offered at several parole offices. Parolees, who frequently depend on public transportation or family or friends to take them to appointments, are more likely to continue classes when transportation problems are minimized. They also thrive from studying with other parolees under the encouraging supervision of their parole officers.

Parole also aims to place substance abuse and mental health

services counselors on site whenever possible. By improving the quality of those services and tightening enforcement on targeted offenders, the agency documented a dramatic result for FY98: although monitoring in the form of drug screens increased by 38 percent, *positive tests declined by 22 percent.*

Those testing positive may be placed in residential treatment centers within their parole district as an intermediate sanction. For more serious technical violations, parolees may be sent to the state-operated Whitworth Detention Center in Hartwell which houses parolees with addictive disorders or mental health problems. During Fiscal '98 the agency expanded this intensive treatment facility from 175 to 212 beds. Parolees who are revoked due to drug or alcohol problems may be sent to the Homerville correctional facility for nine months of hard prison time coupled with daily counseling and education.

Although Anthony earns his income by painting window displays and wall murals—like those he created for his apartment shown at right—he needs basic math and language skills to help him market his work and negotiate contracts. Now he's filling in those educational gaps by attending GED classes at the DeKalb Parole Center.

Employment rate at all-time high

Parole officers have always known the importance of steady employment to keep parolees on the right track but they were often frustrated by the lag between the offender's release from prison and his first job and paycheck. Now the Parole Board, working with the Department of Corrections, accelerates the hiring process by preparing job-readiness packages while the offender is still incarcerated.

The package includes the offender's picture identifications, social security card, resumes, diplomas, and other job-related documents which make the parolee "job-ready" immediately upon prison release. The Job Development Program, piloted in three prisons in FY98, will be conducted in all institutions next year.

During FY98 many parolees also benefited from job-readiness courses prepared by local parole offices. Statewide, the agency push to accelerate and sustain parolee employment during FY98 created an unprecedented result: *an employment rate of 87.8 percent, a 2.7 percent increase over FY97.* Compare this to another statistic: *More than 60 percent of offenders entering Georgia prisons were unemployed at the time they committed their offense.*

Cognitive skills training is difficult but critical

Thinking patterns, the most critical element for parole success, is also the most difficult to alter and the trickiest to measure.

The agency researched, piloted, and committed to a cognitive skills training program, Reasoning and Rehabilitation, that offers structured, intense training for higher-risk offenders. Importantly, the program can be statistically evaluated for effectiveness in changing thinking patterns that lead to criminal behavior.

The 70-hour, 17-week-long course, required for certain offenders, teaches through interactive exercises and assignments such skills as anger management, negotiation, and dealing with authority. In 1998 the agency trained 25 more parole officers as instructors, bringing the total to 65 statewide who offer Reasoning and Rehabilitation in 35 sites.

The cognitive skills program has reduced recidivism rates in several states such as Colorado, which offers it for probationers as well as parolees. With grant funds from the National Institute of Justice, the Georgia Parole Board has contracted an independent researcher to track the progress of graduates for three years after program completion.

Those four tracks run in the shadow of two others:
enforcement and consequences.

Enforcement protects the community and spurs attention to goals

Parolees live by a set of conditions that limits their freedom, prohibits certain associations, requires employment, demands payment of obligations like restitution and child support, and mandates expected behavior and attitude. Parole officers enforce the conditions of parole by imposing appropriate punishment from a continuum of sanctions ranging from increased reporting to arrest. Electronic monitoring is used both as a preventive measure for higher-risk parolees straight out of prison as well as a sanction for any parole violator.

Parolees must pay child support by Georgia parole condition; parole officers enforce it

During FY98, parole officers kept 1400 electronic monitoring units in continuous use, strapped on the ankles of all higher-risk offenders as soon as they emerged from prison or placed on any offender who required more structure or surveillance. For parolees with mandated treatment, officers used supplemental drive-by units to quickly confirm their attendance at counseling or other assigned meetings.

Offender-funded EM project promises taxpayer savings

In January the Board began a one-year study with the Sentinel Monitoring Company to determine the feasibility of requiring parolees to pay for their own electronic monitoring. Operating in nine parole districts, the offender-funded program has the capability of saving taxpayers thousands of dollars while

simultaneously expanding statewide parolee monitoring and surveillance.

Sex offenders receive amplified supervision

Although sex offenders routinely serve all of their court-imposed sentences, the Georgia Board recognizes that, for public protection, a period of post-prison, transitional community supervision may be essential for certain offenders. During FY98 only 35 sex offenders were paroled to this intensive community-based structure. Within the monitored period, parole officers can:

- guarantee the offender's registration with local police and school authorities as well as school authorities, as required by law;
- establish the offender's residence and employment away from children or other potential victims;
- enroll the offender in a recognized sex offender program and enforce attendance;
- restrict the offender's movement through electronic monitoring while he remains in mental health programs;
- address other contributing factors leading to criminal activity such as substance abuse.

During Fiscal '98 the Georgia Parole Board implemented other policies strengthening sex-offender supervision, including greater search privileges and the use of polygraph examinations.

Sex offender supervision, while following the results-driven established tracks, amplifies surveillance. Parole officers receive specialized training in the thought patterns and behavior of the sex offender and thus can develop effective case-management strategies. Parole officials demand the highest level of monitoring for these offenders. Because of the tight structure built around sex offenders during parole, in cooperation with other law enforcement and social service officials, those offenders will remain under community scrutiny after their paroles expire.

Georgia parole officers are certified state peace officers with arrest powers on Board warrants. They train extensively and frequently in search and arrest procedures, and twice yearly qualify with their semi-automatic service weapons. Georgia's parole officers are among the best-trained community supervision officers in the country.

Parole officers are law-enforcement trained and motivated

Parole officers undergo a rigorous process to become the Board's community representatives. All college graduates who pass physical and psychological tests, candidates then attend eight weeks of training at the Georgia Public Safety Training

Center in Forsyth. They graduate as certified peace officers sworn to protect the public. That mission remains foremost while carrying out their parole functions. From their oral and written reports, the Parole Board responds quickly and decisively to isolate parole violators from the community.

Thanks to the discretion granted to the Georgia Parole Board, the agency can reincarcerate those committing even low-level technical violations which, based on that offender's history and the parole officer's observations, suggest criminal relapse. Technological advances in the agency during FY98 permit rapid communication between headquarters and statewide field offices, including electronic transmission of warrants.

Parole officers work side by side with police — literally

Parole works in partnership with local law-enforcement agencies to create safer communities. To promote those alliances, the agency has placed parole officers within police precincts so that police and parole officers can work together to watch offenders, to report to each other on drug traffic or other activities affecting the community, and to share information or observations about any matters of public safety. By the end of FY98, the agency had placed 19 parole officers in police precincts on a full or part-time basis, with six other parole-in-police precinct sites being developed. Positive feedback from participating police agencies ensures the expansion of this project in FY99.

Parole initiates computer-based law-enforcement partnerships

Information sharing among law-enforcement agencies is critical to solve and prevent crimes. To further that mission, the Parole Board is providing detailed, computerized information about parolees to Georgia's two largest urban police departments, Savannah and Atlanta. The data, which includes the parolee's crime and release date, physical description, home address and phone number, and supervising parole officer, can help police identify or eliminate crime suspects as well as aid parole in keeping offenders under close surveillance in the community. Parole offers this service to any Georgia police agency.

Parole, police, and citizens weave the security net

Effective supervision for the prison-to-community transition is more important now than ever before. Formerly, some citizens — usually employers — assisted parole officers in helping the offender become re-established by providing instruction and guidance. Churches, too, often provided this service to offenders returning to their communities.

Now in our mobile society with reduced social services and

fewer employers with the time or desire to assume sponsorship, many offenders do not have access to the daily support which fosters change. To help recreate some of that community structure the agency launched "Community Linkage," a citizen volunteer pilot program. The program matches a trained, certified volunteer to work one-on-one with an offender for three months while in prison and then for six months upon release. So far 34 volunteers have been certified and begun this all-important work of helping parole officers to successfully establish an offender in a productive, law-abiding life.

Prison-to-community transition with parole is safer

All across Georgia offenders are returning from prison with either a discharge document — and not much else — or a parole certificate. Those on parole have critical, immediate obligations to fulfill: to report to their approved residence and to their parole officer, possibly be hooked to an electronic monitoring device, and to begin a period of structured re-entry to the community. Those without are on their own. The Parole Board believes that the community's safety is best served by keeping violent and predatory criminals behind bars, making well-researched parole selections on lower-risk offenders, and delivering quality parole supervision to those who make the cut.

Most parolees do not reoffend. Under parole they have the opportunity and structure necessary to upgrade education, to overcome chemical addiction, to improve job skills, and to learn life-coping techniques. Strict, structured supervision works for the offender and — more importantly — for the community.

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Sex Offender Registries: Fear without Function?*

Amanda Y. Agan
University of Chicago Department of Economics

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Abstract

I use three separate datasets and designs to determine whether sex offender registries are effective. First, state-level panel data is used to determine whether sex offender registries or public access to them decreases the rate of rape and other sexual abuse. Second, a dataset which contains information on the subsequent arrests of sex offenders released from prison in 1994 in 15 states is used to determine if registries reduce the recidivism rate of offenders required to register compared with those who do not. Finally, I combine data on locations of crimes in Washington, D.C. with data on locations of registered sex offenders to determine whether knowing the location of sex offenders in a region help predict the locations of sexual abuse. The results from all three datasets do not support the hypothesis that sex offender registries are effective tools for increasing public safety.

1. Introduction

Sex offender registries that contain the names, addresses, and photographs of sex offenders are now easily accessible on the internet.¹ People appear to value this information and pay to avoid living near a registered sex offender; homes within close proximity of a registered offender sell for about \$5,500 less than comparable homes (Lindon and Rockoff 2006). The major justification for the existence of registries is to protect the public. Are sex offender registries effective at serving this purpose or do they create fear without increasing public safety? Two plausible channels exist through which registries could be effective. Registration implies a larger penalty for sex offenders which could deter new offenders and recidivists not yet on the registry. Once on the registry, registries could reduce recidivism through target hardening or through increase police monitoring.

This paper evaluates the effectiveness of such registries from two angles. First, I use variation across states in sex offender registration laws to explore whether the introduction of sex offender registration changes sex offense rates, and whether offenders who are released into states with registration laws are less likely to recidivate. Second, I use variation across blocks in Washington, D.C. to evaluate whether having a registered sex offender on the block leads to higher rates of sex offense. The first analysis addresses directly the effectiveness of sex offender registries. The second part of the analysis addresses the *potential* effectiveness of registries, by considering whether knowing where offenders live is predictive of where they offend.

I find little evidence to support the effectiveness of sex offender registries, either in practice or potentially. Rates of sexual offense do not decline after the introduction of a registry.

¹ See for example the sex offender registry for the state of Virginia: <http://sex-offender.vsp.virginia.gov/sor/index.htm>

or public access via the internet, nor do sex offenders appear to recidivate less when released into states with registries. The data from Washington, DC indicates that census blocks with more offenders do not experience statistically significantly higher rates of sexual abuse, implying that there is little information we can infer from knowing that a sex offender lives on our block.

I use three different datasets and designs to test these different aspects of registry effectiveness. First, I answer whether the existence of a sex offender registry or public access to this information via the internet decreases the rate of rape and other sexual offenses. I use state panel data from 1985-2003 which includes rape incidences and sexual abuse arrests as well as control variables and run a fixed effects regression to examine whether these measures declined after the introduction of a registry or public access via the internet.

Second, I determine whether sex offender registries reduce the recidivism rate of offenders required to register compared with those who do not. I use a dataset which tracks arrests and convictions of individual sex offenders for three years after their release from prison in 1994. I compare subsequent criminal records for sex offenders who should have been registered in the state sex offender registry upon release with criminal records for sex offenders who would not have been required to register upon release. I compare the two groups on two measures of recidivism: arrest and conviction. The variation arises from the fact that five of the fourteen states in the study had registration laws in effect by 1994, three enacted registration laws in 1994, and 6 had no registries by the end of 1994.

Third, I want to test whether sex offender registries are *potentially* effective by determining whether locations with more registered sex offenders have higher rates of sexual abuse crimes. Or, put another way, does knowing the location of sex offenders in a region help predict the locations of sexual abuse crimes. I combine data on sex offenses in Washington, DC

which include crime location with the addresses of registered offenders from the Washington DC Sex Offender registry. This locational data is then used to determine if blocks with registered offenders are subject to increased rates of sexual assault. This data is useful for understanding whether releasing information on the *location* of a sex offender is useful or helpful to the public.

Despite the importance of and controversy surrounding sex offender registries there has been little empirical research done on their effects. Adkins, Huff, and Stageberg (2000) and Schram and Milloy (1995) compare the behaviors of offenders who had to register or were subject to community notification with those that were not in a specific state, Iowa and Washington respectively. Both studies find no statistically significant difference in the recidivism rate between the two groups. These studies imply that neither registration nor community notification helps to reduce sex offender recidivism. However, both studies suffer from small sample sizes (N=435 and 139, respectively) and from restriction to effects in just one state.

More recent work by Prescott & Rockoff (2008) and Walker, et al. (2005) use data across states and exploit the variation in timing of the start of registration to attempt to determine the effectiveness of sex offender registries. Prescott & Rockoff (2008) use data from the National Incident Based Reporting System (NIBRS), a subset of the UCR, which allows them to use incident level data rather than arrests, and find mixed results on the effects of registration.² They attempt to separate out the effects of registration and notification and between registered and non-registered offenders and the effects on the relationship between offenders and victims. On the one hand, they find that sex offenses committed against known victims (relatives or others with a prior relationship to the offender) were reduced. They find no effect on sex offenses

² NIBRS data covers a small subset of states, and within a state only represents cities with less than 1 million occupants. Recent research suggests NIBRS data suffers from bias and tends to over-represent certain subpopulations.

committed against strangers. In terms of recidivism, the authors find that registered offenders may actually be more likely to recidivate when subject to community notification. They find no evidence that the registration requirement deters first time offenders; but do find evidence that registration itself reduces recidivism of registered sex offenders. When looking at arrests rather than incidents they find no significant affect of registration or notification.

Walker et. al (2005) find similarly mixed results. They use UCR monthly counts of rape incidences to analyze registry effectiveness. Looking across states they find that only three states showed a significant decrease in rape incidences after the implementation of registration laws. They find that some states even showed increases in rape incidences, though these increases were often not significant.

In addition to the few empirical papers, some surveys have been conducted to extract opinions from sex offenders and professionals who work with sex offenders about the registries and community notification. A survey of the opinions of mental health professionals that work with sexual abusers found that most believe that community notification will be ineffective in preventing future sex crimes (Malesky and Keim, 2001)³. Surveys of sex offenders themselves reveal that a majority of sex offenders experience some type of negative consequences from harassment, loss of employment, or feelings of isolation. The surveys reveal mixed feelings about the effectiveness of registration and community notification. (Zevitz, Crim & Farkas 2000, Levonson & Cotter 2005).

The paper continues as follows: Section 2 provides background on sex offender registries. Section 3 presents data and results from the state-level panel data. Section 4 presents

³ For example, a majority (59.4%) of respondents did not believe that community notification will deter offenders on the registry because they believe they are being monitored. A majority (67.7%) did not agree that community notification would deter offenders not on the registries with the threat of being put on the registry....

data and results from recidivism analysis. Section 5 presents data and results from the locational data in Washington, D.C. Section 6 concludes.

2. Background

A sex offender is anyone who is convicted of a sex crime. Which crimes qualify as sex crimes varies by state, but most include rape (forced and statutory), sexual assault or battery, child molestation or any sexual conduct with a minor, production or possession of child pornography, and attempts to commit any of these crimes. Even though California began registering sex offenders as early as 1947, sex offender registries did not become widespread until the 1990s after state registries became federal law with the passing of the Jacob Wetterling Act in 1994 (California Office of the Attorney General 2001).⁴ Over the next few years more states enacted sex offender registries to comply with the provisions of the Wetterling Act and by the end of the 1990s every state was registering sex offenders. These registries contain information about convicted sex offenders including name, address, physical characteristics of the offender, and sex crime committed. Sex offenders must periodically report to a local authority, usually a local police department, and verify their current address. States vary on how many times per year a sex offender must verify their address, from once a year to quarterly.⁵ Although these registries were originally meant for use by police, community notification about registered sex offenders was pioneered by Washington in 1990. Community notification subsequently became part of federal legislation in 1996 with the addition of Megan's Law, an amendment to the Jacob Wetterling Act.⁶ This notification can be handled through a variety of

⁴ In October 1989 in St. Joseph Minnesota Jacob Wetterling was abducted by an armed, masked man. To this day it is unknown what happened to Jacob, but his parents began the Jacob Wetterling Foundation and have been advocating for child safety and protection laws ever since.

⁵ Sometimes within states this requirement varies by type of sex offender. For example, in Arkansas offenders must verify their address every 6 months, however sexually violent predators must verify their address every 3 months.

⁶ Megan's Law is named for Megan Kanka who was murdered at age 7 by a sex offender in her neighborhood, although since community notification was not in effect no one knew he had committed offenses in the past.

both passive and active means including community meetings and flyers. In 1997, some states began putting registry information on the internet. By the summer of 2006 all states had some subset of the registry available for public search on the internet. In many states the entire contents of the registry are available for search on the website (e.g., Alabama, Florida, Idaho, North Carolina and Texas among others); others include only sexual offenders in a certain "tier" or category (like Arizona which only lists level 2 and 3 offenders or Minnesota which only lists level 3 offenders).

States also differ on whether the registration or public notification is retroactive. For example, in Connecticut the registry became effective on October 1, 1998, but applies to anyone released from state custody on or after October 1, 1988. However, in Delaware the law only applied to those convicted on or after the date the registry became effective. Registration and retroactivity is not without controversy, however. Several law suits have been filed on behalf of sex offenders, and two went to the Supreme Court of the United States. In both cases the Court upheld the constitutionality of registration. The Missouri Supreme Court found similarly with one key exception - the registration requirement could not be applied retrospectively to sex offenders convicted before the laws inception on January 1, 1995.⁷

State governments cite public safety and protection as the reason for having sex offender registration and notification laws. These justifications for registration and public access typically relate to the behavior of sex offenders that are required to register, i.e. specific deterrence or target hardening, rather than to general deterrence among those that have yet to commit a crime. The first line of Maryland's Sex Offender registry website notes that the information on the

⁷ The two Supreme Court cases were *Smith et al. v. Doe* (Alaska) and *Connecticut Department of Public Safety et al. v. Doe*. The Missouri Supreme Court case was *Jane Doe I, et al., Appellants, v. Thomas Phillips, et al., Respondents*, 11 where Missouri sex offenders filed to challenge the constitutionality of Missouri's version of Megan's Law.

website is "...provided as part of the State's effort to protect children and others from those with histories of crimes against children and other sexual offenses."⁸ Several states also refer to sex offender's high rates of recidivism. For example, Mississippi's legal code states that "[t]he Legislature finds that the danger of recidivism posed by criminal sex offenders and the protection of the public from these offenders is of paramount concern and interest to government" (Miss. Code Ann. § 45-33-21 (2001)). Most studies, however, have shown that sex offenders are less likely to reoffend than many other types of criminals (Langan, Schmitt, and Durose 2003, Langan and Levin 2002, Ohio Department of Rehabilitation and Correction Bureau of Planning and Evaluation 2001, Arizona Department of Corrections 1998)

A public registry could increase public safety through several means including: reducing the incentive to commit sexual offenses, reducing recidivism, target hardening, and increased police monitoring of known sex offenders. Registration and public access increases the cost of committing a sexual offense for an offender not on the registry. Once released from jail an offender would have to report to a local authority at least once a year (if not more) in order to verify his location for anywhere from 10 years to life. His identity may be revealed to the public via the internet, or through community meetings and flyers. Levenson and Cotter (2005) found that one-third of the sex offenders they surveyed in Florida experienced some sort of adverse event from having to register, including harassment and job loss; and a majority suffered negative emotions such as stress or hopelessness. This increased cost could help deter non-registered offenders from committing a sexual offense and thus increase public safety.

