REPORT OF
THE VIRGINIA STATE CRIME COMMISSION

"MEGAN'S LAW" OR COMMUNITY NOTIFICATION FOR SEX OFFENDERS

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 34

COMMONWEALTH OF VIRGINIA
RICHMOND
1998

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

Rich Savage
Director

General Assembly Building

December 16, 1997

To: The Honorable James S. Gilmore III, and
Members of the Virginia General Assembly:

Senate Joint Resolution 249, agreed to by the 1997 General Assembly, directed the Virginia State Crime Commission to continue its study of "Megan's Law" and to develop recommendations to implement the concept of community notification on sex offenders, and to submit its findings and recommendations to the Governor and 1998 session of the General Assembly.

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission in 1997. I have the honor of submitting herewith the study report.

Respectively submitted,

Clifton A. Woodrum
Chairman

CAW:jrp

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1997

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Attorney General:

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SJR 249: "Megan's Law"/Community Notification for Sex Offenders

I. Authority for Study

The 1997 General Assembly approved Senate Joint Resolution 249 (SJR 249/Howell) directing the Virginia State Crime Commission to continue its study on Virginia's current law on notification of sex offender, the efficacy of expanding the law to include provisions of New Jersey's *"Megan's Law"* and to submit its findings and recommendations to the Governor and the 1998 General Assembly.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report, and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate recommendations to the Governor and the General Assembly." Section 9-134 authorizes the Commission to "conduct private and public hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study to develop legislation for public notification when sex offenders are released back into a community. The study also examined the two other components of the New Jersey "Megan's Law": sex offender registration and civil commitment for violent sexual predators.

According to clinicians, sex offenders have one of the highest rates of recidivism. Many pedophiles have as many as 140 victims, and some, many more. Nationally, persons age 12 or older reported experiencing an estimated 260,300 attempted or completed

rapes and nearly 95,000 threatened or completed sexual assaults other than rape.[1] A large and increasing number of prison inmates are sexual offenders. At least 20 percent of the adult prison population in ten States were sex offenders in 1991.[2] According to Department of Corrections data, Virginia has approximately 2539 sex offenders incarcerated, ten percent of its total inmate population. Another 1700 are under community supervision. The Virginia Sex Offender and Crimes Against Children Registry has approximately 6000 registered sex offenders. To enhance the safety of women and children many states have enacted statutes which provide for public notification when certain sex offenders are released from incarceration or relocates at any time after conviction. Virginia currently requires notification to local law enforcement authorities when a sex offender is released but has no provision for notice to the general public. The study resolution directs the Crime Commission to continue its study of "Megan's Law" and to develop notification legislation for consideration by the 1998 Virginia General Assembly.

In April, 1996 Congress passed a federal law which required states to enact notification laws by September, 1997. The law was an amendment to the *Jacob Wetterling Crimes Against Children Act* passed in 1995. Failure to enact such legislation will jeopardize states' Byrne formula grant funding or anti-crime monies. Virginia would lose approximately a million dollars in grant funds if it is not in compliance with the provisions of the Act. The legislation specified that states could seek up to a two year extension if they can demonstrate that they are working towards compliance. Virginia submitted the continuing study resolution and other documentation to the Department of Justice to reflect its efforts towards compliance with provisions of the *"Megan's Law"* amendment.

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[1]Bureau of Justice Statistics, Sex Offenses and Offenders, NCJ-163931, January 1997.

[2]Steele, N.M., Treating Sex Offenders: Minnesota Findings, The State of Corrections: American Correctional Association Proceedings, Laurel, Maryland: ACA, 1992, pp 9-16.

During the 1996 phase of the study on public notification of sex offenders, the task force appointed by the Crime Commission recommended legislation which would bring Virginia into compliance with the original tenets of the *"Jacob Wetterling Crime Against Children Act"*. The legislation (SB 746-Howell) designated certain sexually violent crimes for more stringent registration requirements and expanded the offenses included on the Virginia Sex Offender and Crimes Against Minors Registry. It also required that photographs and fingerprints be made a part of the Registry and be sent to the FBI for inclusion in the federal Sex Offender Registry.

II. Members Appointed to Serve

At the April 15, 1997 meeting of the Crime Commission, Chairman Clifton A. Woodrum selected Senator Janet D. Howell to serve as Chairman of the Law Enforcement Subcommittee and Delegate Raymond Guest to chair the Corrections Subcommittee. The following members of the Crime Commission were selected to serve on the respective subcommittees:

Law Enforcement Subcommittee

Senator Janet D. Howell
Delegate James F. Almand
Mr. Robert C. Bobb
Delegate R. Creigh Deeds
Senator Mark L. Early
Mr. James S. Gilmore, III
Mr. Robert J. Humphreys

Corrections Subcommittee

Delegate Raymond R. Guest
Delegate James F. Almand
Delegate Jean W. Cunningham
Delegate John J. Davies, III
Sheriff Terry W. Hawkins
Senator Kenneth W. Stolle
Delegate Clifton A. Woodrum

III. Executive Summary

In 1996 the General Assembly directed the Virginia State Crime Commission to study the feasibility of enacting legislation to provide for public access to information on sex offenders when released, commonly known as "Megan's Law". The Crime Commission convened a task force to examine the issues comprised of judges, commonwealth attorneys, state and local law enforcement, probation & parole staff, and mental health clinicians. In the first year of the study, the task force recommended legislation which created a subcategory of offenses on the Sex Offender Registry, known as "sexually violent crimes". Offenders convicted of these crimes would be required to register every 90 days for life. These offenders could petition the court for relief from this provision after three years. The task force also expanded the registry offenses. In the second year of the study (SJR249) the Crime Commission was directed to develop legislation for sex offender information access. The task force was reconvened and worked toward the development of such legislation. A number of recommendations have been made.

The task force recommended that additional crimes be added to the Sex Offender Registry and to the "sexually violent offense" subcategory. Clarifying legislation will be introduced to identify the Department of State Police as the lead agency for enforcement of registration violations.

The task force recommended that legislation be drafted which allowed anyone seeking information concerning a sex offender registered on the Virginia Sex Offender and Crimes Against Children Registry to request the information from the State Police. Request forms will be made available in all local law enforcement offices. A web page will be developed on the internet for all "sexually violent offenders" which will include photograph, address, criminal history records, and other pertinent information. All schools, daycare facilities, and other organizations serving vulnerable populations may

submit a request to the State Police for automatic notice when a sex offender moves into their area. The legislation will also include a procedure for a sex offender who is convicted of a second or subsequent non "sexually violent" sex offense to be evaluated for redesignation as a "sexually violent offender". The evaluation will be conducted by the Department of Corrections.

The task force recommendations also included budget requests for funding additional probation and parole officers and funds for community based sex offender treatment. The recommendations directed the Crime Commission to seek Byrne grant funds to develop an evaluation of the community notification legislation and to introduce a continuing study resolution which authorizes the Crime Commission to monitor the implementation of the notification legislation.

Finally, the task force recommended that a study resolution be introduced to direct the Crime Commission to study the feasibility of enacting a civil commitment statute for sex offenders; legislation recently upheld by the U.S. Supreme Court as constitutional.

IV. Study Methodology

The task force established in 1996 by the Crime Commission continued its work this year with emphasis on the development of legislation for community notification for sex offenders. The membership of the task force included representation from probation and parole, commonwealth attorneys, circuit court judges, representatives of local law enforcement, a Parole Board member, treatment specialists from the field of sex offender treatment, a representative from the State Police, representatives from the Department of Corrections, the Department of Criminal Justice Services, the Department of Juvenile Justice, and the Department of Health Professions. The Attorney General's designee to the Crime Commission, Frank Ferguson, served on the

task force and Senator Janet Howell, chair of the Law Enforcement Subcommittee of the Crime Commission, chaired the group (Attachment A).

The task force began its work by examining other states' models for community notification for sex offenders. At least 32 States have enacted notification legislation(Attachment B). Community supervision models for sex offenders on parole or probation were also examined. Research was done for the task force on the legal challenges to community notification legislation in order to determine appropriate parameters for the proposed legislation. Finally, the task force sought data on the resources which would be needed for the implementation of community notification. These resources included treatment services for sex offenders, both in the institutional setting and in the community, additional resources for community supervision, and an evaluation database on sex offender notification. As a part of this effort, a risk assessment instrument developed in phase one of the study was used on sex offenders exiting the Department of Corrections or who were sentenced directly to probation during a three month period and were required to register on the Sex Offender and Crimes Against Minors Registry to determine the number of offenders considered to be at high or moderate risk of re-offense (Attachment D). The results indicated that most offenders fell into the moderate risk range. Approximately seventeen percent of the 192 offenders assessed fell within the high risk range.

Crime Commission staff and two additional members of the task force attended a regional seminar on community notification in Boston. The seminar was conducted by officials from the state of Washington which has had the longest experience with community notification legislation. The seminar gave staff valuable insights into certain obstacles to avoid in the implementation of a community notification law as well as legal considerations which must be addressed. The Council on State Governments also sponsored a teleconference on "Megan's Law" for the 50 states. Several members of the task force participated in the teleconference.

V. Background

In 1994 the New Jersey legislature enacted a law hereafter to be known as *"Megan's Law"* , Public Law 1994, Chapters 128 and 133 codified as N.J.S.A. 2 C:7-1 to 7-11. The legislation was a response to a brutal murder and rape of a seven year old girl, Megan Kanka. The murderer lived across the street from the Kankas and was a twice convicted sex offender. The legislation was introduced as an emergency measure and was unanimously approved. Megan's Law enacted a registration requirement and three tiers of notification. It also included a civil commitment procedure for certain mentally ill and violent sex offenders following their sentence. All persons who serve sentences for certain sexual offenses are required to register with local law enforcement. In New Jersey the offender must re-register with local law enforcement every ninety days; notify the law enforcement agency if he moves; and re-register with law enforcement wherever he moves. The local law enforcement agency forwards registration information to the prosecuting attorney of the jurisdiction where the offender was convicted. The prosecuting attorney then notifies the State Police who then notifies the local prosecuting attorney of the jurisdiction where the offender plans to live. At this point the prosecuting attorneys of the jurisdictions, if different, must consult to determine if the offender is at low, moderate, or high risk of reoffending. Guidelines for the risk assessment are promulgated by the New Jersey Attorney General. The guidelines set forth the level or tier of notification which must take place based upon a determination of public safety risk:

Tier I means low risk and the prosecutor must notify law enforcement agencies likely to encounter offender.

Tier 2 means moderate risk and the prosecutor must notify schools, daycare facilities, summer camps, and designated community agencies involved with care of children or battered women or rape victims.

Tier 3 means high risk and law enforcement agencies are required to notify members of the public likely to encounter the offender.

Tier 2 and 3 include registrant's name, recent photograph, physical description, offense, address, place of employment, and description and license number of his vehicle.

Under Tier 2 and 3 there is a warning that the information is confidential and a warning against acts of vandalism, threats, or assaults against the offender.

Notification statutes vary from state to state. A survey of 32 state laws for sex offender community notification was done by the Washington State Institute for Public Policy in April 1996. The report organized notification laws into three categories:

***Broad community notification.** This category includes states authorizing the broad release of sex offender information to the public. This type of notification is authorized in 13 states.

***Notification to organizations and individuals at risk.** In this version of notification, information is released based on the need to protect an individual or vulnerable organization from a specific offender. Laws allowing this type of notification exist in eight states.

***Access to registration information.** The 11 states in this category allow access by citizens or organizations to sex offender information through local law enforcement.[3] Virginia has this type of notification statute in place. Schools, daycare facilities, and other child-caring agencies can require a sex offender registry check on potential

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[3]Matson, Scott with Lieb, Roxanne, Sex Offender Community Notification: A Review of Laws in 32 States, Washington State Institute for Public Policy, April 1996.

employees. The 1997 General Assembly broadened this to allow parents to request a sex offender registry check of potential baby sitters or child caring employees.

The final regulations issued by the U. S. Department of Justice indicate that states will be required to enact some form of broad public notification or access to information on certain sex offenders in order to be in compliance with the provisions of the "Megan's Law" amendment to the *Jacob Wetterling Act.*

VI. Court Challenges to "Megan's Law" Legislation

The New Jersey notification statute was challenged in 1994 and in 1995 the New Jersey Supreme Court upheld the constitutionality of the law in Doe v. Poritz, 142 N.J. 1, 662 A. 2d 367. In rendering that opinion the Court included additional procedural protections in the statute. Tier 2 notice must be confined to only those likely to encounter the offender. The prosecuting attorney must notify the offender prior to a Tier 2 or 3 notification unless it is practically impossible. Third, the court must provide for an in camera hearing for relief from the notification requirements in which the offender bears the burden of persuasion.