The registry could lower recidivism through its affects on the offenders already on the registry. Since offenders are required to register with a local authority, the local police or sheriff knows them and is aware of their current location. This increased monitoring could raise the

⁸ <http://www.dpscs.state.md.us/onlineservs/sor/>

probability of an offender being caught if he chooses to recidivate and thus increase the expected cost of reoffending conditional on being on the registry. Having sex offender's information on the web for public access could also decrease further crime through target hardening. The increased awareness of the offender among members of the neighborhood could cause them to change their behavior and thus increase the cost of finding a victim for offenders on the registry. In their survey of sex offenders, Levonson and Cotter (2005) did find that some sex offenders (22%) thought that registration and community notification helped them to prevent reoffending.

However, it is not clear that the only effect of sex offender registries will be positive. For one, registration laws may compel offenders to commit a different though similar crime that would not be registratable. Moreover, as mentioned above, reintegration costs for offenders are high since the public is aware of their status as a sex offender. Lower property values near offenders, vigilante justice, and new laws restricting where sex offenders can live and work show that the public tends to react with fear and suspicion when it comes to registered offenders. Some sex offenders have been fired from their jobs or expelled from their homes because of their status as a registered offender (Levonson and Carter 2005; Zevitz, Cram, and Farkas 2000). In a sense, registered sex offenders are stigmatized and shunned from society. This implies that being a registered sex offender may lower the offender's outside opportunities (in terms of jobs and social life) and thus lower the opportunity cost of choosing crime over more legal lifestyles. Braithewaite (1989) contends that this labeling of criminals is a form of "disintegrative shaming" and drives them to continue their criminal behavior and may make them more likely to recidivate.

Further, being on the registry already eliminates the possible deterrent effect of having to register for committing a sex crime. So again the opportunity cost of committing a future sexual

offense is lowered because the offender is already experiencing the costs of reintegration and will continue to do so whether or not they reoffend. Prentsky, Knight, and Lee (1997) reflect the attitude that community notification may increase recidivism through increased stress caused to offenders by "threats of bodily harm, termination of employment, on-the-job harassment, and forced instability of residence," all of which were experienced by at least some offenders in the above cited surveys (Prentsky, Knight, and Lee 1997 p. 9). A similar conclusion is reached by Prescott and Rockoff (2008) who find evidence that recidivism rates of registered offenders may be higher rather than lower.

3. Panel Data

3.1. Data Description

In order to test the effectiveness of registries I used state panel data which includes information on when each state enacted their registry, when they first allowed public access on the internet, crime rates and controls. No comprehensive repository of information on each state's sex offender registry existed and so for each state I collected data on the date the registry was enacted, the date the registry was placed on the internet for search by the public, and whether the registration requirement was retroactive (and if so, to what date). I collected the data through a variety of means including state websites, personal contact with relevant representatives through phone or email, information collected by the Klass Kids Foundation, and state legal codes. Prescott and Rockoff (2008), Table 1, show that verifying these dates can be a difficult task by showing that researchers tend not to agree on the dates registries became effective. Wherever feasible I have cross-checked my dates to ensure that they were as accurate

as possible. The dates of enactment of both the registry and public access via the internet, as well as retroactive dates, are presented in Table 1.⁹

Most states enacted their registry laws after Congress passed the Jacob Wetterling act in 1994. Some states, such as California, Washington, and North Dakota, had registries before the 1994 law. The earliest a state put any portion of the registry on the internet was 1997, and Oregon and South Dakota were the last to do so in the summer of 2006. Figures 1 and 2 show CDF graphs which illustrate the rapid growth in registration and internet access after their initial introductions.

States vary as to whether their registration requirement was retroactive or not, that is some states require registration for convictions that took place prior to registry enactment. For the purpose of this study I define a state's registration requirement to be not retroactive if the state's registry was theoretically empty on the day it began. For example, Alabama's sex offender registry was enacted on September 6, 1967 and requires sex offenders released on or after September 6, 1967 to register and was therefore theoretically empty on the day it began even though it applied to crimes that were committed before the enactment date. 18 states have registry requirements that are retroactive, while 33 do not (Washington, D.C. is included). Of those that are retroactive, 9 are completely retroactive – i.e. the law applies both retrospectively and prospectively to any sex offender ever convicted of a sex offense.

The number of sex offenders on the registry may also be important to this analysis. However, finding data on historical registry sizes is difficult. Spotty information exists, with individual data points coming from many varying sources. Since we would be collecting data from differing sources it is hard to control for how the agencies verify the information and

⁹ Prescott and Rockoff (2008) only use the 13 NIBRS states in their data, and we disagree on dates of enactment for 3 states - Connecticut, Kentucky, and North Dakota. I have included in Appendix A more thorough justifications for those 3 state registration dates.

where they get it from, so it is not clear we would be getting an accurate picture. One thing that can be measured with a better degree of accuracy is the stock of years of offenders that could possibly be on the registry, which will be correlated with the size of the registry (more possible years of offenders should lead to more registered offenders). So, for example, in 1994 Alabama's registry had been in place for 28 years and was not retroactive, and therefore had 28 possible years worth of released sex offenders on the registry; in 1994 New Hampshire's registry had been in place for 1 year, but was retroactive to 1988 and therefore had 6 possible years worth of offenders on it. For each state-year I calculated this value.

To complete the panel data I combined the registry date information I collected with data on forcible rape incidences (as opposed to statutory rape) and forcible rape/sex offense arrests per state from 1983 to 2003 from the Federal Bureau of Investigation's Uniform Crime Reports (FBI UCRs) and demographic characteristics from the Census Bureau. The FBI breaks up UCRs into two categories, Part I and Part II. Data on all known offenses are reported for Part I crimes, whereas only data on arrests are reported for Part II crimes. Forcible rape is considered a Part I offense, thus states report data on all known forcible rapes. This means that if a rape is reported to a police department but an arrest is never made that rape is still reported to the UCR as an incident. Sex offenses excluding rape and commercial prostitution are considered Part II offenses. Thus, for sex offenses other than forcible rape only arrest rates are available.

3.2. *Empirical Strategy*

I use a fixed effects regression model to determine the effectiveness of registration and public access in reducing sexual crime rates. Two difference specifications are used with two different dependent variables: the natural log of the rape incidence rate and the natural log of the sex offense arrest rate, natural logs are used so that coefficients can be read as percentage change

in the crime rate. A dummy variable for the existence of a registry is set equal to 1 if a registry existed in that state in that year and 0 otherwise and is used to test the effect of the registry. Another dummy variable, *web*, equals 1 if the registry was searchable on the internet in that state and that year and 0 otherwise. Data from Massachusetts and Arizona are dropped from the regression.¹⁰ Controls include state and year fixed effects, population density, real per capita income, real per capita unemployment payments, one year lagged incarceration rates, and demographic characteristics (Aryes and Donohue (2003), Kuziemko and Levitt (2004)).

The regression specification is then as follows:

$$\ln crime_{st} = registry_{st}\beta + internet_{st}\theta + stock_{st}\alpha + \delta_t + \gamma_s + X_{st}\varphi + \varepsilon \quad (1)$$

Where the subscript *s* represents the state and *t* represents the year, 1985 to 2003. Registry is a dummy set equal 1 if the state had a registry in that year, similarly internet is a dummy equal 1 if the state allowed access to the registry on the internet in that year. *stock_{st}* measures the stock of years of offenders that could possibly be on the registry.¹¹ δ_t are time fixed effects, γ_s are state fixed effects. *X* is the vector of controls. The dependent variables takes on either of 2 definitions of sex offense rates as defined above.

I will also consider that the effects on crime rates may be different in states with retroactive registries versus states with non-retroactive registries. One might expect a difference because with an empty registry there is no effect of police monitoring or increased probability arrest yet, there is only the deterrent effect on new offenders. On the other hand, a state whose

¹⁰ Determining when Arizona began its sex offender registry proved very difficult. Mixed results were found from different sources including talking to different people within the Arizona Department of Public Safety, because no date could be cross-checked I chose to not use Arizona in the analysis. Massachusetts went through a series of court cases which alternately suspended and reenacted sex offender registration through the late 1990s, thus making any analysis of the effectiveness of the registry difficult.

¹¹ There may be reason to believe that the stock of offenders should have a varying effect on crime as the stock grows, but adding in a squared term did not have any effect on the coefficients and the coefficient on the squared term was extremely close to zero, and thus I used a linear specification.

registry is full would maintain both effects. I will do this in two ways; one is to add in interaction term between the registry beginning and the registry being retroactive (so this is essentially a dummy which equals one in the year in which the registry begins if that registry was also retroactive. I will also do these regressions separately for states with retroactive registries and states with non-retroactive registries, with the data restricted to three years prior to and three years after registry beginning, to see if there is a difference in the effects.

Endogeneity can be a problem when dealing with crime policy like this. If the introduction of a registry was endogenous to the rate of sexual offenses then states with higher sexual offense rates would have implemented registries earlier, thus distorting the results. The history of sex offender registries suggests that the date of creation is largely exogenous and due to random shocks. It is revealing that all major laws pertaining to sex offender registration were enacted based on high profile cases, not on a multitude of cases in general. New Jersey pioneered Megan's Law after the brutal rape and murder of Megan Kanka by a convicted sex offender living in her town; not because New Jersey was experiencing a high incidence of these events. Similarly, the Jacob Wetterling Act, Jessie's Law, and the Adam Walsh Act are named after children who were part of highly publicized sexual crimes. These singular events can be considered random shocks and not representative of the amount of crime in each state. Further, the passing of the Jacob Wetterling Act in 1994 left the mid-1990s the decision as to whether to have a registry out of the state's hands. Those states that enacted their registries before 1994 – California, Idaho, Kansas, Louisiana, Minnesota, Missouri, Montana, New Hampshire, North Dakota, Oregon, Texas, and Washington – are on the whole not states considered to have high rates of sex offense. In fact, if you rank the states by their 1995 rape incidence rate, these states

tend to fall in the middle of the distribution. The endogeneity issue will also be explored further in the empirical results.

3.3. Results

Figures 3 and 4 show a graphical analysis of the data to give a preliminary idea of whether registration or internet access to the registry had any effect on crime rates. Each graph shows crime rates over time, with time zero being the point in time when registration (or internet access) began, and the x-axis thus showing time until or since the registry (internet access) began. Rape rates, sexual offense arrest rates, violent crime rates, and property crime rates are graphed. In figure 3 we see the results with time 0 indicating beginning of registration. For rape rates we see no real trend difference after the registry was introduced, and as expected the result is similar for violent crime and property crimes. With sex offense arrest rates, however, there does appear to be a downward change after registration begins. Figure 4 shows results with time 0 indicating the beginning of internet access to the registry. This time there appears to be no break in trend for either rape, sex offense arrests, or violent crime after time 0. There does, however, seem to be a leveling off of property crime rates. The overall result from these graphs seems to indicate that registration and internet access had little effect on sexual offense crime rates.

The results from the fixed effects regression using the state panel data are presented in Table 2. The first specification uses the natural log of the rape incidence rate as the dependent variable. The variables *registry* and *web* are the dummy variables which are set equal to 1 when a state had a registry or public access via the web in that year. The coefficient on the *registry* variable is positive though extremely small, indicated about a 0.3% increase in rapes. The *web* coefficient is larger and positive, indicating about a 5.4% increase in rape after internet access.

However, neither of these coefficients is statistically significant. The stock of offenders also has no statistically significant effect on crime, though the point estimates are positive indicating if anything having more offenders on the registry increases crime rates.

Although no measure of crime is perfect, incidence reports are one of the better proxies that we have. Since incidence reports were only available for rapes and not for other sex offense, the second specification in Table 2 uses arrests for sexual offenses as the dependent variable to try to determine the effect on a broader range of sex crimes. In this specification there is a positive coefficient on the existence of a registry in the state, with the coefficient indicating a 10% increase in sexual assault arrest rates after the registry went into effect, although it is not statistically significant. However, putting the registry on the internet has a significant negative effect, showing a significant decrease in arrests for sexual offenses of approximately 19%.¹²

Though the interpretation of the coefficients on rape incidences is rather clear, it is not obvious how to interpret the coefficients on arrests, and thus what that significant decline truly means. The interpretation depends on the percentage of crime incidences for which there is an arrest, or the arrest ratio, $ArrRatio = \frac{arrests}{incidents}$. If arrests decrease and the number of actual incidents stay the same then a decline in arrests does not imply that registries are effective. If arrests decrease and incidents decrease then registered could be seen as effective. A clearer picture could be seen if there was data on incidents of sexual assault, but unfortunately the UCR only reports arrests for Part II data. If we assume that arrests are a good proxy for incidences, however, this could indicate that putting the registry contents on the internet did decrease sexual offenses.

¹²Per a referee's suggestion, I also ran each regressions without control variables to see how concerned we should be about unobservable and found coefficients were all similar in sign and magnitude even without controls.

Although I believe the history of sex offender registries points to a lack of an endogeneity issue, the panel data also can be used to address the possibility of endogeneity empirically. In order to do this I added a variable *endog* which equals 1 in the year *before* the registry began and 0 elsewhere, and *webendog* which equals 1 in the year before the registry went on the internet and 0 otherwise, to the two regressions. The coefficients and standard errors are shown in the fourth and fifth specification in Table 2. If anything, the coefficient indicates that the year before a state enacted registries rape incidents were slightly lower, a similar result is found for sexual assault arrest rates, suggesting that the creation of the registry was not driven by higher rape or sexual assault rates and thus may be treated as plausibly exogenous. Admittedly it could be that sex offenders knew a registry was going to be enacted and changed their behavior accordingly; however the previous results do not show offenders changing behavior much in response to actual registries, so it seems unlikely that there was a lot of behavioral change in anticipation of the registry. However, history of enactment laws is probably a stronger argument and at the very least the empirical results do not dispute the assumption of non-endogeneity.

Panel B of Table 2 runs the same regressions for other crimes – violent crime incidences (murder, robbery and aggravated assault – rape is excluded) and property crime incidences (burglary, larceny, auto theft, and arson). The results for the most part show small, statistically insignificant effects of the registry on other crimes, as we would expect. They do, however, suggest that violent crime incidences increased significantly after the registries were made available on the internet.

Finally, I reran the specifications in Table 2, columns 1 and 2, but added a dummy which equals one in the year the registry begins if the registry was also retroactive, to see if there are differing effects on retroactive and non-retroactive states. The results are presented in Table 3.

The results show that retroactive states experienced slight declines over non-retroactive states, but the difference is not statistically significant. I also reran each specification for only those states where the registration requirement is retroactive and for those that are not, limiting the data to three years prior to and three years after registry the registry begins. None of the results are significant, though imply that rape incidences decreased more in retroactive states than in non-retroactive states; and that sex offense arrests decreased in retroactive states but increased in non-retroactive states after the registry.

On the whole the panel data does not present strong evidence that registries were effective in reducing rape or sexual offenses, though does offer some limited evidence of reducing sexual offense rates.

4. Recidivism Analysis

4.1. *Data description*

In order to test the effect of registration requirements on sex offender recidivism I used a dataset that tracked the behavior of individual offenders. The Bureau of Justice Statistics (BJS) collected data on a subset of prisoners released from prison in the year 1994 in fifteen states: Arizona, California, Delaware, Florida, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Texas and Virginia, which included *all* sex offenders released into those states (Langan, Schmitt, and Durose 2003).¹³ Arizona, however, is not used in my analysis.¹⁴ The information in the dataset includes demographic characteristics on the released prisoner such as race, date of birth, and gender as well as criminal history, including

¹³ For an application of this data to Three Strikes laws in California see: Helland, E. and Tabarrok A. 2006. Does Three Strikes Deter? A Non-parametric Estimation. *Journal of Human Resources*. 42(2): 309-330.

¹⁴ Arizona was dropped for the same reason it was not used in the panel data analysis. Determining when Arizona began its sex offender registry proved an impossible task. Mixed results were found from different sources including talking to different people within the Arizona Department of Public Safety, because no date could be cross-checked I chose to not use Arizona in the analysis.

past arrests and convictions. The BJS then tracked these prisoners for three years after their release adding information on all subsequent arrests, convictions and sentences.

The BJS dataset is useful because I can compare the behavior of offenders who would have had to register upon release in 1994 with those that would not have been required to register. California, Minnesota, Oregon, Texas and partially Florida enacted registries before 1994, the beginning of the study period.¹⁵ Virginia, New Jersey and Delaware enacted registries during 1994, the year of initial release. The law in Delaware, however, only applies to offenders convicted on or after June 27, 1994, and thus does not apply to any prisoners in this study. Virginia and New Jersey laws include anyone in state custody on the date the law was enacted, thus any offender released in Virginia after July 1, 1994 and any offender released in New Jersey after October 31, 1994 would be required to register.¹⁶

The BJS data contains information 10,510 prisoners whose offense for which they were released in 1994 was a sex offense. Because registration laws vary across the states, I further restricted the data to only those offenders who appear to have remained in the state that released them. I did so by dropping offenders who were arrested out of state at any point during the three year follow up (N=620).¹⁷ Also, most states do not require registration of and/or public access to information about juvenile offenders, and juvenile offenders are often subject to different length and penalty requirements. Due to lack of information about whether the offender was tried as a juvenile or adult, and to avoid ambiguity, I also dropped offenders who were juveniles at the

¹⁵ Florida has two tiers for those who have committed sex crimes: sexual predator and sexual offender. Sexual predator is the more serious of the two labels. Sexual predators were required to register starting in 1994, but sexual offenders weren't required to register until 1997, hence Florida had enacted registries for only part of the sex offender population by 1994.

¹⁶ Virginia and New Jersey could have served as ideal states within which to test the effect of registration by comparing the two populations (registered and unregistered but released in the same year and same state). However, this analysis suffers from an extremely small sample size. Of the 247 sex offenders released into Virginia, only 12 were rearrested for a sex offense, 5 that would have had to register and 7 who would not have. It would be difficult to conclude anything from this small sample.

¹⁷ Running the regressions with the prisoners arrested out of state included does not significantly change the results

time of their admission (N=108). Finally the 138 offenders released into Arizona were dropped. After these adjustments 9,623 sex offenders released in 1994 are included in the analysis.¹⁸

By examining the crime the offenders committed, the date the registry law was enacted in the state that released them, and the relevant laws regarding registration in that state, I determined that 4,626 (47.39%) offenders should have been required to register upon their release in 1994. All offenders released in Minnesota, California, Oregon and Texas would have had to register because the laws in those states went into effect before 1994 and indicated that offenders released after that date would have to register. Offenders released in Virginia and New Jersey would have had to register if they were released after the date the respective states registry went into effect; 130 of VA's 247 released offenders had to register, 56 of NJ's 404 had to register. No offender released in DE would have had to register because the law applied to only those offenders *convicted* on or after 6/27/1994. Similarly, Texas law in 1994 indicated that only those convicted after 9/1/1991 would have to register. I used admission date as a proxy for their conviction date and only those admitted to prison after 9/1/1991 then released in 1994 were considered as having to register; 366 of TX's 665 offenders had to register. Florida began registering sexual predators (a more harsh distinction than sexual offender) for those predators who *committed* offenses on or after 10/1/1993. 60 offenders released in Florida were admitted after 10/1/1993, however to qualify as a sexual predator the offense must have been serious, and due to the short time served (approximately one year) I assumed none would qualify.