The prosecutor makes the future risk determination using the "Registrant Risk Assessment Scale" promulgated by the Attorney General. The Scale is a matrix of thirteen categories organized into four larger headings:

1) Seriousness of Offense
2) Offense History
3) Characteristics of the Offender
4) Community Support

Each category is scored by the prosecutor as low, moderate, or high risk. Two exceptions apply to the risk determination: a) if the offender has indicated he will reoffend once he is released back into the community and the available record lends credence to this finding, then the offender is deemed high risk; and, 2) if the offender demonstrates a physical condition which minimizes the risk of reoffending, then the offender is deemed low risk.[4] Either of these factors can trigger an override of the tier designation.

Other challenges have been made in Alaska, New York, Washington, to name a few. Some of the issues raised have been:

* Constitutionality of the application of notification requirements to convictions prior to the implementation date. Does this violate the *expost facto* clause of the U.S. Constitution? Nitz v. Otte; Case No. A95-486 Cl; United States District Court, District of Alaska. The federal District Courts are split on this issue. Retroactive application has been upheld in Michigan and in one case in New Jersey and overturned in Washington, SDNY, Connecticut, and in another case in New Jersey. In July, 1997 the United States Supreme Court denied the Kansas petition for certiorari on *Kansas v. Myers*, wherein the Kansas Supreme Court had overturned the retroactive application of notification. The United States Court of Appeals for the Second, Third and Ninth Circuit recently issued affirmative opinions on the issue of retroactive application of notification requirements, upholding such application.

* Who should be the subject of notification? Court has ruled that there must be some evidence of future dangerousness, likelihood of re-offense, threat to a community to justify disclosure. State v. Ward, 123 Wn.2d 488, 503 (1994).

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[4] Alexander A. Artway v. Attorney General of the State of New Jersey, 1996 WL 170671 (3rd Cir. (N.J.s))

* What should be disclosed to the community? Court ruled that the standard of "relevant and necessary" imposed an obligation to release information necessary to counteract the danger created by the particular offender. State v. Ward, 123 Wn.2d at 503.

* Who in the community should be notified? Court ruled that the geographic scope of dissemination must relate to the threat posed by the registered offender. Ward, 123 Wn.2d at 503-04.[5]

Courts have tended to focus on two main factors: breadth of public access to information (unlimited access vs. target audience) and due process considerations (procedures to challenge both initial classification and opportunity to have classification adjusted). The disparity within both state and federal courts in addressing the public notification provisions makes it impossible to reach a confident conclusion on how such a challenge would be viewed in Virginia's courts or before the Fourth Circuit in the federal system.

One other potential legal challenge related to sex offender notification is the threat of civil suits against agencies and individuals involved in implementing the notification statutes. Most states which have enacted notification legislation have included immunity statutes from civil liability for the implementing agency. Concern for such liability has been raised by the task force studying "Megan's Law" in Virginia. Immunity statutes should be an integral component of a sex offender notification process in the Commonwealth. The legislation should also include specific prohibitions against acts of vigilantism or harassment.

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[5]Matson & Lieb, Ibid., pp. 4-5.

VII. Current Status of Virginia's Compliance with the *Jacob Wetterling Crimes Against Children Act*

The federal legislation known as *"Megan's Law"* was signed into law the week of May 13, 1996. The bill is an amendment to the *Jacob Wetterling Crimes Against Children Act.* The bill is broad and does not specify the level of notification states will have to undertake to be in compliance. Guidelines for the specifics of notification requirements were promulgated by the Department of Justice in July of 1997. Virginia's law currently requires notification to local law enforcement authorities. The Department of Justice's guidelines require a higher level of public access to offender information while giving States the maximum flexibility in enacting new legislation which will meet the individual needs of each State and their respective demographics.

Virginia enacted legislation during the 1997 General Assembly which would bring the Code into compliance with the original provisions of the *Jacob Wetterling Crimes Against Children Act.* The following is an analysis of the provisions of the legislation on sexually violent offenders passed by the 1997 General Assembly:

1) The bill created two categories of offenses which will go on the registry: sexually violent crimes and serious sexual crimes.

2) Offenders who are convicted of the following crimes will be known as "sexually violent offenders":
   a. §18.2-61 Rape
   b. §18.2-67.1 Forcible Sodomy
   c. §18.2-67.2 Object Penetration
   d. §18.2-67.3A(1) Aggravated sexual battery against a minor

3) Three additional offenses have been added to the registry:

a. §18.2-47(a) Non-parental kidnapping.

b. §18.2-48 ii & iii Abduction with intent to defile.
Abduction of child under 16 with intent to prostitute.

c. §18.2-374.1 B(i) Accosts, entices or solicits a person below 18 to perform in a sexually explicit production.

4) "Sexually violent offenders" are required to register for life and provide verification of their whereabouts every 90 days.

5) Offenders convicted of other serious sexual crimes requiring registration must re-register annually and when they relocate. After ten years, without an additional conviction, these offenders may petition the court for expungement.

6) "Sexually violent offenders" are not eligible for expungement but after three years may petition the court for relief on the every ninety day verification provision. They must undergo an evaluation by a panel of clinical experts in the field of sex offender treatment for determination if they are no longer a "sexually violent offender" as part of the petition for relief.

7) Sex offenders who fail to register or reregister within ten days of their release, probation, relocation, etc. are guilty of a Class I misdemeanor.

8) "Sexually violent offenders" who fail to register within ten days of the date required are guilty of a Class 6 felony. Venue for prosecution on this offense is where the offender can be found.

9) All sex offenders included in the registry must provide fingerprints and a photograph. Following sentencing the offender will be remanded to the custody of local law enforcement for this purpose.

The increase to a Class 6 felony for failure to register applies only to those offenders convicted of a "sexually violent crime". This provision is required by the Jacob Wetterling Act. The fiscal impact or prison bed space impact of the increased penalty was estimated to be $62,000 over the next ten years. Funding for this was included in the 1997 amendments to the state budget.

Legislation was also passed during the 1997 General Assembly (SB 855/Houck) which allowed persons seeking child-minding or day-care services as defined by §19.2-390.1 (C) to access information on the Sex Offender and Crimes Against Minors Registry. Regulations for implementation of both pieces of legislation were promulgated by the Department of State Police.

VIII. Issues to be Addressed

The task force identified a number of issues for consideration during the course of the second year of the "Megan's Law" study. These included:

1. Review of the current sex offender registry and the sexually violent offender legislation to determine if additional crimes should be included as well as attempts. Included in this issue is an estimate of the prison bed impact costs, trial costs, and court docket overload. The task force also reviewed the training issues for judges and commonwealth attorneys.

2. Review of whether juveniles not tried as adults should be included in the sex

offender registry? One of the issues for juveniles is the statutory threshold provisions for release of information on juveniles offenders.

3. Review of compliance issues with the registration requirements. The task force examined the process for serving a warrant on those offenders who are under the misdemeanor section for failure to register and for those sexually violent offenders under the Class 6 felony section who fail to register every 90 days to determine who should have the lead responsibility for enforcement.

4. Review of the appropriate agency or agencies to assign responsibility for the administration of notification assessments on sex offenders preparing for release from incarceration or sentenced directly to probation. The notification assessment is done to determine the level of notification to apply to an individual offender. The task force also reviewed the resources needed to do the notification assessment.

5. Review of the levels of notifications and determination of who should be notified on each level or tier.

6. Review of which sex offenders should be subject to notification. If notification is made applicable to those currently on the Sex Offender Registry, the task force must review the procedures needed to apply risk assessments to over 6,000 offenders currently living in the community; and, the resources needed to do the notification assessment on these individuals.

7. Review of the methodology for notification. The task force must determine if there is to be a statewide protocol for notification or if the localities will be given discretion on the method of notification. Review of the additional resources needed to implement community notification.

8. Review of the constitutional issues and liability issues for registration and notification.

9. Review of the services and programs which are currently in place for sex offenders in the institutions and in the community and a determination of what programs and services are needed to effectively manage sex offenders in the community.

10. Development of a proposal for an evaluative database on sex offenders, notification, etc. to determine the effectiveness of legislation and resource allocation.

The task force developed recommendations on each of the ten issues. The issues were grouped into several general categories.

IX. Expansion and Enforcement of the Sex Offender and Crimes Against Minors Registry

Discussion was held on the inclusion of several additional offenses in Virginia's Sex Offender and Crimes Against Minors Registry. The task force recommended that the following crimes be added to the Registry:

1) Where the victim is a minor, solicitation for prostitution §18.2-346(B)*;
2) Sexual battery of a minor victim §18.2-67.4*;
3) Marital sexual assault §18.2-67.2:1;
4) Breaking and entering with intent to rape §18.2-90; and
5) Aggravated sexual battery §18.2-67.3.

*These two crimes, both misdemeanors, were deleted by the Crime Commission as they do not exist in this form in the Code of Virginia. The age of the victim is not an element of either crime. Upon examination, it was determined that these offenses are not statutory, generic, or juvenile offenses and do not need to be included for compliance with the *Jacob Wetterling Crimes Against Children Act.*

An additional offense was recommended to be included in the "sexually violent crimes" category: Abduction with intent to defile and abduction with intent to prostitute-§18.2-48 (ii and iii). Final guidelines for the *Jacob Wetterling Act* indicate that this should be included. Compliance requires that attempts also be included.

Finally, the Task Force recommended that the second or subsequent non "sexually violent offense" would trigger a redesignation to the "sexually violent" category of offenses. In order to redesignate the offender would undergo an assessment by the Department of Corrections to determine if he/she is at risk of reoffending.

Concern was expressed regarding the enforcement of registration requirements. Clarification was sought as to how warrants would be issued for registrants who fail to register. The State Police maintain and operate the Sex Offender and Crimes Against Minors Registry. The State Police have agreed to assume the lead responsibility for notifying the appropriate local authority to issue a warrant when an offender fails to comply with registration requirements.

X. Juvenile Sex Offenders

Currently juvenile sex offenders who are tried and convicted as adults are required to register on the Sex Offender and Crimes Against Children Registry, regardless of whether the disposition is handled within the juvenile or adult system. These juvenile offenders will therefore fall under the rubric of public notification. The task force

discussed the advisability of extending registration, and subsequent notification, requirements to certain other juvenile sex offenders. The Jacob Wetterling Crimes Against Children Act does not require the inclusion of juveniles beyond those tried and convicted as adults. One recommendation was to include juveniles sentenced under the Serious Juvenile Offender statute on the Registry. These juveniles may receive determinate sentences in the juvenile correctional system up to their twenty-first birthday. Since July 1, 1992, 7.8% of the juvenile offender population were committed under the Serious Juvenile Offender statute.

The proceedings of juvenile courts are somewhat different than those of the circuit court. The emphasis tends to be on getting at the "truth" of the situation rather than adherence to rules of evidence. Legal representation for defendants in juvenile courts is less extensive than that of circuit courts. One of the most distinct differences is the lack of a jury trial in the juvenile court system. These are also not courts of record which means that the proceedings are not recorded. These issues were carefully reviewed by the Commission staff. Staff also conferred with several juvenile judges on the issue of inclusion of juveniles sentenced under the Serious Juvenile Offender statute. The consensus among the juvenile judges interviewed was that most of the juvenile sex offenders who present a public safety threat are transferred to the circuit court. Other offenses which would require registration and subsequent notification are under the discretion of the commonwealth attorney to seek a transfer to circuit court. If a commonwealth attorney is convinced that a particular juvenile sex offender presents a serious public safety threat and will not benefit from treatment under the juvenile system, he/she can seek a transfer hearing.

Given these responses staff did not recommend expansion of the Registry to include juveniles sentenced under the Serious Juvenile Offender statute. The task force concurred.

XI. Notification Levels

Most courts have ruled that public notification must be tied directly to the level of risk that an offender presents. The task force recommended that notification be linked with to the particular offense conviction. The task force recommended that notification be divided into two levels:

Class I: All sex offenders convicted of "sexually violent crimes" with unlimited access.

Class II: All sex offenders on the Sex Offender and Crimes Against Children Registry. Access limited by request.

The task force recommended that a sex offender convicted of a second or subsequent non "sexually violent crime" be assessed by the Department of Corrections to determine if he/she should be redesignated to Class I-"sexually violent offender".

Risk assessment is an inexact science which cannot predict with total accuracy the risk of reoffense of every sex offender. There are, however, certain predictors which indicate the likelihood of a continued pattern of offending. Sex offenders tend to lie, deny, and minimize their sexual deviancy. They are master manipulators. This requires professionals to be particularly careful in their compilation of data and thorough in gathering all available information. Since treatment participation often impacts post-release decisions as well as award of good conduct time, decisions on risk of reoffending must be based upon sound empirical data.

The type of offense often marks the level of reoffense risk. Untreated exhibitionists are consistently reported to have the highest rate of recidivism (20%-41%) among all sex offenders.[6] The reoffense rates of non-familial child molesters is higher for those who molest boys than those who typically molest girls. The fact that sex offenders often

have a high number of victims before they are caught indicates the difficulty of assessing actual recidivism rates.