4.2. *Empirical Strategy*

I first compare subsequent recidivism rates of offenders in each group (registered and unregistered) using three definitions of recidivism: subsequent arrest for rape, subsequent arrest for any sexual offense, and subsequent conviction for a sexual offense conditional on an arrest

¹⁸ I also dropped the 21 prisoner's who died during the 3 year follow-up period.

after release.¹⁹ After this straightforward comparison of rates across the two groups I use a probit model to compare the recidivism of the two groups so that controls may be included for differences across the groups and across states. I created a dummy variable, register on first release (*rofr*), in order to test the effect of registering. For those offender's who would have had to register upon their release *rofr*=1, for all others *rofr*=0. I ran the model using the three definitions of recidivism.

Due to the nature of the variable that indicates registration, being 0 or 1 for entire states in some cases, I cannot utilize state fixed effects to account for differences across states. Therefore, in the probit model state level controls are used in addition to individual level controls to try to control for some of those differences. Individual level controls consist of age at first arrest; race; gender; sentence length; whether the individual went to jail for rape, sexual abuse, child molestation, or sodomy; and the number of rape arrests and other sex offense arrests before their release in 1994. State level controls are included for the state releasing the offender. These include the police rate per 1000 in the state population, percent of the population of the state residing in urban areas, punishment severity (average sentence length for rapist in study), past rape incidence rates and sex offense arrest rates in the state, a dummy that indicates whether a state elects rather than appoints their judges, and variables that help determine the general social climate of the state.

The regression equation is:

$$recidivist = rofr\beta + I\theta + S\phi + \epsilon \quad (2)$$

¹⁹ There are some prisoners in the dataset who were convicted of a crime after their 1994 release for which they were arrested before they entered prison for their 1994 release. These types of situations are not included.

Where recidivist is a dummy indicating whether the offender recidivated according to one of the three definitions (each is done individually). $Rofr$ is the dummy variables indicated above. I is the vector of individual controls and S is the vector of state level controls.

I also look at the results of a Cox Proportional Hazard Model. For any time t , this model reports the hazard of an individual proportional to the baseline. The hazard is defined as

$$h_i(t) = \exp(rofr\beta + I\theta + S\phi)h_o(t) \quad (3)$$

Where $h_o(t)$ is the baseline hazard at time t , $h_i(t)$ is the hazard of the i^{th} individual at time t , and $rofr$, I , and S are defined as above. The estimated coefficient β can then be used to determine the ratio of the hazard for those on the registry and those not on the registry at any given time:

$$\frac{h(t | rofr = 1)}{h(t | rofr = 0)} = \frac{\exp(rofr\beta + I\theta + S\phi)h_o(t)}{h_o(t)} = \exp(rofr\beta + I\theta + S\phi) \quad (4)$$

In this case the hazard rate we are measuring is for recidivism, defined in one of the three ways previously mentioned.

4.3. Results

Summary statistics for demographic information and criminal records are presented in Table 4 Panel A broken down into registered and unregistered offenders. There do appear to be general differences in these categories across registered and non-registered offenders, which can probably be attributed to the state they were in. The large difference in the percent of sex offenders who are Hispanic is most likely because California and Texas both enacted their registry laws prior to 1994 thus all offenders released in those two states would have had to register and both states have a relatively high percentage of Hispanic releasees (30.9% and 21.8% respectively) populations. Table 4 Panel B presents a tabulation of the original offense of the sex offenders that had to register and those that did not. Sexual abuse, rape, and child

molestation make up a majority of the crimes. The proportion of rapists, attempted rapists, sexual abusers, child molesters, attempted child molesters, and sodomizers is significantly different between the two groups. Based on the evidence in these tables, whether the sex offenders original crime was rape or attempted rape, child molestation or attempted child molestation, sexual abuse, or sodomy as well as demographic characteristics will be controlled for in the regression analysis.

Table 5 uses the BJS data and three definitions of recidivism to compare the percent of sex offender released in 1994 that recidivated within 1, 2, and 3 years after release between those that had to register and those that did not. The three definitions are: arrested for a sex offense, convicted of a sex offense conditional on arrest after release, and arrested for rape. The differences are small and not statistically significant for the percent arrested for a sex offense or percent convicted of a sex offense between the groups, indicating that registration caused no change in behavior. However, it appears that sex offenders that had to register are significantly more likely to be arrested for rape than those not registered. Interpretation of this difference is difficult. If registries were effective in the way that policy makers expected them to be, then reduced recidivism by registered offenders would imply the difference should be the other way around.

This preliminary analysis does not fully support the hypothesis that registration reduces recidivism among sex offenders. However, summary statistics showed that there are some fundamental differences between the registered and unregistered groups that we were unable to control for in Table 5. Table 6 presents results from the probit models with the same three definitions of recidivism used as well as various control variables at the individual and state level. The more arrests an offender had for rape or other sex offenses the more likely they are to

recidivate across all definitions of recidivism. More police per capita seems to cause less recidivism when arrest is used as the definition, but has an insignificant effect on convictions. More sex offense arrests in 1993 in a state decreases recidivism across all categories.

The variable of interest, however, is the dummy variable which represents whether the offender should have had to register upon their release in 1994, "registered on release". In the three specifications that refer to sex offense recidivism the coefficient is positive but insignificant. This result pretty much mimics the straight forward comparison of rates in Table 5 except that the coefficient on rape arrest is insignificant. But the main conclusion is that it appears sex offender recidivism is not reduced by having to register and if anything it is slightly increased. Interestingly the coefficient on arrest for an offense other than a sex offense is significant, indicating that registered offenders are almost 8% more likely to be arrested for an "other" offense. This could be the result of increased monitoring or general difficulty reintegrating that causes them to commit other crimes as well.

The results from the Cox Proportional Hazard model yield similar conclusions and are shown in Table 7. For each definition of recidivism, at any given time t the hazard for those offenders on the registry is significantly *higher* than the hazard for those not on the registry. Again, these are not the results one would expect if registries were effective. An offender who should have had to register appears to behave no differently, or possibly worse, from one that did not have to register; having to register does not seem to reduce recidivism among sex offenders.

The definitions used for recidivism all involve arrests or convictions, not actual rates of offense. Obviously, it is impossible to measure the true number of offenses that a sex offender committed after release. In the case of this BJS data, arrests are the closest proxy we have to a measure of offenses committed. It is possible that offenders on the registry are more likely to be

arrested for a crime due to the fact that they are on the registry and thus under scrutiny for any sex offense that arises. The results also showed, though, that conditional on arrest after release the two groups had no statistically significant difference in conviction rates.

5. Locational Analysis

5.1. Data Description

To understand whether registries are potentially effective, I combine data on locations of crime in Washington, D.C. with data on locations of registered sex offenders. I have data on locations of crime in Washington, D.C. from 1/1/1997 to 7/30/2003 from the Washington, D.C. Metropolitan Police Department.^{20,21} This data contains the type of offense committed (sexual abuse, arson, burglary, theft, theft from auto, stolen auto, homicide, assault with a deadly weapon or robbery), the date and hour of the day the crime took place, and the block where the crime happened.

The Washington, D.C. Metropolitan Police Departments sex offender registry website has information about all Class A and B sex offenders.²² I obtained information on each offender's home and work address as well as date of initial registration from the website.²³ Unfortunately, I only have information on offender's currently registered addresses; I do not have information about changes in the registry information over time. Thus, I assume that offenders have not moved, i.e. that the address listed on the website has been their address since

²⁰ The MPD requires the following disclaimer: "These data reflect preliminary crime reports made by individual police districts to the MPD's Central Crime Analysis Unit. These data DO NOT reflect official index crime totals as reported to the FBI's Uniform Crime Reporting Program. These data are subject to change for a variety of reasons, including late reporting, reclassification of some offenses, and the discovery that some offenses were unfounded."

²¹ See Klick, Jonathan and Tabarrok, A. 2005. Using Terror Alert Levels to Estimate the Effect of Police on Crime. *Journal of Law and Economics*. 48(1) for another application of this data.

²² Washington DC uses a 3 tiered classification system, A, B and C. C is the lowest tier. Examples of Class A crimes are forcible rape and first degree child abuse; examples of Class C crimes are kidnapping with the intent to commit a sexual offense and threatening to commit a sexual offense.

²³ http://mpdc.dc.gov/mpdc/cwp/view,a;1241;q;540704,mpdcNav_GID,1523,mpdcNav,l,asp

their initial registration.²⁴ Figure 3 presents a map of where registered sex offenders in Washington DC live. While there are some parts of DC with few or no sex offenders, they appear to be fairly spread out over the city. Figure 4 presents a map of where registered sex offenders work in Washington DC, if the offender has reported a work address.

5.2. *Empirical Strategy*

I broke the data up into year-month time groups, and counted the number of offenders living in a particular census block in any given year-month. This can change over time as new offenders begin to register. I similarly count the number of sex abuse incidents in a given year-month-census block, and use this as the dependent variable. First I run regressions with different crime rates per 1000 in the population as the dependent variables, including sex abuse incidences and violent and non-violent crime incidences. The regressions include a variable for the number of sex offenders living in that census block-month to determine the effects of the registered sex offenders themselves on crime rates. Also included in the regressions are demographic controls at the block level such as percent of the population that is Black, Hispanic, female, or in a certain age group as well as the percent of housing that is renter occupied. I then run the same regressions with census block fixed effects instead of the controls.

Second, I try to understand the difference in the effects on sex crime rates between the time when there was just a registry versus when there was a registry and public access via the internet. I do so by creating a variable that is the number of registered offenders “before web” and another that represents the number of registered offenders that are both registered and on the internet. I then use a similar specification as in previous regressions with census block fixed

²⁴ Admittedly, this is a big assumption, but I believe given the short time span I am analyzing it may not be entirely unreasonable. I hope in the future to be able to repeat this analysis with changes over time in offender addresses

effects. The results will help us understand if knowing the location of sex offenders in Washington, DC helps to predict the location of sexual abuse.²⁵

5.3. Results

Table 8 presents the results from the first set of regressions. The variable of interest is offenders per 1000 living in the block-group. The first specification uses sex abuse per 1000 people in a census block as the dependent variable. The results indicate a slight decrease in sex abuse crimes near where sex offenders live that is not statistically significant. Note that the average block has approximately 0.92 sex abuse incidences per 1000. However, the second specification in Table 8 runs the same regression for incidences of violent and non-violent crime per 1000 and shows that having one more sex offender living in a block decreases the rates of non-violent and violent crime, though again this is not statistically significant. This seems to indicate that, if anything, sex offenders tend to live in less crime-ridden areas. More importantly, it shows that knowing where a sex offender lives does not tell us much about where sex crimes will take place. The last specification in Table 8 presents the results when fixed effects are used to control for differences across blocks instead of observables. These results are similar to the first specification.

The data offer a unique opportunity to study the difference in the effect on sex crime rates when there was just a registry versus a registry and public access to it via the web. There were nine months in Washington, D.C. between June 2000 and March 2001 where the registry existed but the contents were not available online. Table 9 attempts to differentiate between these two periods, with census block fixed effects used to control for differences across blocks. The results

²⁵ I also imitated the analysis from the panel data section, by regressing sex abuse on whether a registry existed as well as time and season dummies, and found that, similar to the national data, the registry appeared to have no statistically significant impact on sex abuse rates across the city.

show that there is little difference in the effect of having a registered sex offender in a census block when this information is not public versus when it is public.

The results from analysis of the data on crime location along with sex offender location in Washington, DC indicate that knowing that a sex offender lives on your block does not give you information about rates of sexual abuse in that block.

6. Conclusion

The data in all three datasets does not strongly support the effectiveness of sex offender registries. The national panel data did not show a significant decrease in the rate of rape or the arrest rate for sexual abuse after implementation of a registry or allowing access via the internet. The BJS data which tracked individual sex offenders after their release in 1994 did not show that registration had a significantly negative effect on sex offender recidivism. And the results from the DC crime data did not show that knowing the location of sex offenders in different census blocks can help predict locations of sexual abuse. The fact that this pattern of non-effectiveness shows up in all the datasets does not support the conclusion that the sex offender registries are successful in meeting their objectives of increasing public safety and lowering recidivism rates.

Aside from the direct policy interest, understanding whether sex offender registries work is potentially important because they are a precedent for other types of registries. Tennessee, along with Illinois, Montana and Minnesota, recently began a public registry for methamphetamine offenders, and several other states are considering such registries.²⁶ Not only could different types of criminals be registered but technological advances, such as global positioning systems (GPS), mean that the actual physical location of individual criminals can be tracked on a twenty-four hour basis. Several states have passed laws that require high risk

²⁶ <http://www.tennesseeanytime.org/methor/>, <http://www.star-gazette.com/apps/pbcs.dll/article?AID=/20060824/OPINION01/608240320/1004>

offenders to be monitored by GPS so police know their exact location at any given moment.²⁷

Another use of GPS involves trying to keep children away from registered offenders through GPS capabilities in their cell phones. CATS Communications, a telecommunication company based in California, now offers parents a service that will alert them if their children, armed with a GPS enabled cell phone, come within a certain distance of a registered sex offender's address.²⁸ In addition to these technological changes to sex offender management, Congress recently passed the Adam Walsh Child Protection and Safety Act of 2006. This new act requires states to enact stricter registration requirements, including an increase in the penalty for not registering and more frequent verification of sex offender locations. With all these developments in registration, sex offender registries should be evaluated before committing to further extensions and we should look critically at any attempts to extend registration to other criminals.

²⁷ Examples include: Florida, Missouri, Ohio & Oklahoma. For more information see for example: <http://www.mass.gov/courts/probation/pr051105.html>

²⁸ <https://www.catscommunication.com/news/28.htm>

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Table 1 *Summary of significant dates*

State	Registry Begins	On Internet	Retro	State	Registry Begins	On Internet	Retro
AL	9/6/1967	8/1/1998	No (rel)	MT	1989	2001	No
AK	8/10/1994	6/12/1997	No (con)	NE	1/1/1997	2000	No (con)
AZ	6/1/1996	1998	All	NV	1/1/1998	5/1/2004	7/1/1956 (con)
AR	8/1/1987 (h) 8/1/1997 (o)	1/1/2004	No (con)	NH	1993	2001	1/1/1988
CA	1954	12/15/2004	No (con)	NJ	10/31/1994	2/21/2002	No
CO	7/1/1991 (c) 10/1/1998 (o)	7/1/2001	No (rel,c) No (con,o)	NM	7/1/1995	7/1/2000	No
CT	10/1/1998	1/1/1999	10/1/1988 (rel, v) No (o)	NY	1/21/1996	5/11/2000	No
DE	6/27/1994	11/1/1998	No	NC	1/1/1996	5/11/2000	No
DC	6/1/2000	3/1/2001	No	ND	1991	11/1/2001	7/31/1985 (con)
FL	10/1/1993 (v) 10/1/1997 (o)	10/1/1997	No (comm, p) No (rel, o)	OH	7/1/1997	1/1/2001	No
GA	7/1/1996	1998	No (con)	OK	11/1/1989	1/29/2005	No (comm)
HI	1/1/1996 (v) 7/1/1997 (o)	5/1/2005	All	OR	10/3/1989	6/29/2006	No
ID	7/1/1993	2002	No (con)	PA	4/21/1996	11/24/2004	All
IL	8/15/1986	7/1/2002	No (con)	RI	1992	4/13/2005	All
IN	7/1/1994	1/1/2003	All	SC	7/1/1994	6/21/2005	No (con)
IA	7/1/1995	7/1/1998	No	SD	1994	2006	All
KS	7/1/1993	4/24/1997	No (con)	TN	1/1/1995	7/1/1997	No
KY	7/15/1994	4/1/2000	No	TX	9/1/1991	1/1/1998	9/1/1970 (con)
LA	6/18/1992	5/1/2000	No (cust)	UT	3/30/1983	7/1/1998	No (rel)
ME	9/1/1996	10/1/2003	1/1/1982 (sen)	VT	9/1/1996	10/1/2004	No
MD	10/1/1995 (c) 7/1/1997 (o)	2002	No (comm)	VA	7/1/1994	7/1/1999	No (con)
MA		8/1/2004	8/1/1981 (rel)	WA	2/28/1990	3/1/2005	All
MI	10/1/1995	1999	No (con)	WV	1993	9/1/1998	All
MN	7/1/1991	1/1/1997	No	WI	12/25/1993	6/1/2001	No (con)
MS	1994	1997	All	WY	1994		1/1/1985 (sen)
MO	7/1/1979	6/18/2004	No (con)				

Notes:

I use the following abbreviations:

c: child offenders
o: other offenders
con: convicted

v: violent offenders
rel: released
cust: in custody

h: habitual offenders
comm: committed
sen: sentenced

Several states have different dates for different levels of offenders. This is indicated by the single letter in parenthesis. For example, Maryland began registering child sex offenders before other offenders. The Retro column indicates whether the registry was retroactive. If it was, a date is listed and when known whether it refers to the offender being released, convicted, sentenced, in custody, or whether the crime had to be committed on or after that date to be registratable. For example the law in Maine requires that anyone sentenced for a registratable offense on or after January 1, 1982 has to register; and this date is before the registry enactment date of September 1, 1996 and is therefore considered retroactive. For non-retroactive states, defined as having a theoretically empty registry on the date the registry became effective, they are listed as "no" and when known again list whether it was released on or after the date of enactment etc... So for example the law in Michigan is not retroactive, and applies to anyone convicted on or after 10/1/1995. Some laws apply both prospectively and retroactively to all offenders ever convicted of a sex offense, these are listed as "all".

Information was obtained from various sources including official state websites, www.klaaskids.org, legal resources and personal contact via telephone and email with state officials. When only a month and year were available the date is listed as the first of that month. When only year is available it is listed as such. Documentation of where information for each cell was obtained available upon request. Information for when Massachusetts began its sex offender registry left out because Massachusetts went through a series of court cases which alternately suspended and reenacted sex offender registration through the late 1990s, thus making any analysis of the effectiveness of the registry difficult. Information for when Wyoming first put its registry on the internet was unavailable, even after several phone calls and emails with Wyoming Sex Offender Registration Program Utah: Registry was made available to the public via the internet in 7/1998, but in 9/1998 a federal appeals case was filed (Femedeer vs. Haun) and the website was frozen, with no new data added or old data removed, until 12/2000 when the case ended in the State's favor and the website was once again operational. 1998 date is used because I assume offenders would not be as informed about court case as website and would assume they would be put on website.