The use of phallometric measurements to assess sexual arousal is one method commonly used to evaluate reoffense risk. Polygraph tests are also used on offenders in risk assessments. Among some of the predictors for probable reoffense are impulsivity, alcohol abuse, psychopathology, use of force during offense, unemployment, and age. Length of time at risk for reoffense is also a consideration. A subgroup of the task force, comprised of clinical specialists in the field of sex offending, developed an assessment instrument which could be used to determine the level of notification to which a sex offender would be subjected. The group recommended that the assessment be more of an actuarial approach rather than a clinical assessment: that is, criteria such as objective or factual data on the instant offense and the offender's criminal history receive heavier weight than the more subjective predictors like social history or treatment response.

The actuarial risk prediction process is much like that used by insurance companies to determine the driver's insurance rates. If the driver has had speeding tickets they will pose a greater risk to be in a traffic accident than drivers who have not received a ticket; therefore, their rates are adjusted upward. Similarly, sex offenders with prior criminal records, especially prior sex offense convictions, are more likely to reoffend. The assessment instrument is a scientific way to evaluate past behaviors of certain individuals compared to others to predict how they might act once released. Not all offenders who score high on the instrument will reoffend but it is a measure of identifying them to monitor their behavior based upon past behaviors. The instrument was administered by Department of Corrections' staff to 192 sex offenders who were either preparing for release from prison or were sentenced directly to probation for a

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[6]McGrath, Robert, "Sex-Offender Risk Assessment and Disposition Planning: A Review of Empirical and Clinical Findings", International Journal of Offender Therapy and Comparative Criminology, 1994, pg. 334.

three month period. The projection for the results of the assessment was that approximately ten percent of the offenders would fall into the high range of risk and would be subjected to the highest level of notification. This prediction was somewhat validated in the results. Seventeen percent of the offenders tested actually fell into the high risk category. Most of the offenders fell into the moderate range with only approximately two percent assessed as low risk. This instrument will be used to determine the redesignation to "sexually violent offender" when a registered sex offender is convicted of a second or subsequent sex offense which is not in the "sexually violent" category of the Registry. The redesignation to "sexually violent offender" will place the offender under the more stringent registration and notification requirements.

XII. Methodology for Notification

Much discussion was held on who should be charged with the responsibility for notification to communities and their subsets when a sex offender moves into the community. Other states have generally followed one of four models:

(1) An agency identified in legislation or by regulation (prosecutor, law enforcement or probation and parole) determines the level of risk and implements a notification plan that reflects the level of risk (Connecticut, New Jersey, Oregon, Washington). The plan provides for three levels of notification based upon offender risk. First may be local organizations like schools, the second adds community residents, and the third adds media.

(2) State statute stipulates which types of offenders are to be subject to notification and what notification methods are to be used. A designated agency carries out the notification. This statutory scheme requires no risk assessment. (Louisiana)

(3) Offenders are required to do the actual notification, although they may be closely supervised by a criminal justice agency. (Louisiana)

(4) Community groups and individuals must take the initiative to request information about whether a sex offender is living in their community and to ask for information about the person. (Alaska, California, Colorado, Florida, New York)

The trend is to incorporate a tiered system rather than specify the types of offenders who will be subject to notification.[7]

Each of these models have certain advantages and disadvantages. The following points were considered by the task force in their determination of the appropriate notification model for Virginia:

* Providing flexibility to local jurisdictions to develop their own protocols for notification provides the locality with a sense of ownership in the program. It may also enhance the sense of accountability for addressing possible acts of harassment. It allows for individualization to meet differing localities' demographics. Inconsistent notification procedures may, however, result in disparate notification approaches models around the State.

* Mandating a statewide protocol for notification eliminates arbitrariness and subjectivity but may result in a reduced sense of responsibility and accountability.

* The agency that identifies offenders who will be subject to notification and does the notification should also be made accountable for what may follow: community fear, anger, or complacency as well as possible objections from offenders. Agency staff are

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[7]Finn, Peter, Sex Offender Community Notification, NIJ Research in Action, National Institute of Justice, February, 1997, pp.5-6.

more likely to carefully assess those who will be subject to notification and to provide appropriate community education needed to prevent negative community reactions to notification.

* Requiring offenders to do their own notification can frighten the community because the information comes directly from the offender.

* Limiting the number of people with access to information about the offender and keeping a list of the individuals who have asked, making the public responsible for requesting information about sex offenders enables law enforcement to more easily identify which community member may be harassing an offender than when an entire neighborhood has the information. Conversely, this approach may result in few people taking the initiative to request the information and many people may not even be aware that the information is available. This approach has the potential for leaving the less informed, less educated citizenry out of the notification process. Such a consequence could be taken advantage of by sex offenders frequenting areas where the community may not be aware of their presence.[8]

After much discussion the task force voted to adopt a passive notification proposal; that is, the notification will be initiated by the individual wishing the information. School systems and daycare facilities, however, will receive an active or automatic notice when a sex offender moves into their area. The system will require that all school systems and daycare facilities register with the Department of State Police to receive the automatic notice. Information will be transferred electronically or by mail, depending on the computer capacity of the facility.

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[8] Ibid., pp. 7-8.

The task force proposal for notification is two levels of notification:

* Class I: All "Sexually Violent Offenders" will be on a Web Page on the Internet.
* Class II: Individuals may request information on an individual offender on the Registry by name or address through local law enforcement or the State Police. The request should include the name, address, and purpose of the request from the requestor.

Information relative to addresses of the offenders on the Registry will be updated daily to avoid the possibility of releasing inaccurate information.

XIII. Application of Notification

One issue to be addressed within the parameters of notification is that of application. That is; to whom does the notification apply? Many of the legal challenges have been to the retroactive application of notification procedures to offenders sentenced prior to the effective date of the notification legislation. The legal argument has been that retroactive application violates the *expost facto* clause of the Constitution. The task force had significant discussion on this issue. Initially there was a decision to apply retroactively solely to Tier I (low risk) . A later vote proposed applying Tier 2 notification retroactively. That is, all offenders would have to be assessed to determine which tier or level of notification should apply. The constitutional standing of retroactive application has been upheld in two recent federal court decisions: *E.B. v. Verniero, Appellant in No. 96-5132, New Jersey* in the United States Court of Appeals for the Third Circuit and *Doe, Roe, and Poe v. George Pataki, 1997 U.S. App. LEXIS 22369* in the United States Court of Appeals for the Second Circuit. The task force ultimately voted to go to a two level system with retroactive application.

XIV. Monitoring Sex Offenders in the Community

The management of sex offenders in the community should focus on public safety, victim protection and reparation of victims. The model process for managing adult sex offenders in the community is a containment approach that seeks to hold offenders accountable through the combined use of both offenders' internal controls and external control measures (such as the use of polygraphs and relapse prevention plans).[9] Treatment and supervision modalities place priority on community protection and victim safety. Offenders are held fully responsible for the damage they have inflicted and are consistently held accountable for inappropriate thoughts and feelings which may precede a criminal act as well as any illegal acts they may actually commit.

Specialized case management of sex offenders in the community by specially trained probation & parole officers insures that the supervision is done by individuals who clearly understand the dynamics of sex offending. Specialization enhances skills, increases communication, and improves consistency at all stages of sex offender management.[10]

XV. Community Education

It has been suggested that community notification may incite excessive fear or anger, resulting in acts of violence against the offender. Some have also stated that notification can create a false sense of complacency in communities by leading residents to conclude they know about the sex offenders in their midst and therefore have no further worry about the problem. Both of these potential negative effects can be minimized through

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9 English, Kim et al., Managing Adult Sex Offenders in the Community--A Containment Approach, NIJ Research in Brief, January 1997, pg. 4.

10 English, Kim et al., Managing Sex Offenders in the Community--A Containment Approach, NIJ Research in Brief, January 1997, pg. 9.

the use of community meetings, door-to-door discussions, and the media to educate the public on the dynamics of sex offending. The local probation & parole district office, working with local law enforcement and the commonwealth attorney, should actively try to prevent harassment. It should be made clear that such acts of harassment may threaten the legality of notification and result in the law being repealed. Also acts of harassment should be vigorously prosecuted.

The creation of an interagency, interdisciplinary approach to educating the community on the issue of sex offending provides a comprehensive and unified approach to sex offender management. Through systematic cooperation and collaboration, a multidiscilplinary team can remediate otherwise fragmented intervention efforts. Interagency communication is facilitated with case-specific information sharing. The exchange of expertise can help break down barriers, minimize turf battles. Such sharing of responsibility also assists in minimizing a duplication of effort while maximizing resources.

XVI. Benefits of Notification and Community Education

The goals of public notification for sex offenders are twofold: increasing public safety and assisting law enforcement with sex offender investigations. There is little empirical data to support the fact that the first goal is being met through current public notification practices. The Washington State Institute for Public Policy compared the number of arrests for new sex offenses among 90 sex offenders subject to notification with arrests for 90 sex offenders not subject to notification. At the end of 54 months there was no statistically significant difference in the arrest rates for sex offenses between the two groups (19 percent versus 22 percent). The study did find that notification contributed to quicker arrests for new crimes. The overall levels of recidivism between the two groups at the end of the 4.5 years were similar.

Community notification will be less able to improve public safety in that offenders often move around to avoid the consequences of registration and notification. Some studies indicate that notification may have a displacement effect. However, the stigma attached to notification may also motivate offenders to work harder in treatment, adhere to parole conditions or find a job and remain employed. The threat of notification, in this regard, may contribute to a reduction in recidivism.

Notification can, to a degree, further the goal of crime prevention. It can enhance law enforcement's ability to investigate sex offenses. Through community education, neighbors, employers, and organizations are encouraged to report suspicious behavior. Notification has led to expedited investigations and quicker arrests.

XVII. Punishment vs. Treatment

Someone once said, "to punish and not to restore is the greatest sin of all." (author unknown) Sex offenders are sent to prisons for punishment for their crimes. They are also sent to protect the public from their predatory behavior. The numbers of sex offenders in the prison population are growing and their sentences are increasing. There is an ongoing debate among corrections officials, legislators, treatment specialists, victims, and families of offenders as to whether the sex offender should receive treatment while incarcerated. To frame that debate, one must understand that many sex offenders, while serving lengthy sentences, will eventually be released back into the community.

It is also important to understand the recidivism rates of most sex offenders. Although the data varies, studies indicate recidivism rates of between 20 and 60 percent for untreated convicted sex offenders, among the highest of any offender category. The third important element of the debate is one of victimology. It is an established fact among sex offender treatment experts that sex offenders have significantly high

numbers of victims, ranging from 20 to as many as 300 to 400. Finally, the debate should factor in the pathology of victim-perpetrator. Research has shown a clear relationship between child victims of sexual abuse and later patterns of sexual deviancy. In other words, many victims later become perpetrators.

Many would argue that sex offenders do not deserve treatment services. This can be countered by an examination of the goal of sex offender treatment. The first and foremost goal of treatment is to reduce victimization rates. Recent research suggests that rehabilitation efforts are cost effective even if treatment reduces recidivism rates by a small degree.[11] Since most offenders who do reoffend after release from prison or discharge by the courts, do so against more than one victim, then just effectively treating one offender who would otherwise have reoffended, is beneficial in that it saves two or more innocent victims from suffering.

Prentsky and Burgess (1988) calculated the cost to investigate a reoffense by one of these men, to prosecute and jail the offender, and finally, to offer minimal assessment and treatment to the victim. The estimated costs of this amounted to $180,000 for a single offense by a single offender.[12] A 1987 evaluation of sex offender treatment services in the Vermont correctional system provided cost data on the cost savings to the State. These costs included the cost of criminal prosecution, victim related expenses, and the cost of incarceration. The cost calculations compared a five year cost of treatment in prison at $27,500 to the cost of release, reoffense and a second prison term at approximately $280,000.

Another study conducted by the Wisconsin Department of Corrections has examined treatment locations and their impact on recidivism rates. The comparative data

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[11] McGrath, Robert, Ibid, pg. 329.

[12] Marshall, W.L., et al, "Treatment Outcomes with Sex Offenders, Clinical Psychology Review, Vol. 11, 1991, pg.468.

indicates that treatment provided in prisons has the highest impact on reduction of recidivism of sex offenders (Attachment E).

Given the high rate of recidivism, the number of victims of a typical perpetrator, the costs of prosecution and re-incarceration, and the human costs to the victim it is obvious that treatment should be considered. The truth is, both punishment and treatment are compatible goals for addressing convicted sex offenders in the criminal justice system.