Table 2: *Effect of existence of registries and internet registries on rape rates and sexual offense arrest rates*

Panel A: Regression Results

	(1)	(2)	(3)	(4)
	Rape	Sex Offense	Rape	Sex Offense
registry	0.003 (0.024)	0.105 (0.072)		
web	0.054 (0.041)	-0.187 (0.096)		
Stock of years of offenders	0.012 (0.010)	0.032 (0.028)	0.010 (0.010)	0.033 (0.027)
Population per square mile of land area	-0.004* (0.002)	-0.002 (0.003)	-0.004* (0.002)	-0.002 (0.003)
Real PC Income (\$1000s)	-0.006 (0.006)	-0.018 (0.931)	0.269 (0.436)	-0.067 (0.022)
Real PC Unemployment Insurance (\$1000s)	-0.973** (0.305)	-0.214 (0.668)	-0.973** (0.308)	-0.260 (0.664)
Real PC Income Maint. (\$1000s)	0.283 (0.436)	-0.140 (0.022)	-0.007 (0.006)	-0.015 (0.956)
Percentage of state population that is black, male, and aged 10-19	-0.248 (0.213)	0.686 (0.569)	-0.211 (0.207)	0.611 (0.604)
pbm2029	0.256 (0.204)	-0.241 (0.457)	0.255 (0.202)	-0.240 (0.467)
pbm3039	0.324 (0.200)	-0.102 (0.493)	0.283 (0.197)	0.035 (0.509)
pbm4049	0.155 (0.165)	0.497 (0.300)	0.206 (0.156)	0.375 (0.316)
pwm1019	0.022 (0.066)	0.189 (0.142)	0.020 (0.066)	0.194 (0.150)
pwm2029	0.022 (0.044)	0.159* (0.075)	0.025 (0.046)	0.133 (0.080)
pwm3039	0.077 (0.044)	-0.035 (0.095)	0.078 (0.047)	-0.039 (0.089)
pwm4049	0.344* (0.130)	-0.115 (0.179)	0.351* (0.132)	-0.117 (0.184)
Incarceration rate per 1000 (lagged one year)	-0.043 (0.036)	0.047 (0.042)	-0.045 (0.034)	0.048 (0.046)
Police per 1000	-0.092 (0.106)	-0.021 (0.337)	-0.094 (0.104)	-0.016 (0.346)
endog			-0.017 (0.018)	-0.002 (0.047)

webendog			0.013 (0.025)	0.023 (0.038)
Constant	-2.017 (1.310)	1.621 (2.059)	-2.049 (1.356)	1.788 (2.034)
Observations	886	886	886	886
R-squared	0.98	0.67	0.98	0.67
State fixed effects	yes	yes	yes	yes
Year fixed effects	yes	yes	yes	yes
Robust standard errors in parentheses				
* significant at 5%; ** significant at 1%				

Panel B: Other Crimes, controls suppressed for display

	(1) Violent Incidences(not rape)	(2) Property Crime Incidences
registry	0.030 (0.037)	-0.017 (0.021)
web	0.095* (0.044)	-0.004 (0.025)
Constant	2.031* (0.936)	3.257** (0.802)
Observations	886	886
R-squared	0.97	0.99
State fixed effects	Yes	Yes
Year fixed effects	Yes	Yes
Controls	Yes	Yes
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Notes: All dependent variables are natural logs of rates (i.e. rape is the natural log of the rape rate), so coefficients are interpreted as percentage change in the crime rate. Robust standard errors in parenthesis clustered by state. Registry (web)=1 if a state had a registry (internet access to the registry) in that year, 0 otherwise. Endog =1 in the year prior to the registry going into effect. Stock of years of offenders is the number of years worth of criminals that could possibly be on the registry. Data on demographic statistics from the US Census Bureau. Crime rates from FBI's *Uniform Crime Reports*. Violent Incidences are murder, robbery, and aggravated assault (the UCR also includes rapes, but that is excluded for the falsification test). Property incidences are burglary, larceny, auto theft and arson. All controls from Panel A regression are included in Panel B but coefficients are not displayed.

Table 3: *Effect of existence of registries on rape rates and sexual offense arrest rates: retroactive vs non-retroactive states*

	(1) Rape	(2) Sex Offense	(3) Rape Retro	(4) Rape Not Retro	(5) Sex Offense Retro	(6) Sex Offense Not Retro
registry	0.008 (0.027)	0.093 (0.077)	-0.025 (0.041)	-0.0002 (0.024)	-0.049 (0.125)	0.046 (0.126)
Registry begins x retroactive	-0.021 (0.031)	0.038 (0.076)				
Stock of years of offenders	0.011 (0.010)	-0.035 (0.027)	0.159* (0.062)	0.035 (0.024)	0.306 (0.177)	0.120 (0.096)
Constant			-13.637** (3.275)	1.028 (1.857)	2.922 (10.278)	5.484 (12.002)
Observations			105	203	105	203
R-squared			0.99	0.99	0.90	0.78
Controls			yes	yes	yes	yes
State fixed effects			yes	yes	yes	yes
Year fixed effects			yes	yes	yes	yes

* significant at 5%; ** significant at 1%

Notes: All dependent variables are natural logs of rates (i.e. rape is the natural log of the rape rate), coefficients are interpreted as percentage change in the crime rate. Robust standard errors in parenthesis clustered by state. In the last 4 columns data is limited to 3 years prior and 3 years after registry goes into effect. Retro indicates states that whose registries were retroactive, as listed in Table 1. Not Retro is states whose registries were not retroactive. Dependent variables are the same as Table 2, though their coefficients are suppressed

Table 4: *Summary Statistics for BJS Dataset by Registered or Not*Panel A: *Demographic Summary Statistics*

	Not Registered On Release	Registered on release	Difference
Number in analysis	5135	4,488	
Avg. Age	36.70	37.34	-0.64**
Avg. Age at first release	25.17	25.81	-0.64**
Avg. Sentence length (months)	96.57	62.11	34.46**
Ave. number of rape arrests prior to 1994 release	0.367	0.482	-0.12**
Avg. number of sex offense arrests prior to 1994 release	0.851	0.839	0.012
Perc Black	38.1%	23.0%	15%**
Perc Hispanic	7.0%	25.6%	-18.6%**
Perc Male	98.7%	99.2%	-0.05%*

Panel B: *Tabulation of offenses for which prisoners were put in jail for release in 1994*

Offense	Not Registered On Release		Registered on Release		Total	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Rape*	1,071	20.86	1,066	23.75	2,137	22.21
Assault with intent to rape*	60	1.17	17	0.38	77	0.80
Statutory rape	120	2.34	122	2.72	242	2.51
Incest	47	0.92	0	0.00	47	0.49
Sexual abuse – assault*	2,734	53.24	755	16.82	3,489	36.26
Attempted sexual abuse	33	0.64	25	0.56	58	0.60
Conspiracy sexual abuse	0	0.00	3	0.07	3	0.03
Child molestation*	913	17.78	2,130	47.46	3,043	31.62
Attempted child molestation*	1	0.02	13	0.29	14	0.15
Forcible sodomy*	155	3.02	357	7.95	512	5.32
Morals offense	1	0.02	0	0.00	1	0.01
Total	5,135	100.00	4,488	100.00	9,623	100.00

Notes:

In Panel A: * significant at 5% ** significant at 1%. Significance for difference of means calculated using two sample t-test. Significance for difference of percentages calculated using two sample test of proportion.

Avg. Age at first release is the age of the offender when they were released from jail for the first conviction, which is not necessarily the release in 1994. Avg. Age is the age of release in 1994 that got them put into the study.

In Panel B: * Indicates the proportions between the two groups are significantly different (at the 1% level) tested using a two sample test of proportion. Conspiracy sexual abuse, attempted child molestation and morals offense have very small sample sizes of 3, 14, and 1 respectively.

Table 5: *Percent of offenders who recidivated by group*

Registered On Release	Percent arrested for sex offense within _____ year(s) of release:			Percent convicted for sexual offense within _____ year(s) of release:			Percent arrested for rape offense within _____ year(s) of release:			Percent arrested for other offense within 3 years
	1	2	3	1	2	3	1	2	3	
No	1.73	3.14	4.15	0.51	1.69	1.69	0.41	0.74	0.93	33.03
Yes	1.63	3.07	3.94	0.36	1.65	1.65	0.78	1.38	1.76	31.08
Difference	0.1	0.07	0.2	0.15	0.04	0.04	-0.37*	-0.64**	-0.83**	1.94*

Notes:

* significant at 5% ** significant at 1%. Significance for difference of percentages calculated using two sample test of proportion. Any discrepancies in addition are caused by rounding.

Table 6: *Effect of registration on offender recidivism, defined 4 different ways*

	(1) Sex Offense Arrest	(2) Sex Offense Conviction	(3) Rape Arrest	(4) Other Arrest
Registered on release	0.009 (0.008)	0.008 (0.004)	0.002 (0.003)	0.079* (0.038)
Age at first release	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.014** (0.001)
# Previous rape arrests	0.020** (0.004)	0.008** (0.003)	0.010** (0.002)	0.016 (0.013)
# Previous sex offense arrests	0.035** (0.003)	0.017** (0.002)	0.005** (0.001)	-0.004 (0.019)
Black	-0.004 (0.005)	-0.002 (0.002)	0.001 (0.002)	0.164** (0.027)
Hispanic	0.001 (0.005)	-0.002 (0.003)	0.004 (0.003)	0.041** (0.013)
Male	0.025** (0.009)			0.000 (0.086)
Rapist	0.027** (0.010)	0.022 (0.026)	0.007 (0.011)	0.100 (0.052)
Sex Abuser	0.017* (0.009)	0.016 (0.019)	0.010 (0.011)	0.127* (0.051)
Statutory Rapist	-0.003 (0.013)	0.021 (0.036)	0.004 (0.015)	0.229** (0.064)
Child Molester	0.013 (0.007)	0.021 (0.025)	0.005 (0.010)	0.058 (0.063)
Sodomizer	0.035* (0.017)	0.038 (0.047)	0.014 (0.020)	0.062 (0.060)
Police per 1000 (1997)	-1.684** (0.604)	0.195 (0.228)	-0.821 (0.646)	-2.684 (4.003)
Rape Incidences per 1000 (1993)	-0.102 (0.267)	0.275 (0.157)	-0.182 (0.230)	-0.475 (2.300)
Sex offense arrests per 1000 (1993)	-0.907** (0.320)	-0.657** (0.196)	0.491* (0.213)	-5.522* (2.552)
Percent Urban	0.099 (0.108)	0.173** (0.045)	0.013 (0.068)	0.726 (0.472)
Percent Christian (2000)	-0.001 (0.045)	0.029 (0.020)	0.057* (0.023)	-1.401** (0.347)
Elected Judges	0.004 (0.016)	0.019** (0.007)	0.002 (0.008)	0.045 (0.061)
Percent Republican Votes (1992)	0.179 (0.214)	0.363** (0.065)	-0.029 (0.128)	0.831 (0.967)
Average Rape Sentence (in years)	-0.001 (0.001)	-0.002** (0.000)	0.000 (0.000)	-0.003 (0.005)
Prisoners per 1000 (1994)	0.006 (0.042)	-0.037** (0.014)	-0.010 (0.026)	-0.268 (0.256)
Observations	9323	9227	9227	9323
Robust standard errors in parentheses; clustered on state				
* significant at 5%; ** significant at 1%				

Notes: Probit analysis is used with change in probability reported. Standard errors clustered on state are in parenthesis. Other arrest is arrest for an offense other than a sex offense or rape. Registered on release=1 if sex offender characteristics implied he would have had to register on his release in 1994. Sentence length is sentence length for prison stay for which the prisoner was released in 1994. Rapist, sexual abuser, child molester, sodomizer are dummy variables indicating what the crime for which the sex offender committed for which he was released in 1994. Police per 1000 is a state level control, data from *Bureau of Justice Statistics*. No females in the sample were later convicted of a sex offense nor arrested for rape, thus male is dropped from the second and third specification. Rape incidences per 1000 and Sex offense arrests per 1000 come from the "panel data" used in this paper, from the Bureau of Justice Statistics. Percent Christian is measured as percent Christian Church adherents from the 2000 Statistical Abstract of the United States. Elected Judges is a dummy=1 if a state elects their judges rather than appoints them, data from Tabarrok and Helland (1999). Percent Republican Votes is the percent of the state that voted for the Republican candidate in the 1992 presidential election, data from USElectionAtlas.org.

Table 7: *Effect of registration on offender recidivism, Cox Proportional Hazard Model*

	(1) Sex Offense Arrest	(2) Rape Arrest	(3) Rape Conviction
Registered on release	1.462* (0.308)	2.195** (0.838)	1.727* (0.508)
Age at first release	0.984*** (0.006)	0.970** (0.012)	0.977*** (0.009)
# Previous rape arrests	1.622*** (0.097)	2.374*** (0.179)	1.620*** (0.142)
# previous sex offense arrests	2.073*** (0.070)	1.577*** (0.140)	2.436*** (0.110)
Black	1.012 (0.117)	1.410 (0.306)	0.968 (0.167)
Hispanic	1.009 (0.149)	1.438 (0.370)	0.867 (0.195)
Male	4.116 (4.125)	2.288e+14 (4.527e+21)	1.032e+16 (0.000)
Rapist	1.378 (0.659)	1.512 (1.593)	2.132 (2.207)
Sex Abuser	1.375 (0.648)	2.055 (2.145)	2.127 (2.178)
Statutory Rapist	0.881 (0.525)	0.992 (1.189)	1.670 (1.876)
Child Molester	1.278 (0.608)	1.144 (1.203)	2.748 (2.832)
Sodomizer	1.594 (0.819)	1.650 (1.807)	3.479 (3.696)
Police per 1000 (1997)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
Rape Incidences per 1000 (1993)	0.000*** (0.000)	0.000* (0.000)	1.763e+08 (2.271e+09)
Sex offense arrests per 1000 (1993)	0.357 (2.290)	0.000 (0.000)	2.721e+10** (2.793e+11)
Percent Urban	0.000*** (0.000)	2.584e+15 (7.447e+16)	0.000*** (0.000)
Percent Christian (2000)	32.729* (62.950)	5.983 (24.883)	910,668.528*** (3277023.576)
Elected Judges	0.993 (0.011)	1.029 (0.022)	1.019 (0.016)
Percent Republican Votes (1992)	1.144 (0.348)	1.755 (1.056)	3.608*** (1.788)
Average Rape Sentence (in years)	2,867.587** (11,628.947)	0.308 (2.506)	1.495e+12*** (8.986e+12)
Prisoners per 1000 (1994)	0.954*** (0.017)	1.020 (0.048)	0.881*** (0.023)
Registered on release	0.629 (0.524)	0.385 (0.717)	0.035*** (0.045)
Observations	12427	12427	12427
Standard errors in parentheses			
* significant at 10%; ** significant at 5%; *** significant at 1%			

Notes: Cox proportional Hazard model is used. Reported coefficients are exponentiated for ease of interpretation. The coefficient can be read as the proportional change in the hazard rate with respect to that variable. Controls defined as in table 6.

Table 8: *Effect of registered sex offenders living or working in a census block group on crime rates*

	(1) Sex Abuse per 1000	(2) Nonviolent crimes per 1000	(3) Violent crimes per 1000	(4) Sex abuse per 1000
Offenders per 1000 living in block group	-0.011 (0.019)	-159.809 (141.072)	-15.277 (13.302)	-0.046 (0.052)
population	-0.000 (0.000)	-0.036 (0.219)	-0.008 (0.020)	
Black	0.000 (0.001)	-5.666 (4.555)	-0.561 (0.415)	
Hispanic	0.001 (0.002)	-44.706 (32.241)	-4.193 (2.947)	
Female	0.000 (0.009)	-187.384 (135.443)	-17.080 (12.350)	
Age 18 to 39	-0.001 (0.002)	-40.227 (29.859)	-3.617 (2.719)	
Renter Occupied	0.000 (0.000)	0.641 (0.654)	0.062 (0.060)	
Violent Crime	0.009*** (0.001)			0.008*** (0.001)
Non-violent Crime	0.001*** (0.000)			0.000*** (0.000)
Constant	-0.060 (0.391)	11,981.755 (8,571.084)	1,096.468 (775.875)	-0.030 (0.090)
Observations	15280	15280	15280	15280
R-squared	0.06	0.27	0.21	0.06
Block Group Effects	No	No	No	Yes
Time Fixed Effects	Yes	Yes	Yes	Yes
Robust standard errors in parentheses, clustered on block group				
* significant at 5%; ** significant at 1%				

Notes: Non-violent crimes are: stolen auto, theft, theft from auto, arson and burglary. Violent crimes are: homicide, assault, and robbery. Demographic data is per 100 in the population. Crime variables are per 1000 in population. Although using the natural log of the crime rate would have made interpretation easier, many blocks had no crimes and thus natural logs could not be used.

Table 9: *Differentiating between the time when there was only a registry (before the internet database) and after*

	Sex Abuse per 1000
Offenders per 1000 living in block group after internet	0.011 (0.009)
Offenders per 1000 living in block group before internet	0.003 (0.022)
Constant	0.039* (0.021)
Observations	15280
R-squared	0.07
Block group fixed effects	Yes
Time fixed effects	Yes
* significant at 10%; ** significant at 5%; *** significant at 1%	

Notes: Standard errors in parenthesis.

Figure 1: *States with registries*

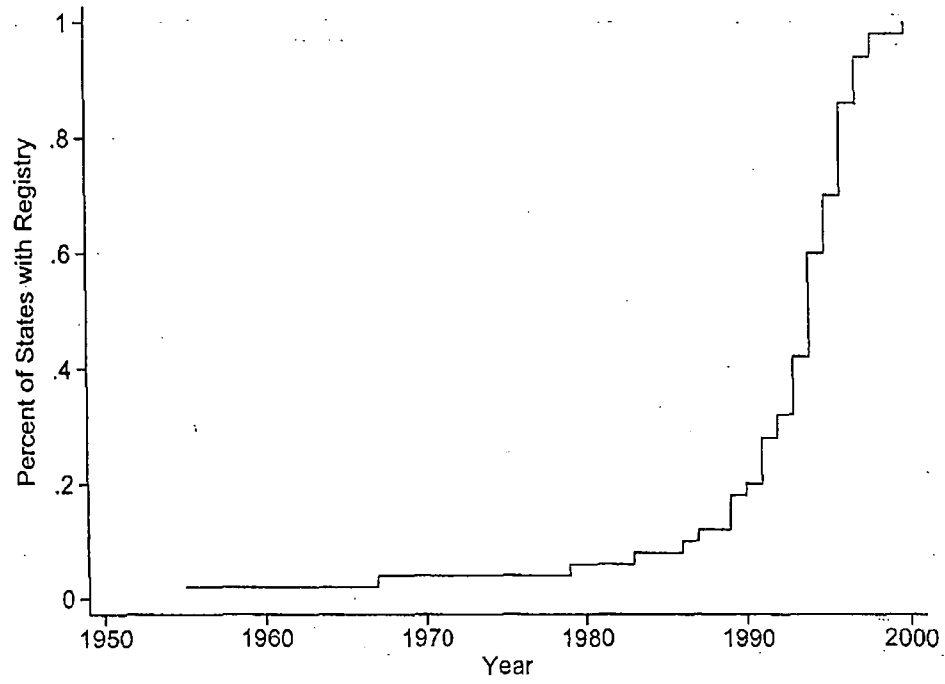


Figure 2: *States with public access to registries via the internet*

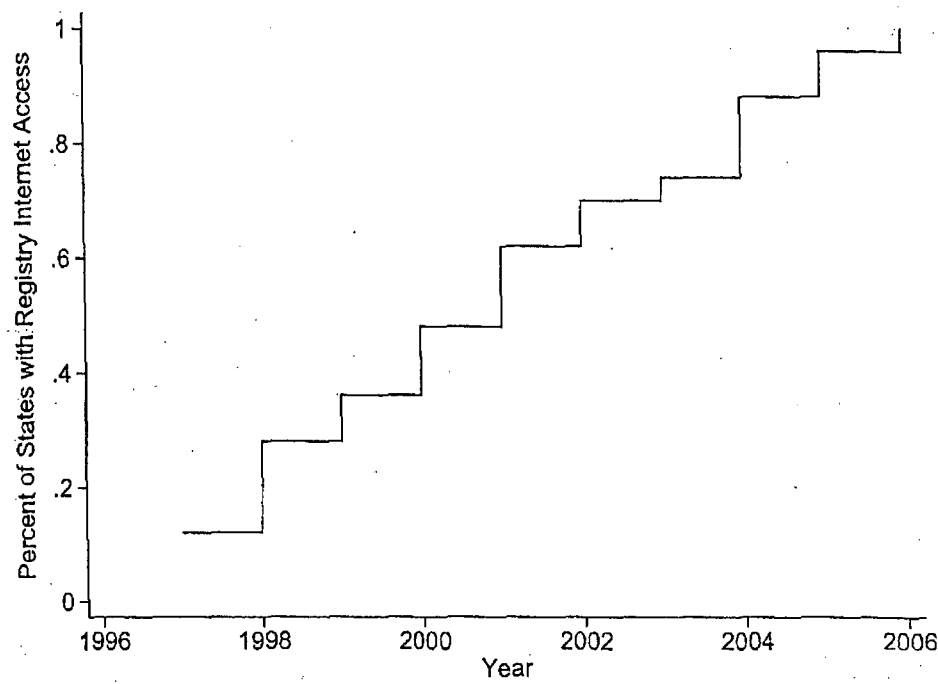
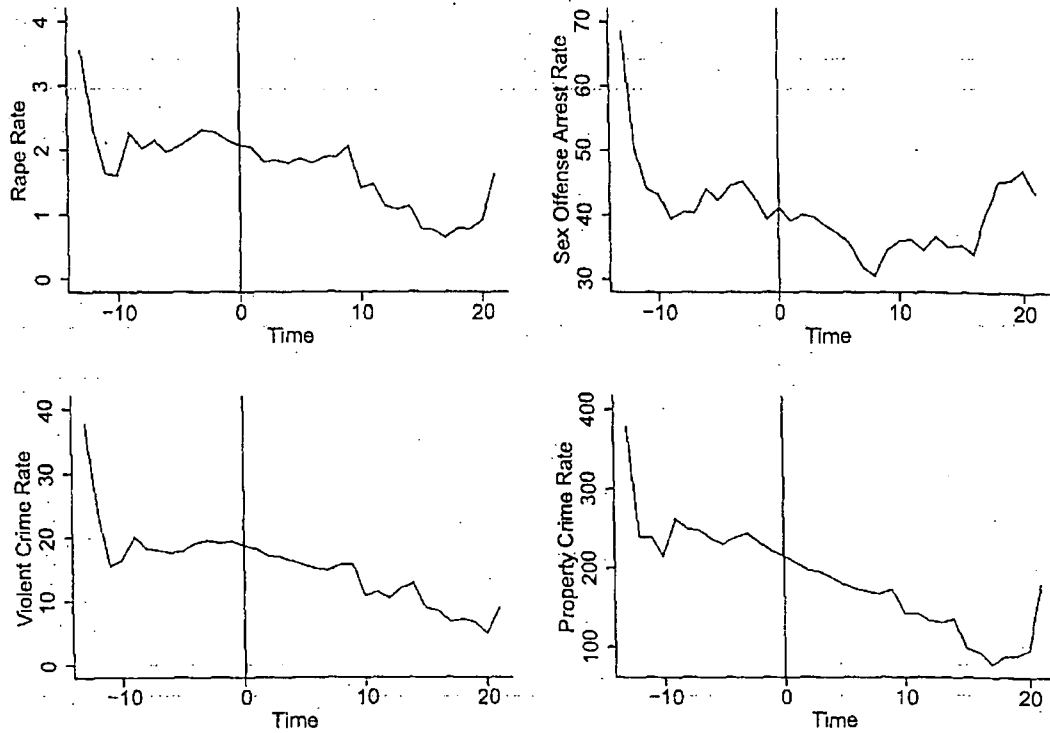
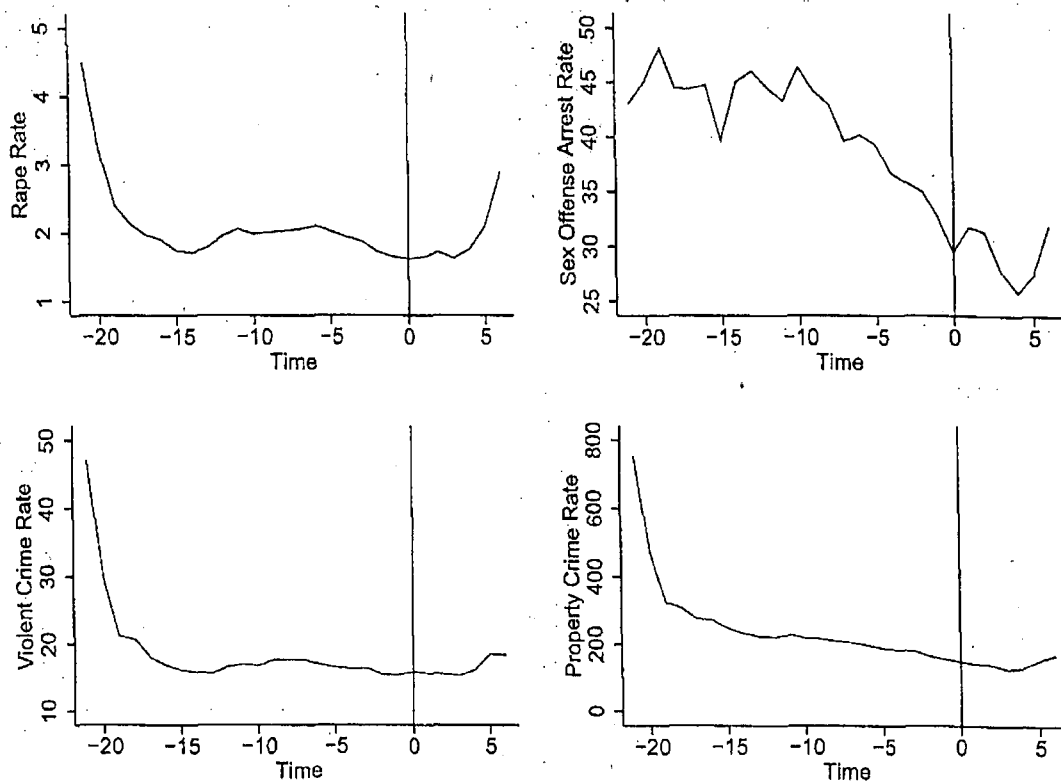


Figure 3: *Crime over Time – Effect of Registry*

Note: 0 represents the point in time when the registry was created. So -10 is 10 years before the registry was created etc... All crime variables are per 100,000 in the population. Violent crime, rape and property crime are incident rates. Violent crime in this graph does not include rape.

Figure 4: *Crime over Time – Effect of Public Access via the Internet*

Note: 0 represents the point in time when public access to the registry via the internet began. So -10 is 10 years before the registry was available on the internet etc... All crime variables are per 100,000 in the population. Violent crime, rape and property crime are incident rates. Violent crime in this graph does not include rape.

Figure 5: *Where registered sex offenders in DC live*

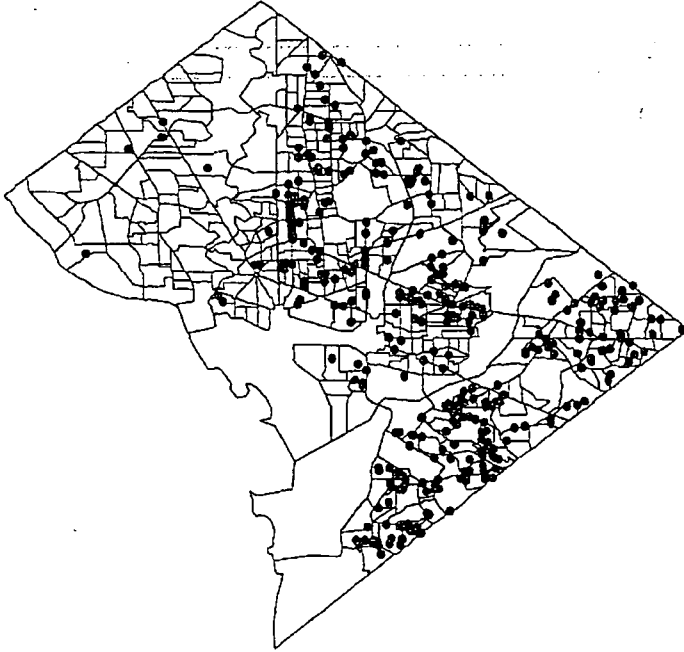
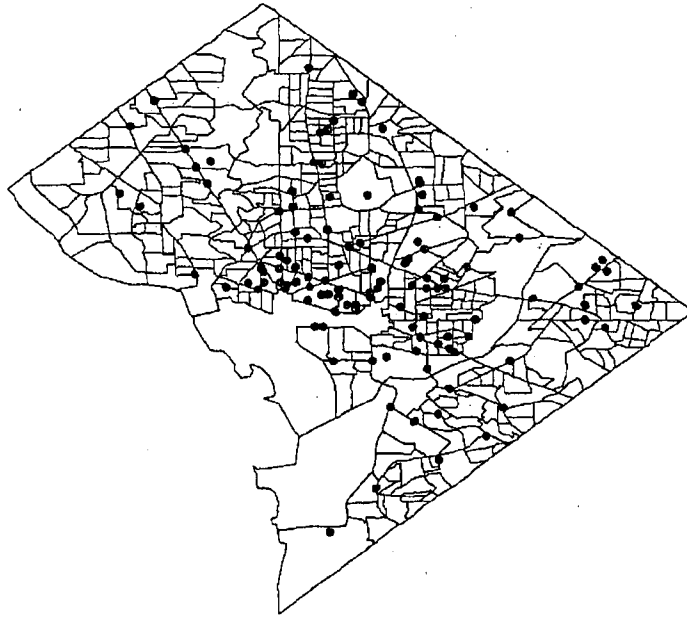


Figure 6: *Where registered sex offenders work in DC*



Appendix A: Registry Effective Date Justifications

Prescott and Rockoff (2008) and I disagree on three dates of registry effective. Below are justifications for the dates I use in my paper.

Kentucky: 7/15/1994

From the Kentucky Legislature Website: <http://www.lrc.ky.gov/KRS/017-00/510.PDF>
 Kentucky revised statutes, Title III, Chapter 17.510 "Registration system for adults who have committed sex crimes or crimes against minors -- Persons required to register -- Manner of registration -- Penalties -- Notifications of violations required.... History: Amended 2008 Ky. Acts ch. 158, sec. 13, effective July 1, 2008. -- Amended 2007 Ky. Acts ch. 85, sec. 100, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 182, sec. 6, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 401, sec. 16, effective April 11, 2000. -- Amended 1998 Ky. Acts ch. 606, sec. 138, effective July 15, 1998. -- Created 1994 Ky. Acts ch. 392, sec. 2, *effective July 15, 1994.*" (emphasis mine)

Connecticut: 10/1/1998

<http://www.cga.ct.gov/ps98/Act/pa/1998PA-00111-R00SB-00065-PA.htm>

According to <http://www.cga.ct.gov/ps98/Act/pa/1998PA-00111-R00SB-00065-PA.htm>, Connecticut Public Act 98-111: "An act concerning the registration of sexual offenders" was approved on May 17, 1998 and according to the Smith Law Firm was effective October 1, 1998. See: <http://www.smith-lawfirm.com/registration.html>
 "The law, (**Public Act 98-111**) effective October 1, 1998, provides for mandatory registration by persons convicted of a broader range of sexual crimes toward children and sexually violent crimes."

See also Connecticut General Assembly Statutes Chapter 969: Registration of Sexual Offenders <http://www.cga.ct.gov/2005/pub/Chap969.htm>
 PA 98-111 is listed first in the history for each section, as stated above PA 98-111 became effective October 1, 1998.

North Dakota: 1991

According to the FAQs on the North Dakota Sex Offender registry site, located at: <http://www.sexoffender.nd.gov/FAQ/faq.shtml>

"1. WHEN DID THIS SEX OFFENDER LAW BEGIN? The first sex offender registration statute in North Dakota was passed in the 1991 legislative session. Since then, there have been changes or additions made to the original statute in every legislative session."

Data appendix

UCR arrest data was provided by the BJS on a CD-ROM. Some data points for sexual offense arrest rates are missing on the FBI UCR CD-ROM. The missing information was filled in from data directly from the state wherever possible, otherwise linear interpolation was used to estimate remaining missing data. The following state-years had missing data for both sexual offense and rape arrests:

Florida: 88-89, 91, 96-03

GA: 90

IL: 99

IA: 91

KS: 93-99

KY: 87-88

MT: 94-96

NH: 95

SC: 91

VT: 96-97

WI: 98-00

Florida information was updated from:

http://www.fdle.state.fl.us/fsac/data_statistics.asp "UCR Arrest Data" Total Arrest by County 1989 Excel File (only non-forcible sex offenses, "forcible sex offenses" include forcible offenses other than rape)

http://www.fdle.state.fl.us/fsac/data_statistics.asp "UCR Arrest Data" Total Arrest by County 1991 Excel File (only non-forcible sex offenses, "forcible sex offenses" include forcible offenses other than rape)

<http://www.fdle.state.fl.us/FSAC/UCR/1996/arrests.asp>

<http://www.fdle.state.fl.us/FSAC/UCR/1997/arrests.asp>

http://www.fdle.state.fl.us/FSAC/UCR/1998/ucr_1998_arrest_totals.pdf

http://www.fdle.state.fl.us/FSAC/UCR/1999/ucr_1999_arrest_totals.pdf

http://www.fdle.state.fl.us/FSAC/UCR/2000/2000CIF_arr.pdf

http://www.fdle.state.fl.us/FSAC/UCR/2001/CIFA_annual01.pdf

http://www.fdle.state.fl.us/FSAC/UCR/2002/CIFA_annual02.pdf

http://www.fdle.state.fl.us/FSAC/UCR/2003/CIFA_annual03.pdf

accessed from: <http://www.fdle.state.fl.us/fsac/UCR/index.asp> Florida Dept of Law Enforcement Uniform Crime Reports

Kansas information updated from:

http://www.accesskansas.org/kbi/stats_crime_1997.shtml (1997 combined arrests pdf)

http://www.accesskansas.org/kbi/stats_crime_1998.shtml (1998 combined arrests pdf)

Wisconsin information updated from:

See - <http://oia.state.wi.us/refcenter.asp#list> search crime and arrests,

Crime and Arrests 1999, table entitled ADULT ARRESTS FOR INDEX CRIMES, STATE OF WISCONSIN (forcible rape)

Crime and Arrests 1999, table entitled ADULT ARRESTS FOR INDEX CRIMES, STATE OF WISCONSIN (forcible rape)

Crime and Arrests 2001, table entitled ADULT ARRESTS FOR INDEX CRIMES, STATE OF WISCONSIN (forcible rape)

Kentucky:

Updated from personal correspondence with Melissa Pratt Kentucky state Police Statistical Coordinator 8/25/2006 (email)

Federal PROBATION

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Sex Offender Residence Restrictions: Sensible Crime Policy or Flawed Logic?

*Jill Levenson, Ph.D., Lynn University**Kristen Zgoba, Ph.D., New Jersey Department of Corrections**Richard Tewksbury, Ph.D., University of Louisville*[Review of Relevant Literature](#)[Effects on Recidivism](#)[The Relationship between Proximity and Recidivism](#)[Criminal Re-entry, Housing Instability, and Recidivism](#)[Housing Availability](#)[Other Unintended Consequences of Residence Restrictions](#)[Premises Underlying Sex Offender Residence Policies](#)[Risk Assessment](#)[Summary](#)[Implications for Practice and Policy](#)

SEXUAL VIOLENCE is a social problem that inspires immense fear and wrath in our society. As such, public policies designed to monitor and restrict sex offenders are becoming increasingly popular in the United States. Since 1994, the Jacob Wetterling Act has required convicted sex offenders to register their addresses with law enforcement agents to facilitate better tracking and monitoring of these particular criminals. Megan's Law, enacted in 1996, modified the Jacob Wetterling Act by allowing registry information to be disclosed to the public. These laws were the initial stepping stones and evolved from registration to notification and now include housing restrictions. As a result of this progression, at least 22 states and hundreds of local municipalities in the U.S. have passed laws prohibiting sex offenders from living within close proximity (usually 1,000 to 2,500 feet) to schools, parks, playgrounds, day care centers, and other places where children congregate (National Conference of State Legislatures, 2006; Nieto & Jung, 2006).

The effectiveness of residence restrictions policies on sex crime prevention is largely unknown because empirical investigations of this topic are virtually absent in the literature. While there is wide consensus on the need for improved community safety from sex offenders, there is considerable debate as to whether current criminal justice responses intended to reduce sexual offending are successful (Edwards & Hensley, 2001; Levenson, 2003; Levenson & D'Amora, 2007; Petersilia, 2003; Prentky, 1996; Welchans, 2005; Zgoba, 2004). Hampering the ability of stakeholders to make informed decisions is the complete lack of empirical data on the effects of residence restrictions on rates of sexual offending and recidivism. Yet, sex offender housing laws have enjoyed overwhelming support as they have swept across the United States.

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Twenty-two states now have laws restricting where sex offenders can live, with 1,000 to 2,500-foot exclusionary zones being most common (National Conference of State Legislatures, 2006; Nieto & Jung, 2006). Since a series of highly publicized murders of several young children by convicted sex offenders around the country in 2005, hundreds of cities and towns nationwide have also passed local ordinances, often increasing restricted zones to 2,500 feet. Some of these regulations have allowed a "grandfather clause" for sex offenders who established residency prior to the passage of the law, and some (but not all) waive restrictions for juvenile or statutory offenders. Some localities have made it a crime for landlords to rent to sex offenders, making it more difficult for them to secure rental properties.

When the constitutionality of residence restrictions has been challenged, these laws have generally been upheld (*State v. Seering*, 2005; *Doe v. Miller*, 2005), and the U.S. Supreme Court has declined to rule on the issue. However, the legal status of such laws has not been firmly and consistently established. A Georgia law banning sex offenders from living or working within 1,000 feet of school bus stops (with no grandfather clause) has been granted class action status and a temporary injunction preventing enforcement of the law is in effect (Tewksbury, in press). A judge in California ruled after the overwhelming recent passage of Proposition 83, a comprehensive bill requiring sex offenders to live 2,000 feet from a school or park, that the law could not be retroactive. Two judges in New Jersey have declared township ordinances unconstitutional because they violated the state's "Megan's Law," which prevents sex offender registration status from being used to deny housing or accommodations (*Elwell v. Lower Township*, 2006; *G.H. v. Galloway Township*, 2007). A Kentucky judge ruled that retroactive housing laws applied to those who established residences before the law took effect violate ex post facto protections (*Commonwealth v. Baker, et al.*, 2007). He opined that residence restrictions are clearly punitive and that to argue otherwise is intellectually dishonest. He added that such laws are "minimal at best and completely illusory at worst" (p. 26) and that they "appear to be little more than a political placebo, offering false comfort to pacify the public's fear" (p. 27).

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Effects on Recidivism

No research has yet been conducted to measure the efficacy of existing residence laws, but one study investigated the potential for sex offender residence restrictions to prevent repeat sex crimes (Minnesota Department of Corrections, 2007). Though no statewide residence law exists in Minnesota, researchers analyzed the patterns of 224 sex offenders released from Minnesota correctional facilities who sexually recidivated between 1990 and 2005. The results showed that not one of the 224 cases likely would have been deterred by residence restrictions. A minority of the 224 offenders initiated contact with their victims in public places. Instead, nearly two-thirds victimized family members or gained access to their victims through another adult, such as a spouse, girlfriend, co-worker, friend, or acquaintance. Only 27 offenders established contact with their victims within one mile of their residence at the time of the offense. Of the 16 juvenile victims with whom contact was established within one mile of the offender's home, none of these relationships were cultivated near a school, park or playground.

These results indicated that the prevailing factor in sexual recidivism is not residential proximity but rather social or relationship proximity. Even when offenders established direct contact with unknown victims, they were unlikely to do so close to where they lived. Based on these findings, the authors concluded that the potential deterrent effects of a residence restriction law would likely be "marginal" at best because the types of offenses it is designed to prevent are exceptionally rare (Minnesota Department of Corrections, 2007).

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The Relationship between Proximity and Recidivism

In an Arkansas study of 170 sex offenders, it was found that 48 percent of child molesters lived within 1,000 feet of a school, day care center, or park, compared with 26 percent of perpetrators convicted of sex crimes against adults (Walker, Golden, & VanHouten, 2001). Citing routine

activities theory, the authors speculated that child molesters might be motivated to purposely live within close access to potential victims. The study did not track recidivism, however, and did not establish that proximity to schools was correlated with reoffending. In fact, the factors contributing to residence selection could not be clearly identified. Other scholars have argued that sex offenders' housing arrangements are most strongly determined by economic conditions, not because they seek to live near potential victims (Tewksbury & Mustaine, 2006). Rapists who target adult victims have been found to often commit sex crimes within a short radius from where they live (Minnesota Department of Corrections, 2007; Warren, Reboussin, Hazelwood, Cummings, Gibbs, & Trumbetta, 1998).