XVIII. Treatment Approaches

There are a number of different treatment interventions utilized in the field of sex offender treatment. The continuum includes psycho-educational, cognitive-behavioral, family-system intervention strategies as well as aversive therapies, use of the plethysmograph which measures penile response to erotic materials, biomedical strategies such as the use of antiandrogens to lower testosterone levels, and even castration. Many of the treatment strategies are considered controversial and have generated lawsuits as a result. Most of the more invasive interventions are conducted in community based settings, not in the prisons. Institutional based treatment is primarily centered on psycho-educational therapies and therapeutic communities which use an intensive cognitive-behavioral approach. Sex offender treatment is different from traditional psychotherapy. It is more confrontive, directive, structured, and focused. Information is shared with other treatment team members, including criminal justice officials. Treatment forces offenders to face the consequences of their behavior on their victims and society.

There is general agreement among the experts that treatment cannot effect a 100% rehabilitation rate. As stated earlier, the goal of treatment is reduce the number of victims. Perhaps the most critical component of the success of a treatment modality lies

in the initial screening process. There are certain patterns of sexual deviancy which do not respond well to treatment. Serial rapists and fixated pedophiles are among the most resistant to treatment. When determining whether to provide treatment services and to whom, policy makers must determine where they can get biggest return on their investment. This means directing scarce treatment resources towards those offenders who have been evaluated through a statistically sound risk assessment tool to be the most amenable to treatment. While sex offenders with life sentences may benefit from some treatment services, treatment will not further the goal of victim reduction as they will not be returning to the community. The question becomes, not whether sex offenders can or should be treated, but rather which offenders can be optimally treated to further the goal of victim reduction when are released back into the community.

XIX. Amenability to Treatment

An offender's amenability to treatment refers to his or her ability to engage in treatment but does not denote the setting in which that treatment takes place nor a prediction about the effectiveness of treatment. The first step in an offender's readiness for treatment is the acknowledgment that he or she committed a sexual offense and an acceptance of responsibility for his or her behavior.[13] Second, he must consider his sexual offending to be a problem behavior that he wants to stop. Finally, the offender must be willing to fully participate in treatment. An offender's informed consent is essential to maintain clarity and ethics in the treatment setting.[14]

Consideration must be given as to how the offender is presented the opportunity to enter into treatment. If treatment offers the offender an improved environment in which to serve his sentence, he may volunteer for purely self-serving reasons. This can significantly impact the effectiveness of treatment. In a preliminary evaluation of a

[13]McGrath, Robert, Ibid., pg. 330.

longitudinal study of sex offenders who received treatment in the California correctional system sex offender treatment program, the researcher Janet Marques indicated that the screening was done through a volunteer process. The treatment participants were removed from a highly secure prison facility and received treatment in a lower custody setting which was a much better facility. There was also an expectation by the participants that treatment participation would positively affect their release date. The results of the treatment program indicated marginal effect on recidivism. According to Dr. Marques, the methodology for selection (treatment facility much better environment) which may negatively impact on the actual motivation of participants was a critical factor in the outcome. Motivation for treatment is a significant factor in treatment effectiveness so selection of program participants must be based upon an objective assessment of the participants and treatment should not be viewed as a reward assignment.

XX. Treatment in the Correctional Setting

As indicated earlier, most correctional settings utilize a combination of psycho-educational group therapies and comprehensive cognitive/behavioral programs. Review of several empirical studies shows encouraging results in the reduction of recidivism using these treatment strategies. Of particular success was the treatment of child molesters and exhibitionists. In a California study, a treatment program showed an impressive impact on sex reoffense rates for rapists: 9.1% as compared to 27.8% for the untreated control group.[15] This same study also found that the treatment group committed fewer nonsex crimes against persons than did the control group. It is important to note that most of the successful programs have a strong relapse prevention component.

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[14] Ibid., pg. 330.

[15] Marques, Janice K., Day, David M. et al., "Effects of Cognitive-Behavioral Treatment of Sex Offender Recidivism", Criminal Justice and Behavior, Vol. 21 No. 1, March 1994, pg. 49.

Virginia's correctional system provides some psycho-educational therapies for sex offenders. The Board of Corrections adopted sex offender treatment as one of its core treatment programs in 1992 and therapy groups are offered at the major institutions. The correctional counselors providing these psycho-educational services are not required to have any specialized training. In 1993 the Virginia General Assembly funded two therapeutic communities for sex offender treatment. Each program was assigned 50 beds in a separate housing unit in a medium security dormitory facility (Bland and Haynesville) and treatment specialists were hired to operate the programs. The therapeutic communities were to use comprehensive cognitive-behavioral treatment strategies. Offender participation was voluntary. There was a provision for an evaluation to be conducted on the program as well.

Budget cuts in 1995 forced the two therapeutic communities to close after a year of operation. All of the treatment specialist positions were eliminated and the inmate participants were returned to the prison's general population. Unfortunately, the short time of the existing programs did not provide any evaluative data as to the efficacy of the treatment.

XXI. Treatment: A Sound Investment

The majority of sex offenders eventually return to the community. Community corrections programs should use treatment as an adjunct to supervision and thereby increase safeguards for the community. Treatment is a management tool for community corrections which should be paired with appropriate sanctions.

Can sex offenders be effectively treated so as to reduce subsequent recidivism? The empirical evidence is unequivocally positive. Not all programs are successful and not all sex offenders profit from treatment but with appropriate risk assessment measures, treatment can lower reoffense rates. It is impossible to measure the cost benefit of reducing human suffering through reducing victims of sexual crimes. However, there

is quantifiable data as to the cost to the criminal justice system for investigating, prosecuting and incarcerating sex offenders. Additionally, there are victim-related expenses for medical and psychological services. A 1% reduction in recidivism will pay for treatment of sex offenders by reducing these other costs. By comparison, treatment costs appear relatively small. Treated offenders are also more likely to make restitution efforts and be available to contribute to the victim's treatment process.

Consideration should be given to reinstating the therapeutic communities for sex offender treatment. Providing treatment throughout the term of incarceration is prohibitively expensive. Assessment and assignment should be done within two years of the offender's probable release date. Once assessment is completed, those high risk offenders who have been identified as amenable to treatment should be placed in a program within the maximum or medium security facility in a separate housing unit. The separation of sex offenders from the general prison population is necessary to establish a therapeutic environment.[16] Research shows that 6-12 months of intensive treatment can secure the desired effects.[17] Treatment should be combined with employment opportunities within the prison, whenever possible. Sex offenders often have sparse employment records and lack vocational and work skills. Work which fosters the development of job skills and responsibility will contribute to the success of treatment goals.

The research indicates that a critical component of efficacious treatment is relapse prevention. Sex offenders need to be able to identify those events which trigger their sexual deviancy. Equally important is the aftercare component. Most sex offenders reoffend within a year of their release. They are usually under the supervision of a parole officer whose typically heavy caseload allows only superficial monitoring of

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[16]Marshall, W.L., Ph.D, Eccles, A., Ph.D. & Barbaree, H.E., Ph.D., "A Three-Tiered Approach to the Rehabilitation of Incarcerated Sex Offenders", Behavioral Sciences and the Law, Vol. 11, 1993, pg.444.

[17]Ibid., pg. 445.

clients. Probation and parole officers do not have any specialized knowledge of the complexities of dealing with sex offenders. In a few probation and parole districts in Virginia, officers have been given a specialized caseload for sex offenders. Use of intensive supervision which requires closer supervision and which limits caseloads to 25 offenders is more successful in providing the aftercare and supervision needed by many sex offenders. Probation and parole officers who work with sex offenders should understand the dynamics of sexual offending through additional specialized training. There should also be post release treatment services available in the community. The task force recommended increased funding for probation and parole officers to purchase treatment services for sex offenders under supervision.

XXIII. Development of Database and Evaluation of Sex Offender Notification

During the deliberations of the Task Force, there was discussion on developing a database on offenders who are on the Sex Offender and Crimes Against Minors Registry. The database should include information on employment, living arrangements, treatment participation, criminal history records and other relevant data. This will give the Commonwealth the opportunity to monitor the effects of community notification on rearrest rates and reoffense rates. It will also be valuable in evaluating the effectiveness of the community notification legislation. The Task Force recommended that the Crime Commission seek Edward Byrne funds through the Department of Criminal Justice Services to develop the database.

The Crime Commission's two year study on "Megan's Law" has resulted in many changes to state policy as well as major legislative changes. Staff recommends that the Crime Commission extend the study one additional year to monitor the implementation of the legislative changes. The Commission should work closely with the state agencies responsible for the implementation and with other interested parties such as victim

organizations to determine if modifications to the community notification legislation are needed.

XXIII. Other Public Safety Considerations for Sex Offenders

Registering, monitoring, and notifying the community of the presence of a sex offender are policies designed to promote public safety when an individual has been convicted of a sex offense. Some consideration should be made to address the front end of the process. A significant number of sex offenses charges are reduced through plea agreements. Such pleas often contribute to the reinforcement of the sex offender's propensity for denial; that is, a frequent refusal to acknowledge the seriousness of their crimes or to take responsibility for the harm they have caused. These pleas often do not involve the victim and may result in the victim feeling that the very system which is designed to protect him or her actually revictimizing through lessening of the punishment for the offender. Victims must be given the opportunity, either in writing or orally, to present the impact of a sex offense on them. Consideration should be given to mandating that judges take into consideration such victim impact statements prior to accepting a plea agreement in a sex offense charge.

Many cases result in a no contest plea. This allows the offender to avoid a direct admission of guilt. This type of plea will give the offender justification to continue his or her denial after conviction. Pleas which reduce a sex offense to a nonsexual offense also contribute to a reinforcement of denial. Such pleas will protect the offender from going on a registry or being subject to notification as well.

Deferred judgments or sentences, referrals to diversion programs are potentially harmful to the public and, more specifically, to the victim. Such dispositions may in fact protect the offender from having to register if the offender successfully completes the conditions imposed for a limited period and the conviction is dropped.

These are issues which can most appropriately be addressed through judicial and prosecutorial training. The Crime Commission recommends that the Supreme Court and the Commonwealth Attorneys' Training Council conduct joint training on the prosecution and disposition of sex offenses, with specific emphasis on the impact of plea agreements and deferred sentences on conviction data, sex offender registration, and community notification. The training curriculum should also include an overview of statutory changes to the Sex Offender and Crimes Against Children Registry and proposed sex offender notification legislation.

Another related issue to addressing the problem of sex offending is that of civil commitment of sex offenders who have served their sentence but are still considered to be very dangerous and predatory. Several states have included this process in their overall sex offender legislation. The United States Supreme Court recently upheld civil commitment for certain sex offenders in the *Kansas v. Hendricks* decision. While the concept of civil commitment was legalized, there were a number of procedural safeguards which states must meet in order to meet the legal challenges to civil commitment of sexual predators.

Civil commitment of sexual predators occurs after a sex offender has completed his or her sentence, is identified as unresponsive to treatment and continues to be a major threat to the public. The offender is referred for a clinical evaluation to determine if he is a "sexual predator". The procedure follows the process for a civil commitment for an individual who is found to be mentally ill. The Court ruled that the legislation did not implicate the two primary objectives of criminal punishment: retribution or deterrence. The following is a summary of the civil commitment procedures:

1) The confined person has: a) been convicted of a sexually violent offense and is scheduled for release; b) the person has been charged with a sexually violent offense but found incompetent to stand trial; c) the person has been found "not guilty by reason of insanity of a sexually violent offense; d) the person has been found not guilty of a

sexually violent offense because of a mental disease or defect. These are the four possible criteria for consideration for civil commitment.

2) The custodial agency (Dept. of Corrections) notifies the prosecutor 60 (changed to 90) days prior to anticipated release of a person who meets the above criteria. The prosecutor has 45 days to determine is he/she wants to file a petition in court seeking the person's involuntary commitment. If the petition is filed, the court determines if there is probable cause to support a finding that the person is a sexually violent predator. The commitment proceedings can only be initiated when a person has been convicted or charged with a sexually violent offense and suffers from a mental abnormality or personality disorder which makes him likely to engage in predatory acts of sexual violence.

3) If the finding is affirmative, the person is then given a clinical evaluation. If this evaluation affirms that the person is a sexually violent predator, a trial is held to determine if the person is a sexually violent predator "beyond a reasonable doubt".

4) If the trial phase determines that the person is, indeed, a sexually violent predator, the person is transferred to the custody of the Secretary of Social and Rehabilitation Services (our equivalent is the Secretary of Health and Human Resources) for the "control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large."
The burden of proof rests with the State.

Several procedural safeguards must be in place:

*The individual must be provided counsel and a mental health examination.

*Individual may present and cross-examine witnesses and review evidence of the State.

*Committing court reviews the commitment status at least annually.

*Secretary can decide at any time if the individual's condition has changed and release is appropriate.

*Individual can file at any time a release petition.

The initial trigger indicates that the person must be found not amenable to existing mental illness treatment. Virginia's prisons have no treatment programs at this time. In order to pass the litmus test there must be some treatment attempt during incarceration to determine if, in fact, the person is not amenable to such treatment.

The annual cost per commitment in Virginia is approximately $125,000 in the mental health system. Annual cost of incarceration per inmate is approximately $18,000. Many states with sexual predator civil commitment statutes are re-examining this policy due to the cumulative costs to the state. The Supreme Court ruling makes it clear that these commitments must be made to the mental health system, not the corrections system, to avoid a violation of double jeopardy or punishing twice.

Members of the Crime Commission discussed the many ramifications of adopting a civil commitment statute in Virginia. It was felt that more time was needed to address the myriad of factors which are necessary for a civil commitment statute: Virginia's mental health system does not currently have a facility which would be appropriate for such commitments; the mental health institutions do not routinely provide sex offender treatment; and the cost factors for civil commitment are unknown at this time. Staff recommended that the Crime Commission introduce a study resolution to the 1998 General Assembly directing the Crime Commission to study the issue of civil commitment of sexual predators and report its findings and recommendation to the 1999 General Assembly.

XXIV. Conclusions

An article in GOVERNING magazine stated that the national average for the proportion of the prison population serving time for a sexual offense was one in 7.[18] According to the Virginia Department of Corrections, sex offenders comprise approximately 16 percent of the State's inmate population, which is below the national average. Even this is a rather startling statistic when one considers its implications. There has been an apparent increase in the number of sexual crimes perpetrated. Another reason we see an increase in this type of offender is the increasing public consciousness on the subject of sexual offending. Both print and broadcast media have focused significant attention on the issue of sexual offenders in the last ten years. This has resulted in more victims of sexual abuse coming forward and more convictions of perpetrators.

Sex offenders are among the most maligned of all offender groups, and for good reason. They prey on the vulnerable and the powerless. The public response to the increased attention to sexual predators has been an outcry for stiffer punishment. The "Willy Horton" and "Polly Klass" horror stories inflame public sentiment and the response has been the passage of tougher laws in most states. Forty-three states have passed a central registry law which requires convicted ex-sex offenders to register with local authorities when moving into a community. There is a usually a special designation on the offender's driver's license to indicate that he has been convicted of a felony sex offense. Virginia adopted a sex offender registry in the 1994 General Assembly. Also longer sentences for certain violent sex offenses have been adopted. Virginia should now move forward to provide for notification to the public when certain predatory sex offenders are released back into the community.

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[18] Henderson, Andre, "The Scariest Criminal", GOVERNING, August 1995, pg. 35.

Who are convicted sex offenders? While sex offenders may differ as much as their individual crimes, there are some similarities. The typical sex offender can be described as a young white male adult with less than a high school education. He usually has between 40-60 victims prior to his first conviction. According data from the Criminal Justice Research Center with the Virginia Department of Criminal Justice Services, over one-fourth of Virginia's sex offenders were unemployed when they committed their offense, forty-three percent of convicted sex offenders had previously undergone some form of mental health treatment. One in four convicted sex offenders had a family member with a felony conviction. Only 32% of offenders convicted of rape or forcible sodomy had no prior convictions.[19]

The Research Center report revealed some frightening data on victims as well. According to the report, eighty percent of all victims of convicted sex offenders were children and over half of the child victims were under the age of 13 years. Children accounted for 94% of all victims of aggravated sexual battery convictions and 62% of all victims of rape/sodomy convictions were children. The largest proportion of sexual offenses were perpetrated by a male offender against a female victim (85%).[20] Child victims are more likely to be sexually assaulted by someone they know while at least half of the assaults on adult victims are perpetrated by strangers. These chilling statistics indicate the predatory nature of sexual offenses.

It is important to educate the public on the dynamics of sex offending. Registration of sex offenders, notification to the public when high risk sex offenders move into a community are important components of an overall strategy for public safety but they are not a panacea. Teaching the public to protect themselves is a critical part of the same strategy. Public awareness also enhances the beneficial effects of registration and notification.

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[19]Criminal Justice Research Center, Convicted Sex Offenders, August 1994, pp. 10-11.

The conclusions reached in this report also demonstrate a need for Virginia to reinstate its intensive sex offender treatment programs. The two therapeutic communities recently eliminated should be funded in the next General Assembly. The two 50 bed units should operate for three years and have an evaluation conducted on participants one year after their release. As a part of the long term funding proposal for sex offender treatment, plans should be developed for a strong post incarceration supervision component. This should include intensive supervision and community based treatment services for sex offenders . Once the data is available to indicate the actual impact of Virginia's two pilot projects, consideration should be given to expanding intensive sex offender treatment to those offenders who have been assessed and identified as appropriate or amenable for treatment services.

Incarceration alone does not work. Treatment, combined with punitive measures, improves the chances that the sex offender will not return to prey upon the innocent and the vulnerable. It improves the safety of our children. It also has the potential to realize cost benefits over time in reduced prosecutions, reduced convictions, and reduced prison bed needs. It also reduces the costs associated with victims, many of which are incalculable. Treatment makes good economic sense and good moral sense.

Finally, the State must evaluate its efforts towards enhancing public safety through a thorough evaluation and monitoring of the implementation of sex offender registration and community notification policy implementation. The goal of the legislative changes is to reduce victimization and reoffense. A secondary goal is to expedite rearrests when the sex offender does reoffend. Towards that end the Crime Commission should seek funds to develop a database and evaluation of Virginia's policies on sex offenders.

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[20] Ibid., pp.12-13.

Examination of Virginia's policies on sex offenders should continue. The Crime should extend its review of the community notification and its implementation as well as examine the feasibility of passage of civil commitment for sexual predators in Virginia.

XXV. Findings and Recommendations:

Finding A:

The current Virginia Sex Offender and Crimes Against Children Registry is not in compliance with the registration requirements of the federal Jacob Wetterling Crimes Against Children Act.

Recommendation 1. **Expansion of crimes included in the Sex Offender and Crimes Against Minors Registry**

Propose that the registry be expanded to include:

a) Marital sexual assault.

b) Breaking and entering with intent to rape.

c) Aggravated sexual battery.

The proposed expansion will increase the volume of registrations by approximately 6,000 annually. This will place a serious burden on the Department of State Police to maintain the Registry. In order to address the capacity for the increased workload the following resources will be needed:

• **Program Support Technician Senior**	**$33,594.75**
• **Office Services Specialist**	**$28,111.05**
• **2 Personal Computers**	**$3,877.42**
• **2 Printers**	**$2,192.20**
• **2 Workstations**	**$6,000.00**
	$73,775.42

Recommendation 2. **Expand the crimes in the "sexually violent" category**

Task Force has also proposed an additional crime in the "sexually violent offense" category. Information on prison bed impact, etc. is still pending. The additional crime proposed is: 1. Abduction of a minor with intent to defile or abduction of a minor with intent to prostitute in the sexually violent crimes. Attempts in the "sexually violent offense" category should also be included.

Finding B:

The statutory changes proposed by the task force will significantly change the policies on sex offenders in Virginia. It is important that both the judiciary and prosecutors in the Commonwealth fully understand the impact of sentencing decisions and plea agreements on sex offenses.

Recommendation 1. **Judicial and prosecutorial training**

Staff recommends that the Supreme Court conduct comprehensive judicial training, both on the sexually violent designation and the public access to information. Staff also recommends that the Commonwealth Attorneys Training Council conduct similar training with emphasis on the impact of plea bargains on registration and release of information on certain sex offenders.

Finding C:

There needs to be statutory clarification on the manner in which registration violations are enforced.

Recommendation 1. **Registration Monitoring and Enforcement**

The Task Force has proposed that the State Police assume the responsibility for the enforcement of registration requirements as they are the designated agency for maintenance of the Registry. State Police will notify the appropriate local authority to issue a warrant when the offender fails to comply with registration requirements. The

legislation will clarify the role of the State Police in enforcement as well as clarify that local law enforcement will assist the State Police in the requisite re-registrations.

Finding D:

The Code of Virginia currently prohibits the release of information on the Sex Offender and Crimes Against Children Registry to the public except by statutory reference. The federal Jacob Wetterling Crimes Against Children Act mandates the release of such information for the purpose of enhancing public safety. Virginia must enact a broader access law or lose ten percent of its Byrne anticrime monies ($1 million). Equally important is the public's interest in having access to information on the Registry.

Recommendation 1. **Public Access Legislation**

The Task Force has proposed that Virginia adopt a system of information access wherein information is released upon request.

The Task Force has proposed a progressive system of access to information on the Sex Offender and Crimes Against Minors Registry which includes:

Class I: Creating a web site with a directory of sex offenders convicted of "sexually violent crimes". **Cost: Approximately $750,000 to develop the web page.**

Class II: Making information on the Sex Offender Registry available upon request to local law enforcement or the State Police. Request forms will be developed by the Department of State Police and made available through local law enforcement offices as well as other sites. **Cost: Forms-$2,000 Cost: Modification of system of 7 existing programs and include 3 new programs-$42,000**

Information may be disseminated in the Class II category for the purpose of enhancing public safety. Request should include a name, address, and purpose for the request.

There will be specific prohibitions against acts of intimidation or harassment.

The Task Force also proposed that all schools, licensed daycare facilities, and other organizations serving vulnerable populations could request the receipt of an automatic notice when a registered sex offender moves into a community.

Cost: Create database for daycare centers and schools to produce letters or transmit electronically-$48,000

Recommendation 2. **Redesignation as a "Sexually Violent Offender"**

The Task Force proposes legislation which requires that a sex offender convicted of a second or subsequent non "sexually violent offense" undergo an assessment by the Department of Corrections to determine if the offender should be reclassified as a "sexually violent offender" and therefore subjected to the more stringent registration and information dissemination requirements.

Finding E:

The Task Force found that the enhanced availability of information is only one factor in increasing public safety against sexual predators. Equally important is providing intensive supervision to sex offenders in the community and monitoring these offenders closely. The General Assembly approved additional probation & parole positions for intensive supervision in the 1997 General Assembly but did not provide sufficient funds to fill those positions.

Recommendation 1. **Community Management of Sex Offenders**

Recommend that the probation & parole positions authorized in the last budget cycle be fully funded:

Cost: FY99 $885,000* FY2000 $905,000*

*(This budget item was included in the Governor's 98-00 biennial budget)

Recommendation 2. **Treatment Services for Offenders**

Recommend that community resources be made available to probation & parole offices for purchase of sex offender treatment services for offenders under supervision:

Cost: FY99 $1,431,250 FY2000 $1,431,250

Finding F:

Providing open access to the Sex Offender Registry will be a major departure from current state policy. It is important to determine if the proposed method of releasing information is effective as well as determine the impact of such policy changes on criminal recidivism of sex offenders in order to adjust both the legislation and state budget, if necessary, to enhance the goal of reducing the incidence of sex offenses in the Commonwealth.

Recommendation 1. **Sex Offender Database**

Seek Byrne funds to modify the Sex Offender and Crimes Against Children Registry to monitor and evaluate the impact of the expansion of available information on the Sex Offender Registry.

Recommendation 2. **Crime Commission Study Resolution to Monitor Implementation of Public Access Legislation**

Staff recommends that the Commission introduce a study resolution to the 1998 General Assembly which directs the Commission to monitor the implementation of the legislation and to make its findings and recommendations for modification, if needed, to the 1999 General Assembly.

Finding G

As an adjunct to the "Megan's Law" study, a subgroup was formed to examine the feasibility of introducing legislation on the civil commitment of sex offenders. This procedure was upheld in the summer of 1997 by the U.S. Supreme Court in *Kansas v.*

Hendricks. Civil commitment occurs after an offender has served his sentence but is considered to be dangerous to the public and unresponsive to treatment. A civil commitment hearing is held to determine if he should be involuntarily committed to the mental health system.

Other states with such civil commitment have experienced the ever increasing expense of this approach. In Virginia it costs approximately $20,000 annually to house an inmate; commitment in a mental health facility costs approximately $125,000 annually. The Court made it clear that this procedure would only pass constitutional muster if the offender were in the mental health system, not the correctional system. In discussing this with officials from Virginia's mental health system, staff found that there are no appropriate secure mental health facilities available at this time. Sex offender treatment, which the Court also requires, is not available. The Commission recommended that the Crime Commission conduct a separate study on civil commitment in the next year and make recommendations to the 1999 General Assembly.

Recommendation 1. **Study Resolution on Civil Commitment of Sex Offenders**

XXVI. Acknowledgments

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Appendix A

SJR 249 Study Resolution

SENATE JOINT RESOLUTION NO. 249

Continuing the Virginia State Crime Commission's study of "Megan's Law."