In Minnesota, an earlier study was undertaken to determine whether residential proximity to schools and parks played a role in recidivism (Minnesota Department of Corrections, 2003). Researchers tracked 329 "level three" sex offenders (those considered to be at highest risk for reoffense) who were released from prison between 1997 and 1999. By March 2002, thirteen (4 percent) of those high-risk offenders had been rearrested for a new sex crime. The circumstances of each recidivism case were then scrutinized to determine whether the offense was related to the offender's residential proximity to a school or park. None of the new crimes occurred on the grounds of a school or was seemingly related to a sex offender living within close proximity to a school. Two of the offenses did take place near parks, but in both cases, the park areas were several miles away from the offenders' homes. The authors concluded that residential proximity to schools and parks appeared to be unrelated to sex offense recidivism, and advised that blanket policies restricting where sex offenders can live are unlikely to benefit community safety. They did suggest that restrictions might be an appropriate supervision strategy when assessing the risks and needs of each individual offender on a case-by-case basis.

In Colorado, 130 sex offenders on probation were tracked for 15 months in order to assess recidivism (Colorado Department of Public Safety, 2004). Fifteen (12 percent) were rearrested for new sex crimes, and all were non-contact offenses (peeping, voyeurism, or indecent exposure). The researchers mapped the sex offenders' proximity to schools and daycare centers, and found that recidivists were randomly located throughout the area and did not live closer to such venues than non-recidivists. They concluded that residence restrictions are unlikely to deter sex offenders from recommitting sex crimes, and that such policies should not be considered a feasible strategy for protecting children. In sum, no evidence exists to support the hypothesis that sex offenders who live within closer proximity to schools, parks, and playgrounds have an increased likelihood of sexually recidivating. There is also no research as yet that establishes residence restrictions as a viable strategy for reducing sex crimes, preventing recidivism, or protecting children.

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Criminal Re-entry, Housing Instability, and Recidivism

Convicted felons returning to communities are confronted with the (often quite daunting) challenge of locating and sustaining affordable housing (La Vigne, Visher, & Castro, 2004; Petersilia, 2003; Travis, 2005). Imprisoned offenders have been separated from their families and communities and consequently, after incarceration, they often find themselves without support systems, fiscal resources, housing, employment opportunities, and transportation. Obstacles to employment can create financial instability, and affordable lodging is often scarce, especially since laws prohibit felons from obtaining subsidized housing (Petersilia, 2003; Travis, 2005). The basic needs of offenders attempting to re-enter society have frequently been ignored, causing some scholars to warn of dire consequences of such neglect: "Housing is the linchpin that holds the reintegration process together. Without a stable residence, continuity in substance abuse and mental health treatment is compromised... in the end, a polity that does not concern itself with the housing needs of returning prisoners finds that it has done so at the expense of its own public safety" (Bradley, Oliver, Richardson, & Slayter, 2001, p. 7).

Housing instability and criminal recidivism are clearly linked, and numerous studies have documented the relationship. Residential instability was found to be a robust predictor of reoffending among Georgia criminals; the likelihood of re-arrest increased by 25 percent each time a parolee

moved (Meredith, Speir, Johnson, & Hull, 2003). Released offenders temporarily residing in New York shelters were at increased risk for drug and alcohol abuse, unemployment, and absconding from probation or parole (Nelson, Deess, & Allen, 1999). Unstable living arrangements were identified as the strongest predictor of absconding in a sample of over 4,000 parolees in California (Williams, McShane, & Dolny, 2000), and in a national sample ($n = 2,030$), probationers who moved multiple times during their period of supervision were almost twice as likely to have had a disciplinary hearing (Schulenberg, 2007). Offenders themselves have identified housing as the most essential factor in their community adjustment and reintegration (La Vigne et al., 2004).

Housing and property ownership lead to the development of social bonds, which facilitate crime desistance through engagement in prosocial activities and self-perception of a non-deviant identity (Laub & Sampson, 2001). Community connections and healthy interpersonal relationships create social and psychological reinforcements to the offender's investment in conformity and crime deterrence. Employment and relationships, especially marriage, are reliable predictors of desistance from crime (Laub & Sampson, 2001). Lifestyle instability has been associated with both general and sexual recidivism (Andrews & Bonta, 2003; Hanson & Harris, 1998) and sex offenders with constructive support systems have fewer violations and new offenses than those who have negative or no support (Colorado Department of Public Safety, 2004). Thus, unstable housing and the ensuing disengagement from family and community appear to increase the likelihood of recidivism for criminal offenders.

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Housing Availability

Residence laws severely limit housing options for sex offenders, especially in major metropolitan areas (Carlson, 2005; Zandbergen & Hart, 2006). Using geographical information system (GIS) mapping technology in Orange County, Florida, researchers found that 95 percent of over 137,000 residences were located within 1,000 feet of schools, parks, daycare centers, or school bus stops, and virtually all housing was within 2,500 feet of such venues. The number of dwellings available for sex offenders outside 1,000-foot buffer zones was 4,233 and only 37 properties existed beyond 2,500-foot buffer zones. When considering the constraint categories individually, bus stops were by far the most restrictive (99.6 percent of properties were within 2,500 feet). Of course, these statistics represent all existing properties and it is likely that only a fraction are available for rent or purchase at any point in time (Zandbergen & Hart, 2006). Furthermore, in Colorado, researchers found that in densely populated areas, residences that are not within 1,000 feet of a school or childcare center are virtually nonexistent (Colorado Department of Public Safety, 2004).

When residence restrictions are enacted, the effects quickly become apparent. Within six months of the implementation of Iowa's 2,000-foot law, thousands of sex offenders became homeless or transient, making them more difficult to track and monitor. The number of registered sex offenders in Iowa who could not be located more than doubled, damaging the reliability and validity of the sex offender registry (Rood, 2006).

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Other Unintended Consequences of Residence Restrictions

A growing body of research indicates that sex offender registration and community notification can interfere in multiple ways with community re-entry and adjustment (Levenson & Cotter, 2005b; Levenson, D'Amora, & Hern, 2007b; Sample & Streveler, 2003; Tewksbury, 2004; Tewksbury, 2005; Tewksbury & Lees, 2006; 2007; Zevitz, 2006a; Zevitz & Farkas, 2000a). Sex offenders surveyed in Florida, Indiana, Connecticut, Wisconsin, Oklahoma, Kansas and Kentucky reported adverse consequences such as unemployment, relationship loss, denial of housing, threats, harassment, physical assault, or property damage as a result of public disclosure (Levenson & Cotter, 2005b; Levenson et al., 2007b; Tewksbury, 2004; Tewksbury, 2005; Tewksbury & Lees, 2006; 2007; Tewksbury & Mustaine, 2007; Zevitz & Farkas, 2000b). The majority of sex offenders also reported psychological symptoms such as shame, embarrassment, depression, or hopelessness (Levenson &

Cotter, 2005b; Levenson et al., 2007b; Tewksbury & Lees, 2007). Though vigilantism is rare, extreme cases such as arson, vandalism, and even murder of sex offenders have been documented (Sample & Streveler, 2003). Because public identification can lead to social exclusion and underemployment for sex offenders, many of them end up living in socially disorganized, economically deprived neighborhoods that have fewer resources for deterring crime and protecting residents (Mustaine, Tewksbury, & Stengel, 2006; Tewksbury & Mustaine, 2006; Zevitz, 2004; 2006b).

The impact of residence restrictions on sex offenders remains largely unknown. Only two studies have been published to date, and two others are forthcoming. Levenson and Cotter (2005a) investigated the impact of Florida's 1,000-foot statewide exclusionary zone on the reintegration of 135 sex offenders. They found that about one quarter of offenders were forced to move from a home that they owned or rented, or were unable to return home following their release from prison. Nearly half (44 percent) reported that they were unable to live with supportive family members due to zoning laws. More than half (57 percent) found it difficult to secure affordable housing, and 60 percent reported emotional distress as a result of housing restrictions. The authors suggested that residence restrictions have the potential to disrupt stability and contribute to psychosocial stressors which can lead to dynamic risk factors (Hanson & Harris, 1998) associated with sex offense recidivism.

Levenson and Cotter (2005a) collected their data in 2004, prior to the passage of scores of city ordinances in Florida that increased restricted zones to 2,500 feet (about one-half mile). Since that time, for example, 26 of the 30 independent cities in Broward County, FL (the greater Fort Lauderdale metropolitan area) have passed local sex offender zoning laws. A more recent study of 109 sex offenders in Broward found that 39 percent reported becoming homeless or living with someone else for two or more days, and 22 percent said they were forced to relocate more than two times (Levenson, in press). Almost half reported that a landlord refused to rent to them, and 13 percent said they had spent time in jail due to a residence violation. Age was inversely correlated with an increase in adverse consequences, and larger buffer zones were associated with transience, homelessness, and reduced employment opportunities.

In Oklahoma and Kansas, 62 percent of a sample of registered sex offenders has moved since registering, with 54 percent of those subject to a residence restriction law being forced to move (Tewksbury & Mustaine, 2007). When sex offenders move it is typically to neighborhoods with higher levels of social disorganization (Mustaine et al., 2006). In Indiana, 26 percent of sex offenders surveyed were unable to return to their homes after being released from prison, 37 percent were unable to live with family, and almost one-third reported that a landlord refused to rent to them or to renew a lease (Levenson & Hern, 2007). Many (38 percent) said that affordable housing was less accessible as a result of restrictions on where they could live, and that they were forced farther away from employment, social services, and mental health treatment. Young adults were particularly affected, and age was significantly inversely correlated with being unable to live with family and having difficulties securing affordable housing (Levenson & Hern, 2007).

Iowa prosecutors and victim advocates took proactive steps and publicly denounced residence restrictions, asserting that they create more problems than they solve (Iowa County Attorneys Association, 2006; NAESV, 2006). Prosecutors observed that the number of plea bargains dropped, causing some cases to go unadjudicated, leaving victims at risk and perpetrators without treatment or punishment (Iowa County Attorneys Association, 2006). Victim advocates cautioned that residential transience makes it more difficult to track the whereabouts of sex offenders and to supervise their activities.

Social stability and support increase the likelihood of successful reintegration for criminal offenders, and public policies that create obstacles to community re-entry may compromise public safety (Petersilia, 2003). It has been found that sex offenders who had a positive support system had significantly lower recidivism and fewer rule violations than those who had negative or no support (Colorado Department of Public Safety, 2004). Sex offenders who maintained social bonds to communities through stable employment and family relationships had lower recidivism rates than those without jobs or significant others (Kruttschnitt, Uggen, & Shelton, 2000). It is well established

that the stigma of felony conviction can impede the ability to engage in prosocial roles across domains such as employment, education, parenting, and property ownership (Tewksbury & Lees, 2007; Uggen, Manza, & Behrens, 2004). Uggen et al. (2004) underscored that self-concept, civic participation, and social resources are essential to an offender's identity as a conforming citizen and therefore to his or her desistance from crime. Policies such as residence restrictions can disrupt the stability of sex offenders and interfere with the potential to develop social bonds, secure employment, and engage in positive activities, raising concerns that such laws might be ultimately counter-productive (Levenson, 2006; Tewksbury & Lees, 2006).

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Premises Underlying Sex Offender Residence Policies

Sex offender policies have not often incorporated empirical data into their development and implementation (Levenson & D'Amora, 2007; Zgoba, 2004). Despite the lack of evidence linking sex offense recidivism with residential proximity to schools, zoning restrictions are widely popular, partly due to the (unsupported) popular belief that sex offenders have extraordinarily high recidivism rates (Levenson, 2006; Levenson, Brannon, Fortney, & Baker, 2007a; Quinn, Forsyth, & Mullen-Quinn, 2004; Sample & Bray, 2006). Extensive media attention to sexually motivated abductions of children creates a perception that violent sex crimes are on the rise, even in an era of consistently declining trends. According to child protection data, police reports, and victim surveys, sexual assault rates for both adults and children have dropped substantially since the early 1990s (Finkelhor & Jones, 2004; Maguire & Pastore, 2003).

Residence restrictions are intended to prevent recidivistic predatory offenses, yet in practice they target only a fraction of sex crimes. The assumption that children are at great risk posed by sex offenders lurking in schoolyards or playgrounds is not supported by data (Zgoba, 2004). Most sexually abused children are victimized by someone they know and trust, and only about 7 percent of sex crimes against minors are perpetrated by strangers (Bureau of Justice Statistics, 2002a). According to the vast majority of empirical research, most child sexual abuse is perpetrated by family members or close acquaintances. About 40 percent of sexual assaults take place in a victim's own home, and 20 percent take place in the home of a friend, neighbor or relative (Bureau of Justice Statistics, 1997).

Another assumption fueling sex offender laws is that rehabilitation is futile and that sex offenders cannot be cured. Of course, the goal of treatment for those diagnosed with disorders like pedophilia is not to "cure" them but to assist them to learn to change their thinking and control their behavior. While it is not realistic to expect any medical or mental health treatment to be 100 percent effective for all patients, research has shown that many sex offenders benefit from psychological interventions. A meta-analysis involving 9,454 sex offenders determined that treated offenders had a lower recidivism rate (10 percent) than untreated offenders (17 percent) (Hanson, Gordon, Harris, Marques, Murphy, Quinsey, & Seto, 2002). A separate study also found a 40 percent reduction in recidivism following treatment (Losel & Schmucker, 2005). Treatment failure has been correlated with increased recidivism (Hanson & Bussiere, 1998). Other studies have not shown significantly lower rates for offenders who participated in treatment programs (Hanson, Broom, & Stephenson, 2004; Marques, Wiederanders, Day, Nelson, & van Ommeren, 2005; Zgoba & Simon, 2005), but Marques et al. did conclude that those who successfully completed therapy goals reoffended less often than those who did not "get it" (p. 97).

Residential restriction laws are typically predicated on the perception that a vast proportion of sex offenders will repeat their crimes. However, recidivism rates are much lower than commonly believed (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005; Sample & Bray, 2003). The Bureau of Justice Statistics found that of 9,691 sex offenders released from prison in 1994, 5.3 percent were rearrested for a new sex crime within a 3-year follow-up period. Other researchers found, in a series of international studies involving nearly 30,000 sex offenders, that 14 percent of all sex offenders, 13 percent of child molesters, and 20 percent of rapists were rearrested for a new sex crime within 4 to 6 years (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). Though official recidivism rates are likely to underestimate true

crime rates, it is clear that the majority of sex offenders do not go on to be re-arrested for new sex crimes and their rates are quite lower than non-sexual recidivism rates. Harris and Hanson (2004) concluded: "After 15 years, 73 percent of sexual offenders had not been charged with, or convicted of, another sexual offense. The sample was sufficiently large that very strong contradictory evidence is necessary to substantially change these recidivism estimates" (p. 17).

Another belief on which residential restriction laws are based is that sex offenders are more likely to reoffend than other types of criminals. In fact, sex offenders are rearrested for ongoing criminal behavior much less often than non-sex offenders (Hanson, Scott, & Steffy, 1995; Sample & Bray, 2003; 2006). The U.S. Department of Justice found much higher rates of recidivism for crimes such as burglary (74 percent), larceny (75 percent), auto theft (70 percent), and drunk driving (51 percent) (Bureau of Justice Statistics, 2002b). Other studies have demonstrated that sex offenders are rearrested at lower rates for their crime of choice than other types of criminals (Sample & Bray, 2003). In other words, robbers are more likely to be rearrested for robbery, burglars are more likely to repeat crimes of burglary, and those who have committed nonsexual assault are more likely to do so again (Sample & Bray, 2003). Although sex offenders may be more likely than other criminals to "specialize," offenders with no prior convictions for sexual assault were responsible for 87 percent of new sex crimes committed by released felons (Bureau of Justice Statistics, 2003). Since the majority of sex offenders do not go on to be rearrested for new sex crimes (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005; Harris & Hanson, 2004), assessing risk and applying restrictive policies to those offenders most likely to pose a threat would be more efficient and becomes of paramount importance.

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Risk Assessment

Indisputably, some sex offenders are quite dangerous and pose a threat to reoffend. In reality, sex offenders demonstrate a wide range of offense patterns and re-offense risk. Follow-up studies have found that pedophiles who molest boys and rapists of adult women are the most likely sex offenders to recidivate (Harris & Hanson, 2004; Prentky, Lee, Knight, & Cerce, 1997). It should be noted that the majority of persons convicted of a sex crime are not diagnosed with pedophilia (Kingston, Firestone, Moulden, & Bradford, 2007; Maletzky & Steinhauser, 2002; Seto & Lalumière, 2001). Risk varies depending on the extent of sexual deviance, offender age, criminal history, and victim preferences (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005; Harris & Hanson, 2004; Quinsey, Harris, Rice, & Cormier, 1998). Sex offenders with multiple arrests are more likely to reoffend than those who have committed only one sex crime (Hanson, 1997; Hanson & Bussiere, 1998; Hanson & Thornton, 1999). Those who comply with probation and treatment have lower reoffense rates than those who violate the conditions of their release (Hanson & Harris, 1998; Hanson & Morton-Bourgon, 2004). Sex offenders who target strangers are more dangerous than those with victims inside their own family (Hanson & Bussiere, 1998; Hanson & Thornton, 1999; Harris & Hanson, 2004). Sex offense recidivism appears to decline with age (Hanson, 2002), and the longer that offenders remain offense-free in the community, the less likely they are to re-offend sexually (Harris & Hanson, 2004).

Factors correlated with recidivism have been used to develop actuarial risk assessment instruments that estimate the probability of sexual reoffense based on the actual recidivism rates of other convicted sex offenders with similar characteristics (Epperson, Kaul, Huot, Hesselton, Alexander, & Goldman, 1999; Hanson, 1997; Hanson & Thornton, 1999; Quinsey et al., 1998). Though they cannot predict with certainty that an individual offender will act in a specific way, risk assessment instruments estimate, with moderate accuracy, the likelihood of reoffending, and are therefore useful for screening offenders into relative risk categories (Barbaree, Seto, Langton, & Peacock, 2001; Hanson, 1997; Hanson & Thornton, 1999; Harris, Rice, Quinsey, Lalumiere, Boer, & Lang, 2003; Quinsey et al., 1998). These procedures are similar to the ways in which insurance companies assess risk and assign premiums, and how doctors evaluate a patient's risk for developing a medical illness. Similar methods are also used in making classification decisions in prisons and parole or release decisions. Risk assessment allows us to identify the sex offenders most likely to reoffend, and to apply the most intensive interventions to those who need the greatest level of supervision, treatment,

and restriction. Unfortunately, most policy initiatives have not incorporated risk assessment strategies into their implementation, instead being applied broadly to all sex offenders.

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Summary

In sum, the empirical research on sex offender residence restrictions is extremely limited. Only one study (Minnesota Department of Corrections, 2007) has specifically examined the empirical relationship between residence restrictions and recidivism, and that study was prospective because no such law was in place. No true empirical evaluations of existing residence laws have been completed to date. There is a growing body of evidence, however, that residence restrictions create unintended consequences for sex offenders and communities. These adverse effects include: homelessness; transience; inaccessibility to social support, employment, and rehabilitative services; registry invalidity; and clustering of sex offenders in poor, rural, or socially disorganized neighborhoods. Residence laws are often predicated on erroneous assumptions of high recidivism rates and "stranger danger," and they have infrequently incorporated empirically derived risk assessment. As a result, the community reintegration of lower-risk, non-violent, and statutory offenders may be unnecessarily impeded. So, in the absence of evidence that residence restrictions are effective in achieving goals of improved community safety, their unintended effects may outweigh their benefits. Therefore, it is crucial to determine whether these laws are indeed efficacious methods for controlling sex offense recidivism and preventing sexual violence.