Agreed to by the Senate, February 20, 1997
Agreed to by the House of Delegates, February 20, 1997

WHEREAS, Congress passed an amendment to the Jacob Wetterling Crimes Against Children Act, known as "Megan's Law," in April, 1996; and

WHEREAS, the Virginia State Crime Commission undertook a study to formulate Virginia's response to the federal legislation; and

WHEREAS, the Virginia State Crime Commission found that Virginia needed to address a number of issues in the Jacob Wetterling Act in order to be in compliance by October 1997; and

WHEREAS, the Virginia State Crime Commission recommended a number of legislative measures to the 1997 Virginia General Assembly and to the Governor which would improve registration and tracking of sex offenders in the Commonwealth; and

WHEREAS, the Virginia State Crime Commission recommended legislation to establish a "sexually violent predator" designation; and

WHEREAS, the Virginia State Crime Commission recommended that the legislation for implementation of "Megan's Law," or public notification of the presence of a sex offender in a community, be addressed in the second year of the study in order to make the changes to the Sex Offender Registry; and

WHEREAS, there are legal and public safety implications related to the passage of a public notification of sex offenders; and

WHEREAS, the Virginia State Crime Commission is working with professionals from law enforcement, corrections, the judiciary, and mental health to develop notification legislation which will enhance the safety of all Virginians, especially the children, and withstand legal challenge; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to continue its study of "Megan's Law". The commission shall develop legislation for public notification of sex offenders for consideration by the 1998 Session of the Virginia General Assembly.

All agencies of the Commonwealth shall provide assistance to the commission, upon request.

The commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B

"Megan's Law" Draft Legislation

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 19.2-298.1 through 19.2-298.4, 19.2-299 and 19.2-390.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-390.2, 19.2-390.3 and 53.1-145.1, relating to sex offenders; community notification.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.1 through 19.2-298.4, 19.2-299 and 19.2-390.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 19.2-390.2, 19.2-390.3 and 53.1-145.1 as follows:

§ 19.2-298.1. Registration required of persons convicted of certain offenses.

A. For purposes of this section:

"Offense for which registration is required" means a violation or attempted violation of ~~or attempts of~~ §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, 18.2-90 with the intent to commit rape, 18.2-370, 18.2-370.1, or a "sexually violent offense," or where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361 or subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1.

"Sexually violent offense" means a violation or attempted violation of clause (i) or (ii) of 18.2-48 §§ 18.2-61, 18.2-67.1, 18.2-67.2 ~~or~~, subdivision A 1 of § 18.2-67.3 or subsection A of § 18.2-67.5. For purposes of the registration requirements of this section through 19.2-298.4, the term includes a violation or attempted violation of §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, 18.2-90 with the intent to commit rape, 18.2-370, 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of §

18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-3 or subdivision B 1 of § 18.2-374.1, if (i) the person has been convicted of two or more such offenses occurring within a ten-year period, provided that person had been at liberty between each such conviction, and (ii) based upon the assessment conducted pursuant to § 19.2-390.3, the person is classified as a sexually violent offender.

B. Every person convicted on or after July 1, 1997, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269, whether sentenced as adults or juveniles, of an offense for which registration is required shall be required as a part of the sentence imposed upon conviction to register and reregister with the Department of State Police as provided in this section. The court shall remand the person to the custody of the local law-enforcement agency of the county or city for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the Department of State Police for inclusion in the Sex Offender and Crimes Against Minors Registry established pursuant t 19.2-390.1. The court shall order the person to provide to the local law-enforcement agency all information required by the State Police for inclusion in the Registry.

It shall be the duty of the local law-enforcement agency to forward to the State Police all the necessary registration information within seven days of the date of sentencing and to promptly provide to the State Police such information as is necessary for any reregistration.

C. Every person serving a sentence of confinement or under community supervision on July 1, 1997, for an offense for which registration is required shall be required to register with the Department of State Police and shall be given notice of the duty to register pursuant to § 53.1-116.1 or § 53.1-160.1 as appropriate.

D. Every person required to register shall register within ten days of his release from confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within ten days of suspension of the sentence or in the case of a juvenile, of disposition. In addition, all persons convicted of violations under the laws of the United Sta or any other state substantially similar to an offense for which registration is required shall

obtain from the local law-enforcement agency of the jurisdiction in which he has established residence two sets of fingerprints and two photographs of a type and kind specified by the State Police for inclusion in the Registry and shall provide to the local agency all necessary information for inclusion in the Registry within ten days of establishing a residence within the Commonwealth. The local law-enforcement agency shall advise the person of his duties regarding reregistration~~, and shall promptly submit all necessary registration information to the State Police~~. Any person required to register shall also be required to reregister within ten days following any change of residence, whether within or without the Commonwealth. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

The local law-enforcement agency shall promptly submit to the State Police all necessary information for registrations and reregistrations pursuant to this subsection.

E. The registration shall be maintained in the Registry established pursuant to § 19.2-90.1 and shall include the person's name, all aliases which he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current address and a description of the offense or offenses for which he was convicted and shall, if applicable, provide the same information on convictions prior to July 1, 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state.

F. Every person required to register under this section, other than a person convicted of a sexually violent offense but including persons required to register prior to July 1, 1997, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense, including persons convicted of a sexually violent offense who were required to register prior to July 1, 1997, shall reregister with the State Police every ninety days from the date of initial registration. For purposes of this section, reregistration means that the person has notified the State Police, confirmed his then current

address and provided such other information, including identifying information, which the State Police may, pursuant to this section and by regulation, require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony. Jurisdiction for prosecution of a violation of this section shall lie in the jurisdiction where the offender is found, or if he is found outside of the Commonwealth, in the jurisdiction of his last known residence in the Commonwealth.

Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly cause a warrant for the arrest of the person to be issued and shall notify the local law-enforcement agency of the jurisdiction of the offender's last known residence as shown in the records of the State Police

§ 19.2-298.2. Duration of registration requirement.

Any person required by § 19.2-298.1 to register or reregister shall be required to register for a period of ten years from the date of initial registration. However, any person who has been convicted of (i) two or more offenses for which registration is required or (ii) any sexually violent offense, including any such person who has been determined to be a sexually violent offender based upon an assessment conducted pursuant to § 19.2-390.3, shall have a continuing duty to re-register, for life.

Any period of confinement in a state or local correctional facility, hospital or any other institution or facility during the otherwise applicable ten-year period shall toll the registration period and the duty to reregister shall be extended.

§ 19.2-298.3. Expungement from Registry.

A. Any person required by § 19.2-298.1 to register, other than a person who has be convicted of two or more offenses for which registration is required or who has been convicted of any sexually violent offense as defined in § 19.2-298.1, may petition the circuit court in

which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be filed earlier than ten years after the date of the initial registration pursuant to subsection D of § 19.2-298.1. The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least twenty-four months from the date of the denial to file a new petition for removal from the registry. A petition for expungement shall not be granted to any person convicted of two or more offenses for which registration is required or convicted of any sexually violent offense.

B. The name of any person required to register under § 19.2-298.1 and all identifying information shall be removed from the Registry by the Department of State Police upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which e person is required to register under § 19.2-298.2.

§ 19.2-298.4. Relief from registration for sexually violent offenders.

A. Upon expiration of three years from the date upon which the duty to register is imposed, any person convicted of a sexually violent offense as defined in § 19.2-298.1 may petition the court in which he was convicted for relief from the requirement to reregister every ninety days. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers as defined in § 54.1-3600. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the ceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that the person does not suffer from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the duty to reregister every ninety days shall be terminated. The person shall, however, be under a continuing duty to register annually in accordance with subsection F of § 19.2-298.1.

B. Within thirty days of receipt of notice from the Department of Corrections pursuant to § 19.2-390.3 indicating that a person convicted of an offense for which registration is required has been determined to be a sexually violent offender pursuant to § 19.2-390.3, the person may petition the court in which he was convicted for relief from the requirement to reregister every ninety days. The court shall hold a hearing on the petition on notice to the attorney for the Commonwealth and the Department of Corrections to determine whether, based upon assessment and such other evidence as may be presented at the hearing, the person has been properly assessed as a sexually violent offender.

C. If the petition is denied, the duty to reregister every ninety days shall continue. An appeal from the denial of a petition shall lie to the Supreme Court.

A petition for relief pursuant to this section may not be filed within three years from the date on which any previous petition for such relief was denied.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court upon a felony charge or upon a charge of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, and is adjudged guilty of such charge, the court may, or on the motion of the defendant sh before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as

an adult and available juvenile court records, and all other relevant facts, including but not limited to a violent sex offender assessment, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written

statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

§ 19.2-390.1. Sex Offender and Crimes Against Minors Registry; maintenance; access.

A. The Department of State Police shall keep and maintain a Sex Offender and Crimes Against Minors Registry, separate and apart from all other records maintained by it. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children.

The Registry shall include conviction data received from the courts, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, on convictions for offenses for which registration is required as defined in § 19.2-298.1 and registrations and reregistrations received from persons required to do so by § 19.2-298.1, whether such requirement arose before or after July 1, 1997.

The Registry shall also include a separate indication that a person has been convicted of a sexually violent offense.

Upon receipt of a registration or reregistration pursuant to § 19.2-298.1 the State Police shall forthwith notify the chief law-enforcement officer of the county, city or town of the locality listed as the person's address on the registration or reregistration and any person who has requested electronic notification pursuant to § 19.2-390.2. The State Police shall forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for ~~the~~

inclusion in the National Sex Offender Registry. The State Police shall promulgate regulations governing the giving of notice to the chief local law-enforcement officer, the operation and maintenance of the Registry and the expungement of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement or relief from frequent registration has been entered pursuant to §§ 19.2-298.3, 19.2-298.4 or § 19.2-392.1.

B. Except as provided in subsection A, C or D, Registry information shall be disseminated, only upon request, ~~only to authorized officers or employees of (i) a criminal justice agency, as defined by § 9-169; (ii) a public school division; (iii) a private, denominational or parochial school; or (iv) a child welfare agency or a registered or unregistered small family day care home as defined in § 63.1-195.~~made directly to the Department of State Police or to State Police through a local law-enforcement agency. Such information may be disclosed to (a) any public, parochial, denominational, or private elementary or secondary school and any state regulated or licensed child caring institution, child day caring center, child day care program, family day home, foster home or group home or (b) to any person seeking child minding or day care services requesting information on a specific individual or (c) any other person requesting information on a specific individual. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used ~~only~~ for the purposes of the administration of criminal justice ~~or~~, for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular. ~~Further dissemination of such information or use~~ Use of the information for purposes not authorized by this section is prohibited and a willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 1 misdemeanor.

The VCIN and any form or document used by the Department of State Police disseminate information from the Registry shall provide notice that any ~~further or~~ unauthorized ~~dissemination of~~ use of the information with the intent to harass or intimidate another is a crime punishable as a Class 1 misdemeanor. The Department of State Police may by regulation establish a fee not to exceed fifteen dollars for responding to requests for information from the Registry pursuant to this subsection. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

C. ~~Notwithstanding subsection B, Registry information~~ Information regarding a specific person pursuant to clause (b) of subsection B shall be disseminated~~,~~ upon receipt of an official request form~~, to any person who is seeking child minding or day care services~~ which may be submitted directly to the State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information ~~and~~; the name, address~~,~~ and, if known, the social security number ~~and signed consent~~ of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification. ~~Registry information provided under this section shall be used only for the purposes of screening current or prospective employees or volunteers seeking to provide child minding or day care services. Further dissemination of such information or~~ Unlawful use of the information for purposes ~~not authorized by this section~~ of intimidating or harassing another is prohibited and a willful violation of this section shall be punished as a Class 1 misdemeanor.

For purposes of this section, the term "day-care services" means provision of supplementary care and protection during a part of the day for the minor child of another, and "child-minding services" means provision of temporary custodial care or supervisory services for the minor child of another.

~~No liability shall be imposed upon any law enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements~~

~~of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.~~

D. On or before January 1, 1999, the State Police shall develop and maintain a system for making certain registry information on violent sex offenders publicly available by means of the Internet. The information to be made available shall include the offender's name, all aliases which he has used or under which he may have been known, the date and locality of the conviction and a brief description of the offense, his date of birth, social security number, current address and photograph and such other information as the State Police may from time to time determine is necessary to preserve public safety. The system shall be secure and not capable of being altered except by or through the State Police. The system shall be updated daily with newly received registrations and reregistrations.

E. No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.

§ 19.2-390.2. Electronic notification of registration to certain entities.

Any public, parochial, denominational or private elementary or secondary school and any state regulated or licensed child caring institution, child day center, child day program, family day home, foster home or group home may register with the State Police pursuant to this section and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender registered pursuant to § 19.2-298.1. Agencies entitled to this notification which do not have the capability of receiving such electronic notice may register with the Department of State Police to receive written notification of sex offender registration or reregistration.

Within three business day of receipt by the State Police of registration or reregistration pursuant to § 19.2-298.1, the State Police shall electronically or in writing notify an entity which

has registered for notification and which is located in the same zip code area as the address of the offender as shown on the registration or any numerically contiguous zip code area.

The State Police shall establish reasonable guidelines governing the electronic dissemination of registry information pursuant to this section, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

§ 19.2-390.3. When certain persons may be registered as sexually violent offenders.