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Implications for Practice and Policy

The benefits of residence restrictions to community safety have yet to be empirically established. Residence restrictions and their consequences are apt to challenge the coping skills of many sex offenders when they face transience and instability as a result of these laws. Precarious living arrangements have the potential to exacerbate dynamic risk factors associated with reoffense, such as lifestyle instability, substance abuse, negative moods, and lack of social support (Hanson & Harris, 1998; 2001). Probation officers and community corrections officials should be cognizant of the stressors created by housing problems and be prepared to assist offenders with case management services. Officers should also collaborate closely with clinical treatment providers when possible in order to coordinate treatment and supervision plans that identify offense patterns, mitigate risk factors, and accommodate psychosocial needs. Attention to dynamic risk factors, which may be aggravated by negative environmental conditions, should be an integral part of ongoing assessment, management, and service planning.

Crime policies that interfere with successful re-entry are unlikely to be in the public's best interest. The stigma of felony conviction creates challenges for all criminal offenders, but in particular, registered sex offenders face tremendous discrimination even when they are behaving in a law-abiding and productive fashion (Levenson & Cotter, 2005b; Levenson et al., 2007b; Tewksbury, 2004; Tewksbury, 2005; Tewksbury & Lees, 2006; 2007; Zevitz & Farkas, 2000b). Sanctions that disrupt stability are contrary to what we might define as "best practice" according to decades of empirical research identifying factors associated with crime desistance (Laub & Sampson, 2001; Maruna, 2001). Most prisoners seek shelter with family members after their release (Travis, 2005), but residence restrictions can eliminate many housing options for sex offenders. Prohibitions on where they can live can increase transience, disrupt stability and social support, and exacerbate the conditions correlated with reoffending (Andrews & Bonta, 2003; Hanson & Harris, 1998). By ostracizing, segregating, and stigmatizing criminal offenders, we leave them with few opportunities to conform to mainstream values and affiliate with law-abiding citizens (Braithwaite, 1989; Sherman, 1993; Uggen, Manza, & Behrens, 2004). As Maruna et al. pointed out, "if society is unwilling to take a chance on an individual who is trying to make an effort toward desistance, then these obstacles might lead to further recidivism" (Maruna, LeBel, Mitchell, & Naples, 2004, p. 2).

Politicians and neighborhood residents are unlikely to be sympathetic to the challenges these

restrictions create for sex offenders. Some sex offenders do indeed pose a serious threat, and communities have a legitimate interest in protecting children from sexual abuse. From a public safety standpoint, however, it is more efficient to establish policies that do not inadvertently contribute, even indirectly, to the risk for reoffense or barriers to reintegration. Policymakers are encouraged to consider a range of available options for building safer communities and to endorse those that are most likely to achieve their stated goals without creating undue obstacles to offender re-entry. For instance, sex offender policies should incorporate empirically derived risk assessment and apply the most intensive and restrictive management strategies to high-risk offenders. Treatment should be part of any comprehensive strategy for preventing repeat sexual violence. Polygraph examination should be enlisted as a method for assessing the past patterns of sex offenders and verifying their compliance with supervision and treatment plans. Collaborative approaches such as containment models (English, Jones, Patrick, & Pasini-Hill, 2003), in which treatment providers, supervising officers, and polygraph examiners work together to manage the risk of registered sex offenders, should be emphasized as a paradigm for community protection.

Criminal justice policy should be grounded in empirical evidence, but sex offender policies in particular have not incorporated available research into their formation and implementation (Levenson & D'Amora, 2007; Zgoba, 2004). Social scientists and criminal justice professionals have a responsibility to assist lawmakers to respond effectively to the problem of sexual violence. It is crucial that sex offender legislation be informed by scientific data and designed to maximize the potential for community safety, while minimizing collateral consequences for offenders and communities.

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The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?

Jill S. Levenson

Leo P. Cotter

Abstract: Several states have enacted public policies that prohibit sex offenders who have abused children from living within close proximity to a school, park, day care center, or school bus stop. The purpose of this exploratory study was to describe the impact of residence restrictions on sex offender reintegration and to better understand sex offenders' perceptions of these laws. A survey of 135 sex offenders in Florida was conducted. Most of the molesters who responded to the survey indicated that housing restrictions increased isolation, created financial and emotional stress, and led to decreased stability. Respondents also indicated that they did not perceive residence restrictions as helpful in risk management and, in fact, reported that such restrictions may inadvertently increase triggers for reoffense. Implications for policy and practice are discussed.

Keywords: sex offender; 1,000-ft rule; proximity; residence restrictions; reintegration; rehabilitation

Public concern about the threat posed by sex offenders has inspired varied legislation designed to combat recidivistic sexual violence. For example, policies mandating sex offender registration, community notification, civil commitment, castration, "three-strikes and you're out," and nondiscretionary sentencing have been introduced. The newest wave of such statutes has come in the form of laws controlling where sex offenders can live. These restrictions prohibit sex offenders from residing within specific distances from schools or places where children congregate.

Thus far, 14 states (Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Ohio, Oklahoma, Oregon, and Tennessee) have enacted buffer zones that prohibit sex offenders from residing within close proximity to a school, park, day care center, or school bus stop. The least restrictive distance requirement is in Illinois (500 ft), but most common are 1,000- to 2,000-ft boundaries. California law does not allow certain sex offenders on parole to live within a quarter mile of an elementary school and prohibits parolees from living within 35 miles of a victim or witness.

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There have been only a few studies investigating the relationship between housing and sex offending, and the results are mixed. In Arkansas, it was found that 48% of child molesters lived in close proximity to schools, day care centers, or parks compared with 26% of perpetrators convicted of sex crimes against adult victims (Walker, Golden, & VanHouten, 2001). The authors speculated that molesters who were motivated to reoffend might be more likely to purposely place themselves in close access to potential child victims. However, in Colorado it was found that molesters who reoffended while under supervision were randomly scattered throughout the study area and did not seem to live closer than nonrecidivists to schools or child care centers (Colorado Department of Public Safety, 2004). In Minnesota, sex offenders' proximity to schools or parks was not a factor in recidivism, nor did it affect community safety (Minnesota Department of Corrections, 2003). In fact, the opposite was found to be true: A sex offender was more likely to travel to another neighborhood in which he could seek victims without being recognized.

Public safety and child protection are understandably the primary considerations when sex offender restrictions are imposed. However, concerns have been raised that such mandates might exacerbate the shortage of housing options for sex offenders and force them to move to rural areas where they would be increasingly isolated with few employment and treatment options (Minnesota Department of Corrections, 2003). The dispersal of parks and schools may lead to overlapping restriction zones thus making it essentially impossible for sex offenders in some cities to find suitable housing. In some urban areas, offenders might be forced to cluster in high-crime neighborhoods. Such restrictions can lead to homelessness and transience, which interfere with effective tracking, monitoring, and close probationary supervision. Other scholars have concurred that sex offender statutes inadvertently may increase risk by aggravating the stressors (e.g., isolation, disempowerment, shame, depression, anxiety, lack of social supports) that can trigger some sex offenders to relapse (Edwards & Hensley, 2001; Freeman-Longo, 1996). The Colorado study recommended that residence restrictions do not appear to be a viable method for controlling sexual offender recidivism (Colorado Department of Public Safety, 2004).

Although sexual predator statutes are based on the presumption that sex offenders are repeatedly arrested in alarmingly high numbers, research suggests that sex offense recidivism rates are lower than commonly believed (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998). As well, ambiguity about the effectiveness of sex offender treatment (Furby, Weinrott, & Blackshaw, 1989) has led to pessimistic attitudes about the possibility of rehabilitation despite recent research suggesting more promising results (Hanson et al., 2002). Over the past decade, great gains have been made in the ability to assess and identify high-risk sex offenders (Epperson et al., 1999; Hanson, 1997; Hanson & Bussiere, 1998; Hanson & Harris, 1998, 2001; Hanson & Morton-Bourgon, 2004; Hanson & Thornton, 1999). Unfortunately, such research has not been consistently incorporated into policy development or implementation.

Most states continue to tighten their restrictions of sex offenders, whereas only a few states have questioned the benefits and consequences of proximity statutes. Recently, a U.S. District Court of Appeals judge in Iowa declared such restrictions unconstitutional and ordered that Iowa's statute, which prohibited sex offenders from living within a restricted zone of 2,000 ft, not be enforced (*Doe v. Miller & White*, 2004). The court opined that the law was punitive, it imposed restraints leading to housing disadvantages for sex offenders, and it hindered the right to conduct family affairs without interference from the state. Although the court noted that the public has a reasonable interest in restricting sex offenders' access to children, it found that the law went beyond what is necessary to protect the community and cited the lack of research indicating a relationship between proximity and recidivism. Constitutional issues notwithstanding, the impact of such statutes on offenders and communities remains largely unknown.

PURPOSE OF THE STUDY

The purpose of this exploratory study was twofold: to describe the impact of residence requirements on sex offender reintegration and to better understand sex offenders' perceptions of such restrictions. Specific hypotheses were not tested, but, using quantitative and qualitative techniques, the study attempted to ascertain (a) the proportion of sex offenders who report having suffered adverse effects as a result of housing restrictions and (b) the opinions of sex offenders about the utility of such restrictions. Florida was considered an ideal venue in which to conduct such research, because its residency limitations (often referred to as *1,000-ft rules*) are quite restrictive and have been in effect since 1997. The study was considered important because it can help policy makers to better understand the positive and negative, intended and unintended, consequences of proximity legislation. Such data ultimately can inform the development of evidence-based social policy and contribute to the effective management of sex offenders in the community.

METHOD

PARTICIPANTS

A nonrandom sample ($N = 135$) was drawn from a pool of sex offenders from two outpatient sex offender counseling centers in Fort Lauderdale, Florida ($n = 40$) and Tampa, Florida ($n = 95$). All clients attending treatment at the facilities were invited to complete a survey about the impact of sexual offender policies on their community reintegration. Out of those who voluntarily completed the survey ($n = 183$), this sample was made up of 135 who indicated that they were subject to residency restrictions. Clients had been on probation for an average of 40

months (median = 32 months, $SD = 37$ months). Slightly more than half had been in their current treatment group for 2 years or less, and 47% had been in treatment for more than 2 years.

Most of the respondents were between the ages of 25 and 64; 10% were younger than 25, and 6% were age 65 or older. About 68% were White, 14% were Black, 14% were Hispanic, and 4% described their race as "other." Marital status included 24% who were currently married with 35% reporting that they had never been married, 37% stating that they were divorced or separated, and 4% describing themselves as widowed. More than one third of the participants had graduated from high school (19%) or obtained a General Equivalency Diploma (16%), 33% had attended some college, and 14% were college graduates. About 77% reported an annual household income of less than \$30,000 per year. About 97% were identified as child molesters. The remaining 3% identified themselves as having an index victim older than the age of 18, although they had minor victims as well. Other reported offenses included voyeurism (9%), exposure (13%), and computer-related sex crimes (9%). The percentages do not add up to 100% because about 20% of participants endorsed more than one type of offense. Offender and victim characteristics are displayed in Table 1.

In Florida, residence restrictions apply only to sex offenders who were sentenced after October 1, 1997, for crimes involving victims younger than the age of 18 (*Special Conditions of Sex Offender Probation*, 1997). At the time of the data collection, the conditions of probationary supervision in Florida precluded sex offenders with minor victims from living within 1,000 ft of a school, day care center, park, playground, or other place where children regularly congregate. Shortly after the data were collected, Florida's law was amended by adding school bus stops to the list of prohibitions for child molesters released from prison (*Conditional Release Program*, 2004).

INSTRUMENTATION

A survey was designed by the authors for the purpose of collecting data regarding the impact of residence restrictions on sex offenders. Client demographic data and information regarding offense history were elicited using forced-choice categorical responses to ensure anonymity. Participants were asked to rate 3-point and 5-point Likert scales indicating their degree of agreement with the issue in question and were also given the opportunity to provide narrative responses.

DATA COLLECTION PROCEDURES

Clients were invited to complete the survey during a group therapy session. Respondents were instructed not to write their names on the survey and to place the completed questionnaire in a sealed box with a slot opening. The research was conducted in accordance with federal guidelines for the ethical treatment of human participants.

TABLE 1
OFFENDER AND VICTIM CHARACTERISTICS

<i>Offender</i>	<i>Percentage</i>
Age	
Younger than 25	10%
25-64	84%
65 or older	6%
Race	
White	68%
Minority	32%
Currently married	24%
Education	
High school or equivalent	35%
Attended college or college graduate	47%
<i>Victim</i>	<i>Percentage</i>
Victim age	
Younger than 5	6%
Age 6-12	37%
Minor teen	54%
Relationship	
Extrafamilial only	67%
Intrafamilial only	20%
Both extra- and intrafamilial	12%
Gender	
Male only	14%
Female only	77%
Both genders	11%

DATA ANALYSIS

Descriptive and correlational statistics were used to interpret the quantitative results of the survey. Data analyses were conducted using SPSS version 12.

RESULTS

Overall, 50% of the respondents reported that proximity restrictions had forced them to move from a residence in which they were living, and 25% indicated that they were unable to return to their residence after their conviction (see Table 2). Nearly half reported that residence restrictions prevented them from living with supportive family members. A considerable proportion reported that the

TABLE 2
IMPACT OF RESIDENCE RESTRICTIONS (N = 135)

Item	Yes
I have had to move out of a home that I owned because of the 1,000-ft rule.	22%
I have had to move out of an apartment that I rented because of the 1,000-ft rule.	28%
When released from prison, I was unable to return to my home.	25%
I have been unable to live with supportive family members because of the 1,000-ft rule.	44%
I find it difficult to find affordable housing because of the 1,000-ft rule.	57%
I have suffered financially because of the 1,000-ft rule.	48%
I have suffered emotionally because of the 1,000-ft rule.	60%

geographical limitations created a financial hardship for them, and nearly 60% agreed or strongly agreed that they have suffered emotionally because of the restrictions.

Age was significantly related ($p < .05$) to being unable to live with family ($r = -.17$) and difficulty finding affordable housing ($r = -.19$) with younger offenders being more likely to report these events. There was also a significant inverse relationship between being married and the inability to find affordable housing ($r = -.19$), and minority race was related to having to move from a residence ($r = .20$). There was no significant relationship between adverse events and income, education, or length of time on probation.

In addition to the structured survey responses, narrative comments were also examined. There were 2 respondents who agreed that residency restrictions were a deterrent to offending, commenting, "It doesn't tempt you" and "It's good because you can't just walk from your home to a school." Overwhelmingly, however, the participants reported that they did not find the 1,000-ft rule to be practical or helpful, although some suggested that such restrictions should be imposed on a case-by-case basis. Several common themes emerged.

Importantly, many offenders emphasized their need for social support and believed their risk increased with isolation from supportive family and friends. For example, they commented, "I believe you have a better chance of recovery by living with supportive family members" and "What helps me is having support people around. . . . Isolating me is not helpful." Another respondent expressed distress that geographical restrictions kept him from living with and caring for his infirm mother. One reported concern at having to live alone because of the location of his family's home, and several young adults said they were unable to live with parents and younger siblings after committing what they referred to as a "statutory" offense. Some respondents indicated that they had to relocate several times, and one said he was forced to move to a "ghetto."

On the other hand, several participants reported that they had successfully petitioned the court for an exception to the rule and were then allowed to reside within 1,000 ft of a school. Such requests to the court were reportedly initiated for various reasons, the most common being home ownership or a desire to reside with family. What was most remarkable about these exceptions is that they were seemingly granted in the absence of an assessment of risk or relevant offender characteristics. They seemed to be based solely on the offender's request that the court eliminate a hardship created by the statute.

The majority of respondents emphatically proclaimed that the 1,000-ft rule would have no effect on their risk of reoffense. Many pointed out the need for internal motivation to prevent reoffense and said that if a sex abuser wanted to reoffend, the rule would not stop him. Their comments included "has no effect at all on offending," "does not make an impact on my life," "I follow the rule, but it has had little impact," "It's a childish rule," "You can walk as far as you want if that [child abuse] is what you're after," "Living 1,000 ft away compared to 900 ft doesn't prevent anything," and "It doesn't matter where a sex offender lives if he sets his mind on reoffending. . . . He can just get closer by walking or driving. The 1,000-rule is just a longer leash, I don't see the point."

Many opined that if an offender is not committed to treatment and recovery, "the 1,000-ft rule is inconsequential: If a person wants to offend, it doesn't matter how close he is to a convenient place to find kids." Another pointed out that "if a person wants to reoffend, he will, regardless of what laws are made up or what treatment they go through. . . . It's entirely up to him." Referring to his victim empathy training received in therapy, one offender suggested that some exposure to children might be a good thing: "When I see kids in the park, I can see them as real people with real lives and real feelings, not just an object."

Other respondents were somewhat more analytical and thoughtful about the issue. One questioned if there is a "link between sex offending and distance from schools," and another suggested that "resources would be better used by identifying dangerous individuals who [*sic*] the rule should apply to."

Noteworthy is that many respondents pointed out that they have always been careful not to reoffend in close proximity to their homes, so geographical restrictions provided little deterrence. The rule "serves no purpose but to give some people the illusion of safety," said one respondent. Others expressed similar sentiments: "I think that if someone wanted to reoffend, then they would do it at a place away from home instead of putting themselves at more risk of getting caught [near home]." Another reported, "It is better for me not to have sexual contact with neighborhood kids—less chance of being recognized," and others agreed, "Most people would worry more about being caught in their own neighborhood." One offender wryly noted, "I never noticed how many schools and parks there were until I had to stay away from them."

Some participants pointed out the myth of *stranger danger*: "It doesn't matter where you live; most offenses happen with someone you know or live with." Another commented, "Most abuse happens in homes or with family or close friends, not at bus stops or schools." Although acknowledging that they would be unlikely to abduct a child from a school or park, they did point out a chilling and ironic reality: "You can live next door to a minor but not a school," said one offender, and another agreed, "You don't want me to live near a school where the kids are when I'm at work. The way it is now, when I get home from work, they're home, too—right next door." One offender asked, "What is the point if the houses on your same block are full of kids?" Another offender noted a similar and equally illogical experience:

I couldn't live in an adult mobile home park because a church was 880 ft away and had a children's class that met once a week. I was forced to move to a motel where right next door to my room was a family with three children—but it qualified under the rule.

DISCUSSION

Most of the molesters who responded to this survey indicated that housing restrictions increased isolation, created financial and emotional hardship, and led to decreased stability. The data further suggested that offenders do not perceive residence restrictions as helpful in risk management. Although this study did not measure risk or recidivism, the findings appear to confirm prior speculation that proximity rules might increase the types of stressors that can trigger reoffense (Minnesota Department of Corrections, 2003). Research regarding dynamic risk has indicated that a lack of positive social support and depressed mood, anger, and hostility are all associated with recidivism (Hanson & Harris, 1998, 2001). Restricting lower risk offenders unnecessarily, in ways that potentially interfere with their recovery, may be counter-productive. In Colorado, it was found that sex offenders who had more social support had a lower number of probation violations (Colorado Department of Public Safety, 2004).

On the other hand, sexual interest in children and access to victims are factors also associated with recidivism (Hanson & Harris, 1998, 2001; Hanson & Morton-Bourgon, 2004), so it makes sense that risk might be managed by reducing some molesters' exposure to children and prohibiting them from living near places where children congregate. However, blanket restrictions may fail to address individualized risk factors that are related to potential offending patterns. For example, proximity laws are usually designated only for sex offenders convicted of child molestation, even though research suggests that up to 50% of rapists have committed undetected sex crimes against child victims (Ahlmeier, Heil,

McKee, & English, 2000). It is well established that most sex offenders have many more victims (and a variety of victims) than those for which they have been arrested (Abel et al., 1987; Abel, Becker, Cunningham-Rathner, Mittleman, & Rouleau, 1988; Ahlmeyer et al., 2000; Heil, Ahlmeyer, & Simons, 2003), and therefore, some may pose risks not readily apparent by relying solely on their documented offense history.