Whenever the Department of Corrections receives a record of conviction for a violation or attempted violation, committed on or after January 1, 1999, of §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, 18.2-90 with the intent to commit rape, 18.2-370, 18.2-370.1, or where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1 and determines through the presentence investigation that (i) the person has previously been convicted of any such offense or of a sexually violent offense as defined in § 19.2-298.1, (ii) such prior offense was committed within the ten years immediately preceding the date of the current offense and (iii) the person was at liberty between each such conviction, the Department shall notify the person convicted and a probation officer of the court in which the most recent conviction was had. The notice to the person shall advise him that based upon an assessment to be conducted by the local probation and parole office, he may be subject to the registration requirements imposed upon sexually violent offenders pursuant to § 19.2-298.1. Upon receipt of the notice, a local probation officer shall conduct an assessment of the offender using the assessment instrument developed by the Department of Corrections pursuant to § 53.1-145.[1] The assessment shall be completed and the results sent to the State Police and the person within fourteen business days from the Department of Corrections. If the assessment so

indicates, the State Police shall thereafter treat the offender as a sexually violent offender for purposes of §§ 19.2-298.1 through 19.2-298.4, unless relief has been granted pursuant to § 19.2-298.3

§ 53.1 -145.1. Sex offender assessment instrument.

Prior to January 1, 1999, the Department of Corrections shall develop a sexually violent offender assessment instrument and procedure for use by probation and parole officers in determining whether persons convicted of two or more specified sex offenses should be subject to the registration requirements imposed upon sexually violent offenders pursuant to § 19.2-298.1. The assessment shall include an evaluation of the offender's prior criminal history, the nature and circumstances of the offenses and such other information as the Department determines is predictive of the relative threat to public safety.

#

Appendix C

Review of 32 States' Legislation

Sex Offender Community Notification: A Review of Laws in 32 States

Scott Matson
with
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April 1996

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CONTENTS

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Sex Offender Community Notification: A Review of Laws in 32 States

EXECUTIVE SUMMARY

Community notification refers to the distribution of information regarding released sex offenders to citizens and community organizations. This report analyzes the 32 states with legislation authorizing some form of notification, or access to information, on registered sex offenders. The states can be organized into the following categories:

- **Broad community notification.** This category includes states authorizing the broad release of sex offender information to the public. This type of notification is authorized in 13 states.

- **Notification to organizations and individuals at risk.** In this version of notification, information is released based on the need to protect an individual or vulnerable organization from a specific offender. Laws allowing this type of notification exist in 8 states.

- **Access to registration information.** The 11 states in this category allow access by citizens or organizations to sex offender information through local law enforcement.

Almost two-thirds of the states that authorize notification have enacted guidelines and procedures for notification into state law. A few states require specific *Community Notification Guidelines Committees* to establish procedures. These procedures cover the type of offenders subject to notification, how and what information is disseminated, and who is notified. The remaining one-third states' statutes authorizing notification allow broad discretion to public officials in their decision-making.

Community notification has been subject to challenges on constitutional grounds, most frequently based on the argument that notification represents additional punishment. Injunctions, or temporary restraining orders, are in place in *Alaska*, *New Jersey*, and *New York* and are under appeal. In *Washington* State, an injunction is in effect for specific individuals and is also being appealed.

The analysis of state statutes reveals the following:

- Generally, notification is reserved for those offenders *assessed as high risk* or those *convicted of offenses against children.*

- *Approaches and methods* for notification *vary*, with typical methods being press releases, flyers, ads in newspapers, and direct mailings.

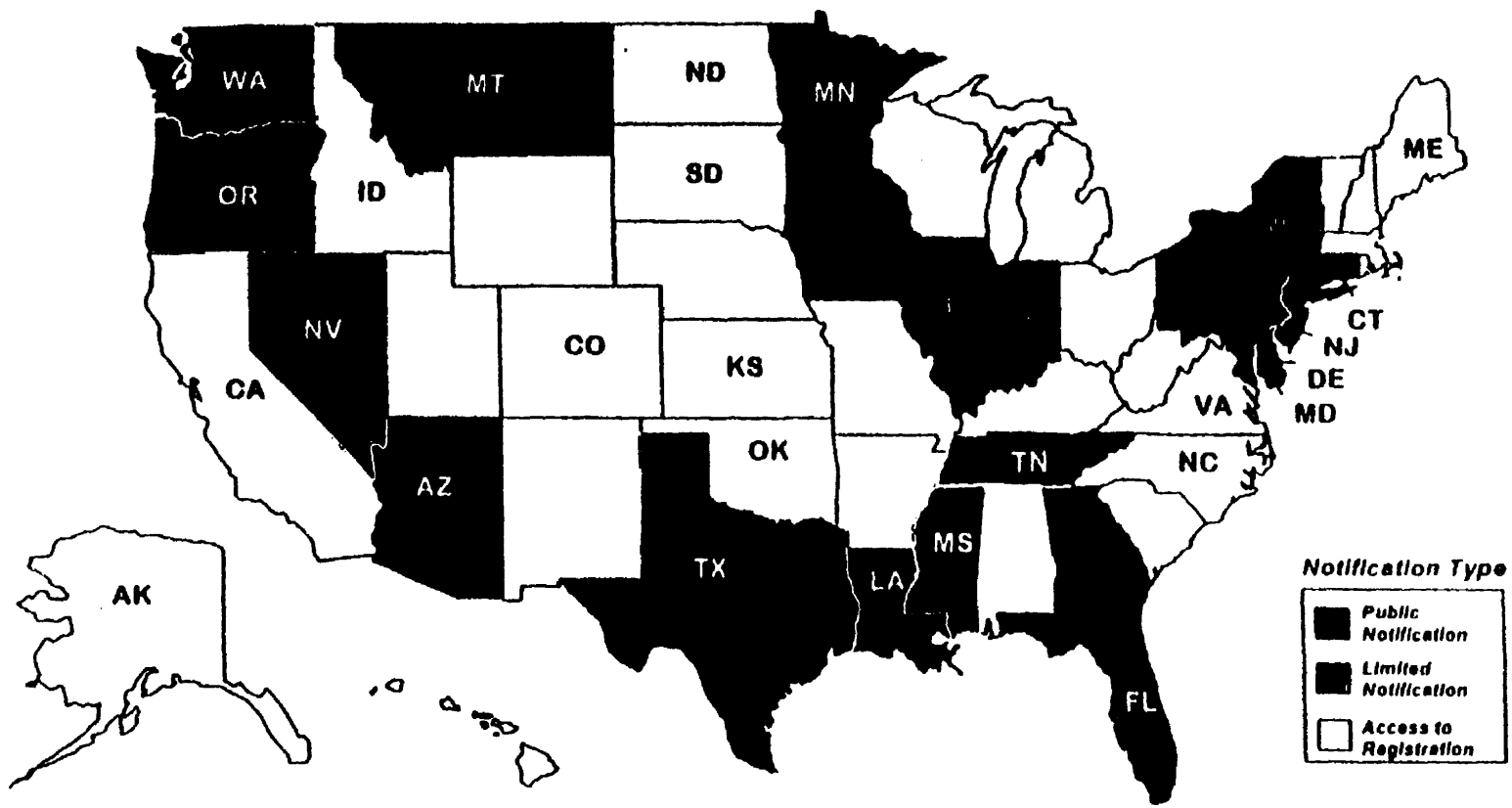
- The notification *typically includes*, name, description or photo, address or approximate address, description of crime, and age of the victim.

- Some states use *specific risk assessment instruments* to determine an offender's risk of re-offending, and whether an offender should be subject to notification.

- State organizations often develop *rules and procedures* for carrying out community notification, with local organizations generally responsible for carrying out the actual notification.

- States that maintain registries locate them with a *state agency*. Typically, citizens have access, however a few states only allow access to organizations dealing with children.

32 States Have Sex Offender Community Notification Laws or Allow Access to Sex Offender Registration Information



WSIPP MARCH 1996

The following states do not have sex offender community notification laws and do not allow access to registration records: AL, AR, HI, KY, MA, MI, MO, NE, NH, NM, OH, RI, SC, UT, VT, WI, WV, WY

BACKGROUND

The term **community notification** refers to the distribution of information regarding released sex offenders to citizens and community organizations. In some states, citizens are notified about the release of all sex offenders from incarceration. In other states, community notification is authorized only when it is deemed necessary to protect the public from a specific offender being released from incarceration. In these instances, the offender may be classified as a habitual or predatory sex offender, and someone who has shown little ability to reform.

As part of federal legislation, title XVII of the Violent Crime Control and Law Enforcement Act of 1994 requires states to create registries of offenders convicted of crimes against children or sexually violent offenses. This Act also encourages states to authorize the release of relevant registration information to the public, when necessary for the public's protection. States that do not comply with this Act's provisions can be penalized by ten percent of funds normally received under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968.

Sex offender registration laws have existed for several years; *California* has the nation's oldest law, enacted in 1944. Community notification laws, however, were initiated in the 1990s. The first community notification law was a provision of *Washington* State's *Community Protection Act* of 1990. *Washington's* community notification law authorizes local law enforcement agencies to disseminate information to the public regarding convicted sex offenders who reside in the community. Many states have followed *Washington's* lea by enacting community notification laws; some laws are modeled after *Washington's* approach and some take new approaches.

ORGANIZATION

This report provides a detailed analysis of state statutes covering community notification.[1] Thirty-two states are included in this report; statutes vary in form and function. For this reason, we have organized the analyses into three categories, based on form of community notification.

1. **Broad community notification.** This category includes states which authorize the *broad release of information* regarding released sex offenders to the public.

[1] Information was collected from February to April 1996, from states known to have sex offender community notification laws. Information was collected through telephone interviews, fax transmissions, and mailings. Informants were administrators, legislative research staff, legal counsel, or law enforcement officials, as appropriate.

Thirteen states provide this type of notification.[2] The process for determining which offenders should be subject to notification differs from state to state.

2. **Notification to organizations and individuals at risk.** This version of notification law is more limited, with *release* of information based on the *need to protect an individual* or *vulnerable organizations* from a specific sex offender.

   An additional eight states provide this type of notification.[3] Organizations typically notified are: child care facilities, religious organizations, public and private schools, and other entities that deal with children. Individuals at risk are generally determined by local law enforcement officials.

3. **Access to registration information.** States in this category allow *access*, by citizens or community organizations, to sex offender information through their county sheriff or local police department.

   Eleven states allow some access to sex offender registration information.[4] In most states, local law enforcement officials maintain a registry of sex offenders residing within their jurisdiction. Some are open to public inspection, others are open only to citizens at risk from a specific offender, and still others are open only to community organizations such as schools, licensed child care facilities, and religious organizations.

States That Issue Broad Community Notification

Of the thirteen states that issue broad community notification, four issue notifications for all sex offenders convicted of specific offenses: *Arizona, Delaware, Louisiana,* and *Texas*. *Arizona* authorizes mandatory community notification for all offenders convicted of sexual conduct with a minor under the age of 15, or sexual assault with a deadly weapon. *Delaware* issues community notification for all child sex offenders. *Louisiana* and *Texas* issue community notification for all registered sex offenders.

The remaining nine states[5] issue notifications regarding released sex offenders determined to pose a threat. These states have varying approaches for determining threat. In *Florida* and *Montana*, the circuit or district court determines which offenders are subject to community notification.

Washington's law authorizes local law enforcement officials to distribute information to the public about dangerous sex offenders. The state leaves decision-making on notification, including how to assess risk and who to notify, in the discretion of the public agency, typically law enforcement. Most law enforcement jurisdictions in the state follow guidelines

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[2] Arizona, Delaware, Florida, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Jersey, Oregon, Tennessee, Texas, and Washington.

[3] Connecticut, Georgia, Illinois, Indiana, Iowa, Maryland, New York, and Pennsylvania.

[4] Alaska, California, Colorado, Idaho, Kansas, Maine, North Carolina, North Dakota, Oklahoma, South Dakota, and Virginia.

[5] Florida, Minnesota, Mississippi, Montana, Nevada, New Jersey, Oregon, Tennessee, and Washington.

for notification based on the offender's risk to re-offend.[6] These guidelines establish three levels of notification:

Level I:

Low Risk to re-offend, information may be shared with other law enforcement agencies.

Level II:

Moderate Risk to re-offend, includes activities above, but in addition, schools, neighbors and community groups may be notified of an offender's release.

Level III:

High Risk to re-offend, in addition to the actions above, press releases and flyers may be issued.

Several states follow Washington's three-tiered approach. *Nevada*, *New Jersey*, and *Minnesota* (*Arizona* has legislation pending) are examples of this approach.

States That Issue Notification to Organizations and Individuals at Risk

These states issue notifications to individuals who may encounter the offender, and/or to organizations dealing with children. *Connecticut* and *Illinois* release information when it is deemed necessary to protect a person from a specific offender. Local law enforcement agencies decide when the release of information is necessary. The *Illinois* Department of State Police, or local law enforcement agencies, also release information to schools and child care facilities.