What we can learn from these sex offenders' responses is that they will circumvent restrictions if they are determined to reoffend. Therefore, restrictions must be sensible and feasible and should be based on a thorough assessment of past offense patterns and current risk factors. Practitioners and probation officers should collaborate in determining treatment plans and supervision restrictions that are most applicable to individual offenders' needs and risks. Noteworthy is that several respondents in our study had successfully petitioned the court for a modification of residence restrictions, seemingly without an assessment of risk by the treatment provider or probation officer. Restrictions are likely to be most effective when combined with appropriate assessment, support, monitoring, and rehabilitation. A more individualized approach to sex offender management can enhance public safety while promoting successful reintegration for offenders.

This study was preliminary and exploratory, and it was limited by the inherent problems of self-reported data. The data were collected from two large, metropolitan areas in Florida and therefore probably reflect urban implementation statewide but may fail to capture other problems or benefits more specific to rural communities. It is unknown whether these results can be generalized to other states, and continued research will assist us to more fully understand the national impact of residence restrictions on sex offender reintegration. Ultimately, empirical investigation must clarify the effect of proximity restrictions on recidivism to determine whether such policies are successful in achieving their stated goals.

Prevention of sexual violence requires a well-planned, comprehensive, interdisciplinary response that begins with developing clear goals and objectives, implementing strategies based on empirical research, and collecting and analyzing data on an ongoing basis (Center for Sex Offender Management, 2002). Some states (Minnesota and Colorado) have elected to study the relationship between housing and recidivism before implementing proximity restrictions. These states ultimately determined that the potential benefits of such legislation do not seem to outweigh the possible negative consequences. Social policy should be solidly grounded in empirical evidence and informed by theoretical literature. It is clear that public concern about sexual crimes sometimes leads to legislation that is not driven by data or science but rather by outrage and fear. Scientists and practitioners have a responsibility to assist lawmakers to respond to the problem of sexual violence by advocating for the development of evidence-based policies that protect women and children and rehabilitate perpetrators as well.

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Jill S. Levenson, Ph.D.
 Center for Offender Rehabilitation and Education
 5950 W. Oakland Park Blvd., Suite 107
 Ft. Lauderdale, Florida 33313
 USA
 E-mail: jsjwm@bellsouth.net

Leo P. Cotter, Ph.D.
 S.H.A.R.E.
 7819 N. Dale Mabry, Suite 212
 Tampa, Florida 33614-3267
 USA

**LEVEL THREE SEX OFFENDERS
RESIDENTIAL PLACEMENT ISSUES**

2003 Report to the Legislature

Minnesota Department of Corrections
1450 Energy Park Drive, Suite 200
St. Paul, Minnesota 55108-5219
(651) 642-0200
TTY (651) 643-3589
www.doc.state.mn.us
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**Level Three Sex Offenders
Residential Placement Issues**
2003 Report to the Legislature

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Introduction

The Minnesota Legislature requested a report from the commissioner of corrections to address issues regarding residential locations of level three sex offenders (see Appendix A: Minnesota Session Laws 2002, Chapter 385, Sec. 10).

Offender Characteristics

As of December 31, 2002, there are 329 designated level three offenders in Minnesota. Of those, 97 are in residential settings in a Minnesota community. All are male. Fifty of those live in Hennepin County, 14 in Ramsey County, six in Olmsted County, and four in St. Louis County. Twenty-three live elsewhere, with no county having more than two.

Issues

Legislation mandating this report directed the commissioner of corrections to report on eight issues concerning level three sex offenders. This section of the report responds to that directive.

1. *How level three offenders re-enter the community, including how housing and jobs are found and the role that corrections agents play in helping an offender find housing and jobs.*

The specific resource for offenders is the institutional caseworker at each Minnesota correctional facility (MCF). While level three offenders may be released from any correctional facility, the majority of releases are done from the MCF-Lino Lakes. The MCF-Moose Lake, MCF-Rush City, and MCF-Stillwater are the release institutions for the greatest number of remaining releasees.

In anticipation of release, the caseworker will work with the offender on transition plans. This may include a three-day workshop on effective transition from incarceration. Topics covered include residential and job issues. In addition, the transitions program will cover related areas of identification, money management, education, health and life skills, family/friend reunification and relationships, and living under supervision. For those leaving to a supervised release status, the caseworker will coordinate with the prospective supervising agent on a re-entry plan. That re-entry plan must include an acceptable residence. At that time, special conditions may be applied to the supervision plan. Special conditions may include restrictions on proximity to victims, minors, or vulnerable adults. Special conditions are applied on an individual basis to each offender. Common conditions subject to agent approval may be:

- a) No residence in a building where children are present;
- b) No direct or indirect contact with minors;
- c) No direct or indirect contact with vulnerable adults;
- d) No direct or indirect contact with victims;
- e) No membership in groups or organizations;

- f) Must not be in any location where children or minors tend to congregate; or
- g) Other variations as determined by the supervising agent.

Residential placement is dependent on the offender's personal and financial resources in the community. The caseworker and agent may be able to help the offender find placement, but limited opportunities exist if an acceptable supervision location is not provided by the offender.

Halfway house placement is one of the most common first steps in the transition, but there are a limited number of beds available at those placements. St. Paul, Minneapolis, Golden Valley, and Duluth each provide a halfway house facility but fall far short in meeting the housing needs of all sex offenders in need of transitional housing. These halfway houses provide not only for level three offenders but also level two and one offenders as well as non-sex offenders in need of such transition (primarily person offenders convicted of such crimes as Assault, Aggravated Robbery, Murder, etc.). Approximately 60 percent of level three predatory offenders are first released to a halfway house placement.

Transition services for offenders leaving prison at expiration of sentence are even more limited. These offenders leave an MCF without supervision. They are required to register an address with the Bureau of Criminal Apprehension (BCA) but receive no assistance other than that provided by a caseworker prior to release. Keeping track of these offenders is difficult due to their often transient housing options. Anecdotally, it appears that a small number (at least 12) of level three offenders have left Minnesota once their sentences expired, and several other level three offenders have come out of compliance with registration after the expiration of their sentences (although it appears they have stayed in Minnesota).

Generally, the housing options available to offenders are limited and well known to supervising agents. Specific properties and landlords are amenable to providing housing for level three offenders. In Minneapolis, certain landlords appear to have developed a specialty in renting to level three offenders. This has resulted in a concentration of level three offenders in some areas of the city. According to corrections agents, when a landlord rents one unit of a duplex to a level three offender, occupants of the other unit feel uncomfortable and seek other housing. The resulting vacancy is likely to be filled by another level three (or lower level) sex offender. Subsequent vacancies are also filled by sex offenders. The landlords then post information about vacancies at halfway houses, and level three offenders learn about potential openings through word of mouth. Such housing is a limited and finite resource in Minneapolis but can be even scarcer in other counties where the placement of level two offenders causes as much of a problem.

Job search is another topic covered in the transition program but, again, the offender bears most of the responsibility for finding employment. Halfway house placement provides the best transition period for job search. Without connections to a previous employer or family assistance, most employment tends to be in low-pay, non-public service jobs. Knowledge of the offender's level three status is an impediment to seeking employment. Fear of liability if re-offense occurs is a common roadblock to employer willingness to hire offenders. A common release condition is that offenders must maintain 40 hours per week of work or other productive activity. Corrections agents become aware of employers who are willing to hire ex-inmates, including sex offenders. If an offender has difficulty obtaining employment on his or her own, the agent will refer the offender to one of these employers.

In meetings and discussions with community corrections agents working throughout Minnesota, the common issue expressed was the ever-increasing difficulty in procuring residences and employment by level three offenders. The close connection between residence and job means that limiting residential options concurrently limits job options. For example, if offenders are required because of residential restrictions to live in largely unpopulated areas, it is likely that they will have difficulty securing employment as many do not own automobiles (and even have release conditions prohibiting ownership).

Expansion of halfway house beds and expansion of emergency housing funds were most commonly cited as needs when planning for level three releases and moves. Landlords willing to rent to a level three offender are non-existent in many communities, according to corrections agents.

Recent release plans for selected level three offenders:

a) Offender A

Released in early 2002 (expiration of sentence). Release address was his parent's home in St. Paul. Maintained that address until mid 2002. This initial placement with a family member is often the ideal placement for transition. Upon leaving that residence, he has been in a transient stage to this date. Registered address was in an outer-ring suburb for one day, the Minneapolis Salvation Army for 18 days, a Bloomington apartment for 19 days, another metro address for 11 days, South Minneapolis for 16 days, an inner ring suburban motel for seven days, and at a downtown St. Paul boarding house for the last 30 days. He has spoken with local law enforcement about living under a bridge. He has made numerous complaints about inability to find acceptable housing of any kind. He has done a fairly good job of maintaining his registration, but constant moving makes tracking difficult.

b) Offender B

Released in mid 2002 (intensive supervised release). His release was to a halfway house from which he absconded in late 2002. He was apprehended and returned to the MCF-Lino Lakes in the same month. He was then released in one month later (expiration of sentence). He was unable to provide a release address prior to release and has no support network. His responsibility for registration was explained to him. He did provide notice of a shelter address in Minneapolis for the first night. He moved to a second shelter the second night and is now officially registered with the BCA as "homeless."

c) Offender C

Released in late 2002 (intensive supervised release). Initial release plan was to a friend's house in rural Minnesota. Due to neighborhood pressure, the invitation was rescinded. His release address then became a transitional motel in a southeastern Minnesota city. His plan is to move into a house he owns in southeastern Minnesota as soon as the current tenant vacates the property. His ownership of property has solved this housing issue.

d) Offender D

Released in mid 2000 (intensive supervised release). His release was to a halfway house. He then moved to South Minneapolis in early 2001. He moved to a trailer park in an outer-ring suburb two months later. He then purchased rural property in an outstate

(revised 2/04)

Form 10-1, Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-170
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Probation

ARREST WARRANT

Indictment Number 01-GS-24-01098

Warrant Number W 01 10 0073

State Identification No. (SID): 01390540

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF ABBEVILLE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that ANTHONY WADE NATION, did on the 3 day of September, 2010 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

BY VIOLATING CONDITIONS #1, #6, #7, #9 & #10 OF THE ORIGINAL PROBATION AGREEMENT ORDERED IN CAUSE #01-GS-24-1096 IN GREENWOOD COUNTY GENERAL SESSIONS COURT ON 07-16-03.

Now, therefore, you are empowered and directed to arrest the said defendant and bring ANTHONY WADE NATION before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at ABBEVILLE, S.C. this 3 day of September, 2010.

County of ABBEVILLE

STATE OF SOUTH CAROLINA

Signature of Probation and Parole Agent

AFFIDAVIT

Personally appeared before me, one Jeffrey L. Sorrow, who, first being duly sworn, deposes and says that ANTHONY WADE NATION did within this County and State on the 3 day of September, 2010, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

BY VIOLATING CONDITIONS #1, #6, #7, #9 & #10 OF THE ORIGINAL PROBATION AGREEMENT ORDERED IN CAUSE #01-GS-24-1096 IN GREENWOOD COUNTY GENERAL SESSIONS COURT ON 07-16-03.

This affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

BY HAVING FAILED TO REPORT TO THE AGENT SINCE 6/11/2010; BY HAVING FAILED TO PAY SUPERVISION FEES AS INSTRUCTED, BEING IN ARREARS, OWING A BALANCE OF \$2500; BY HAVING FAILED TO MAKE ANY PAYMENTS ON COURT ORDERED SURCHARGE, BEING IN ARREARS, OWING A BALANCE OF \$128.75; BY HAVING FAILED TO MAKE ANY PAYMENTS ON COURT ORDERED PUBLIC DEFENDER FUND, BEING IN ARREARS, OWING A BALANCE OF \$500; BY HAVING FAILED TO FOLLOW THE ADVICE AND INSTRUCTIONS OF THE SUPERVISING AGENT; SUCH ACTIONS CONSTITUTE VIOLATIONS OF CONDITIONS #1, #6, #7, #9 & #10 OF THE ORIGINAL PROBATION AGREEMENT ORDERED IN CAUSE #01-GS-24-1096 IN GREENWOOD COUNTY GENERAL SESSIONS COURT ON 07-16-03.

Sworn to and Subscribed before me
this 3 day of September, 2010.

Shandae B. Boagp
Signature of Notary Public

(L.S.)

2/10/2020
My Commission Expires

Address: P.O. BOX 188
ABBEVILLE, SC 29620
ABBEVILLE
USA
(864) 366-5373

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

ABBEVILLE

Caretaker or Law Enforcement Officer

THE STATE

Against

ANTHONY WADE NATION

A copy of this Arrest Warrant was delivered by me to the following defendant:

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 9/3/2010

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Jeffrey L. Sarrow

on the 3rd day of Sept 2010

Caretaker or Law Enforcement Officer

This Warrant is granted for service in (County of western
Certification) County. The accused is to be arrested and brought
before me to deal with according to law.

Disposition

Signature of Judge

(L.S.)

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name ANTHONY WADE NATION

Address ABBEVILLE, SC 29520

Phone (864) 366-1111

Sex Male Race White Height 505

Weight 165 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant

Decision

BAIL

Dap Set

Magistrate

Amount

Surety

Offender: NATION, ANTHONY WADE (SID: 01390540)

View Static 99 Assessment

Static 99 Assessment Report

Run Date: 09/14/2011

For: NATION, ANTHONY WADE

Sid: 01390540 Badge: 0828 County: ABBEVILLE Site: CO

Assessed Date: 8/3/2009

Static 99 Assessment Question

Static 99 Assessment Question	Result
Age at Time Of Assessment?	0
Ever Lived With Lover For At Least Two years?	0
Current Non-Sexual Violence Convictions?	0
Prior Non-Sexual Violence Convictions?	0
Prior Sentencing Dates (Excluding Current)?	0
Any Convictions For Non-Contact Sex Offenses	0
Any Unrelated Victims?	0
Any Stranger Victims?	0
Any Male Victims?	0

Version: 1.00

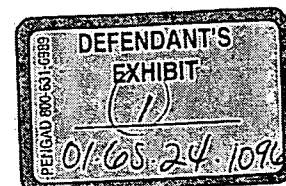
By: Autumn D. Ross

Admission: 7/31/2009

Supv Status: S-High

Static 99 Total: 0

Notes:



ATTEST A TRUE COPY
Ingram Moon
INGRAM MOON
CCOP AND GS
GREENWOOD COUNTY
S.C.

STATE 220 SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
 STATE VS.
Anthony Wade Nation
 AKA:
 Race: W Sex: M Age: 31
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip Ninety Six, SC 29666
 DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#:

01 -GS- 24 1096
 A/W#: ON INFO
 Date of Offense: Dec 1, 1999 to Jan 31, 2001
 S.C. Code §: 16-15-140
 CDR Code #: 2 1 4 1 6 1 8
☐ CASE RESTORED
 SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Lewd Act on a Minorin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2 1 4 1 6 1 8☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
SolicitorAnthony Wade Nation
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of 12 days/months/years and/or payment
 of \$; plus costs and assessments as applicable*, the balance is suspended with probation for 5
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions
 of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied
by the State Department of Corrections.

INTERNSIVE SUPERVISION FOR

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☒ Waived, ☐ Ordered

PTUP

ATTEST A TRUE COPY

Total: \$ plus 20% fee: \$ days/hours Public Service/Employment 1000

Payment Terms:

☐ set by SCDPPPS

ATTEST A TRUE COPY

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Surcharge)

\$14-1-211(A)(2) (Surcharge)

\$56-5-2995 (DUI Assessment)

3% to County (if paid in installments)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

TOTAL

\$ 100 S.C.\$ 3.75\$ 25\$ \$ \$ \$ \$ \$ 128.75

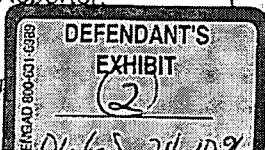
Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther: NO CONTACT W/ VICTIM OR CHILD OF THEVICTIM, UNLESS PERMITTED BY A FAMILY COURT ORDERCOUNSELOR FOR PATIENT SEXUAL BEHAVIOR; DSSREGISTRY IN ADDITION TO SEX OFFENDER REGISTRY; DEF. ISNOT TO EXERCISE ANY SUPERVISORY ROLE OVER ANY MINOR☒ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE W. P. CherryJudge Code: 01 01510Sentence Date: 7-16-03Court:
Reporter:

Clerk of Court Deputy Clerk

[Signature]

Corrections

Canary - Probation

OTHER THAN HIS OWN, AND HE CANNOT EXERCISE
 ANY SUPERVISORY ROLE OVER THE CHILD HE HAS
 IN CONTACT WITH. SCCA/217 (6/2003)
 EXCEPT AS MAY BE SPECIFICALLY PERMITTED
 BY THE FAMILY COURT, P.M. SURCHARGES, W/IN

WITNESSES

Phillip Anderson

WARRANT NUMBERS

ON INFO

Foreman of the Grand Jury

Date: 10-9-01 True Bill

VERDICT

ATTEST A TRUE COPY
Ingram Moon
INGRAM MOON
CLERK AND GS
GREENWOOD COUNTY
S.C. Foreman

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

October Term, 2001

Indictment # 01GS24-) 096

THE STATE

vs.

ANTHONY WADE NATION

Arts 10-12-01

INDICTMENT FOR

- 1) CRIMINAL SEXUAL CONDUCT WITH A MINOR
- 2) COMMITTING OR ATTEMPTING LEWD ACT UPON A CHILD UNDER SIXTEEN YEARS OF AGE

ATTEST A TRUE COPY
Ingram Moon
INGRAM MOON
CLERK AND GS
GREENWOOD COUNTY
S.C.

I, ANTHONY WADE NATION, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD GUILTY TO THE CHARGE(S) OF:

1st 1st Lewd Act on a Minor 2003
THIS 11th DAY OF July A.D.

ATTEST:

Anthony W. Nation

DEFENDANT'S SIGNATURE

CLERK OF COURT, GREENWOOD, S.C.



**THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD**

INDICTMENT FOR

1. CRIMINAL SEXUAL CONDUCT WITH A MINOR
2. COMMITTING OR ATTEMPTING LEWD ACT UPON A
CHILD UNDER SIXTEEN YEARS OF AGE

At a Court of General Sessions, convened on the 8th day of October, 2001, the Grand Jurors of Greenwood County present upon their oath:

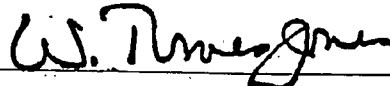
COUNT ONE

That ANTHONY WADE NATION, did in Greenwood County, state aforesaid, between the 1st day of December, 1999, and the 31st day of January, 2001, being older than the victim, wilfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of fourteen (14) years but less than the age of sixteen (16) years, to wit: one Minor in violation of Section 16-3-655 of the South Carolina Code of Laws, 1976, as amended

COUNT TWO

That ANTHONY WADE NATION did in Greenwood County, state aforesaid, between the 1st day of December, 1999, and the 31st day of January, 2001, being over the age of fourteen (14) years, the said defendant did unlawfully, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: Minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, Minor in violation of Section 16-15-140 of the South Carolina Code of Laws, 1976, as amended

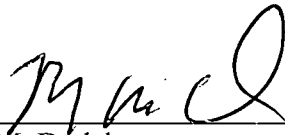
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 4th, 2013

By: 
Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

E. Charles Grose, Jr.
Chief Circuit Public Defender, Eighth Circuit
Pro bono counsel

Shane E. Goranson
Assistant Public Defender, Eighth Circuit
Pro bono counsel

ATTORNEYS FOR APPELLANT