New York releases information dependent upon an offender's level of risk. A three-tier risk assessment instrument (similar to *Washington's*) is used to determine the notification process, and information on offenders assessed as Level II and III may be released.

Georgia, *Indiana*, *Maryland*, and *Pennsylvania* issue notifications to organizations dealing with children. *Indiana* notifies all school corporations, all nonpublic schools, state agencies that license individuals working with children, state personnel department, and licensed child care facilities. In *Maryland*, local law enforcement may notify community and religious organizations, and others that work with children, of a registration statement, if necessary for public protection.

States That Allow Access to Registration Information

Nine states allow the public or members of community organizations to view sex offender registration information.[7] These states allow this type of access through law enforcement offices. *California* maintains a "900" phone line, which citizens may call to inquire whether a specific individual is a registered sex offender (*New York* has implemented a similar

[6] Guidelines created by the Washington State's Law Enforcement Association.
[7] Alaska, California, Colorado, Idaho, Kansas, Maine, North Carolina, North Dakota, and South Dakota.

system). *Colorado* and *North Dakota* release registration information when deemed necessary for public protection and requester demonstrates a need to know.

Two states, *Oklahoma* and *Virginia*, limit access exclusively to schools and agencies dealing with children.

LITIGATION

Challenges to community notification laws have occurred in several states. These challenges are typically based on the argument that notification is punitive in character, and these statutes violate the ex post facto clause in the constitution.

At the time of this report, challenges were under court consideration in *Alaska, New Jersey,* and *New York*. In *Alaska*, the challenge concerns applicability of the statute for offenders who committed offenses prior to the statute's effective date.[8] In July 1995, the *New Jersey* Supreme Court upheld that state's notification statute, saying it was constitutional as long as sex offenders facing notification had a chance to question it before a judge.[9] Currently, a challenge to *New Jersey's* statute has resulted in an injunction, barring notification.

In *Washington* State, a 1994 Supreme Court ruling upheld the constitutionality of the sex offender registration statute and set the following parameters for notification:

- **Who should be the subject of notification?**

  A disclosing agency or official:

  > *"must have some evidence of an offender's future dangerousness, likelihood of re-offense, or threat to the community, to justify disclosure to the public in a given case. This statutory limit ensures that disclosure occurs to prevent future harm, not to punish past offenses."*[10]

- **What should be disclosed to the community?**

  In determining what information to disclose, the supreme court set the standard as "relevant and necessary."

  > *"This standard imposes an obligation to release registrant information reasonably necessary to counteract the danger created by the particular*

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[8] Nitz v. Otte; Case No. A95-486 CI; United States District Court, District of Alaska.
[9] Ralph Siegel, "Judge's ruling halts sex-offender notification," The Seattle Times, March 15, 1996.
[10] State v. Ward, 123 Wn.2d 488, 503 (1994); see also State v. Taylor, 67 Wn. App.350 (1992) and In re Estavillo, 69 Wn. App 401, review denied, 122 Wn.2d 1003 (1993).

offender. An agency must disclose only that information relevant to and necessary for counteracting the offender's dangerousness."[11]

- **Who in the community should be notified?**

The focus of notification must "rationally [relate] to the furtherance" of the goals of public safety and the effective operation of government.[12]

"Accordingly, the geographic scope of dissemination must relate to the threat posed by the registered offender. Depending on the particular methods of an offender, an agency might decide to limit disclosure only to the surrounding neighborhood, or to schools and day care centers, or, in cases of immediate or imminent risk of harm, the public at large. The scope of disclosure must relate to the scope of danger."[13]

Currently, U.S. District Courts are considering injunctions in *Washington* cases disallowing notification on specific individuals.[14] Again, these challenges are based on the notion of additional punishment and argue that the requirement of notification should not apply to offenders convicted before the law was enacted.

TABLE OVERVIEW

This report contains four tables, each containing information regarding state statutes. Tables 1a and 1b contain information on the 21 states that authorize community notifica' Tables 2a and 2b contain information on the 11 states that allow access to sex offender registration information. Each table contains key elements of state laws relating to community notification.

The tables are organized using the categories that are described below. An overview of these categories is provided.

Population Subject to Notification

Many states conduct risk assessment of the likelihood to re-offend as a basis for notification. Other states simply authorize community notification for a category of sex offenders, such as all individuals who commit a certain type of offense or whose victim is under a certain age. Still others allow law enforcement officials to use their discretion in determining who should be subject to notification.

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[11] Ward, 123 Wn.2d at 503.
[12] Laws of 1990, Chap. 3, Sec. 116.
[13] Ward, 123 Wn.2d at 503-04.
[14] Robin Stanton, "Sexual offender wins halt to alert," The Herald, Everett, WA, March 29, 1996.

Because notification laws concern offenders who are typically being released from confinement, the question of retroactive application of the law has been an issue in many states. In most states, the population subject to notification are those convicted *after* the law's effective date. Some states apply their laws retroactively to all appropriate offenders, regardless of adjudication date. The retroactive application in *New York*, *New Jersey*, and *Alaska* has resulted in legal challenges.

In some states, juveniles are also subject to community notification. *Minnesota* and *New Jersey* statutes apply to individuals adjudicated delinquent. *Washington's* statute applies to adult and juvenile offenders. *Illinois'* statute applies to juveniles convicted of child sexual offenses.

Notification Process

Many approaches are taken to notification. In most states, local law enforcement officials notify the appropriate organizations and individuals. In *Louisiana*, the offender is required to mail the notification to neighbors and to the superintendent of the school district in which the offender intends to reside, as well as place an ad in a newspaper.

Methods of notification vary from state to state. Typical methods include: press release, flyers distributed throughout neighborhoods, ads in newspapers, and direct mailings to the offender's neighbors.

Information Included

The information released to the public usually includes the offender's name, description or photo, address or approximate address, crime of conviction or description of crime, and age of the victim. Many statutes simply state that agencies are authorized to release relevant and necessary information regarding specific sex offenders. Some statutes have provisions allowing a community guidelines committee, or similar party, to promulgate rules regarding the release of information.

Levels of Risk

Assessment instruments are used in some states to systematically categorize an offender's level of risk to re-offend. These instruments consist of scales which assign point values to various behaviors and past offenses. Offenders scoring a certain point total are subject to community notification. In other states, convictions for specific sexual offenses automatically qualify an offender for notification and, the age of the victim is an automatic qualifier, in still other states.

When Risk is Assessed

Risk is typically assessed either upon conviction in court, or upon release from incarceration.

State and Local Role

The roles of state and local governments vary by jurisdiction. State organizations involved in community notification are often the Department of Corrections, Board of Probation and Parole, Department of Public Safety, and specific Community Notification Guidelines Committees designed solely for the purpose of community notification. Often, the state role consists of maintaining sex offender information in a central registry and disseminating that information to local law enforcement. State organizations often develop rules and procedures for community notification.

Local organizations consist of county sheriffs, police departments, and county courts. These organizations are generally responsible for notifying the public and organizations at risk. In many states, the sex offender registry is available to the public at each county sheriff's office.

The tables for the 11 states allowing access include the following additional categories:

Offenders Subject to Registration

States that allow access to registration information have statutes that require registration for offenders convicted of specific offenses. These offenders become subject to registration upon conviction of a listed offense. In some of these states, juveniles are also required to register.

Registry Type and Information Included

States that maintain registries of sex offenders generally compile information from each county into a central registry. Many other states maintain registration information at a local level, with the county sheriff or local police department. Generally, all information listed in a sex offender registration statement is included in the registry. However, photographs and exact street addresses may be withheld.

Who Has Access

Some states allow any citizen to view sex offender registries, while others only allow access to organizations dealing with children. States may require the citizen or organization seeking information to provide the name or description of the individual for whom information is sought. If a state's sex offender registry is centrally located, an individual must often request information in writing and pay a fee to receive the information.

CONCLUSION

Currently, 32 states have some form of legislation, either authorizing community notification for released sex offenders, or allowing access to sex offender registration information. Many states passed this legislation because of the Violent Crime Control an Law Enforcement Act of 1994. This act requires states to create registries of offenders convicted of crimes against children or sexually violent offenses by 1997, and allows officials to notify the community when a violent offender relocates there.

Appendix D

Department of Corrections' Sex Offender Assessment Instrument and Trial Application Results

Virginia Department of Corrections
Ombudsman Services Unit

Data Report:

Registrant Risk Assessment Scale

James E. Briggs
Ombusdsman

April 1-June 30, 1997

INTRODUCTION

The task force studying the Megan's Law or community notification of sex offenders (SJR 249) requested that a test of the risk assessment instrument be conducted. The Risk Assessment Instrument was developed to determine the level of risk. The level of risk determines the level of notification to which the offender will be subjected.

The following graphics display the results of the risk assessment test on sex offenders received and released from the Department of Corrections between April 1, 1997 through JUNE 30, 1997.

TABLE OF CONTENTS

INTAKE BY SECTION

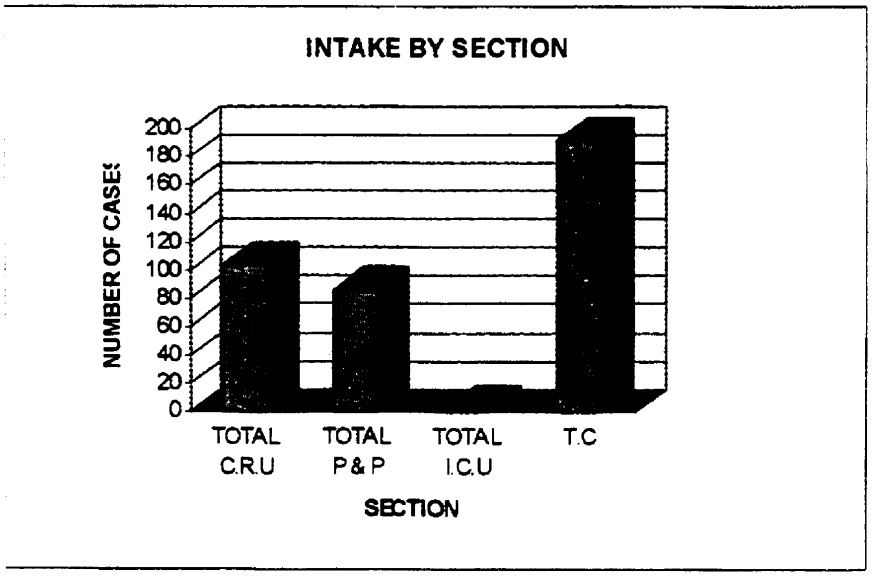
This chart shows the number of cases received from each of the three (3) sections that participated in the pilot project.

* Community Release Unit (C.R.U) # 104

* Probation and Parole District (P.P.D) # 86

* Interstate Compact Unit (I.C.U) # 2

* Total Cases (T.C) # 192



INTAKE BY CASE TYPE

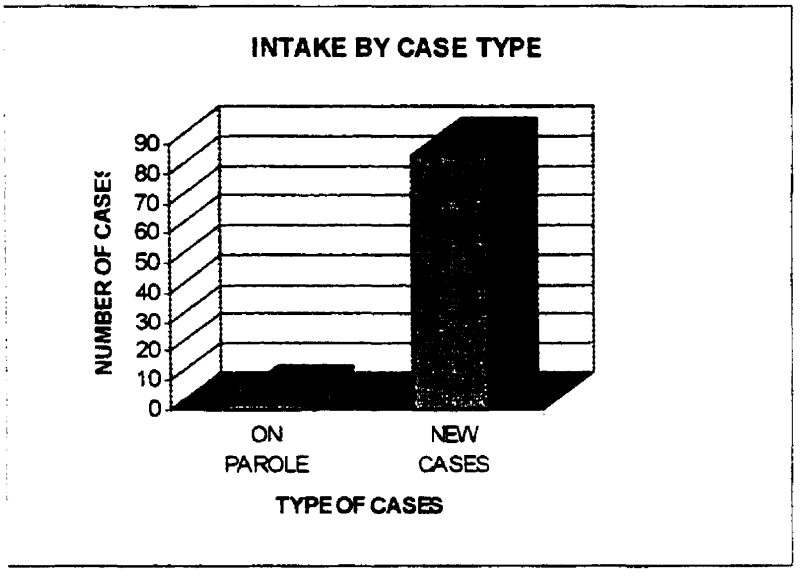
This chart displays the type of cases received from all participating units.

*On parole # 2 :

These cases were submitted by the interstate compact unit. These cases are either under supervision via the compact or are being investigated for transfer of supervision under the terms of the compact.

* New Cases # 86 :

These cases were submitted by the twenty five (25) probation and parole districts that participated in the pilot project. These cases represent inmates coming into the Department of Corrections.



INTAKE BY CASE TYPE (cont.)

Mandatory Parole Release Date (MPRD) : # 76

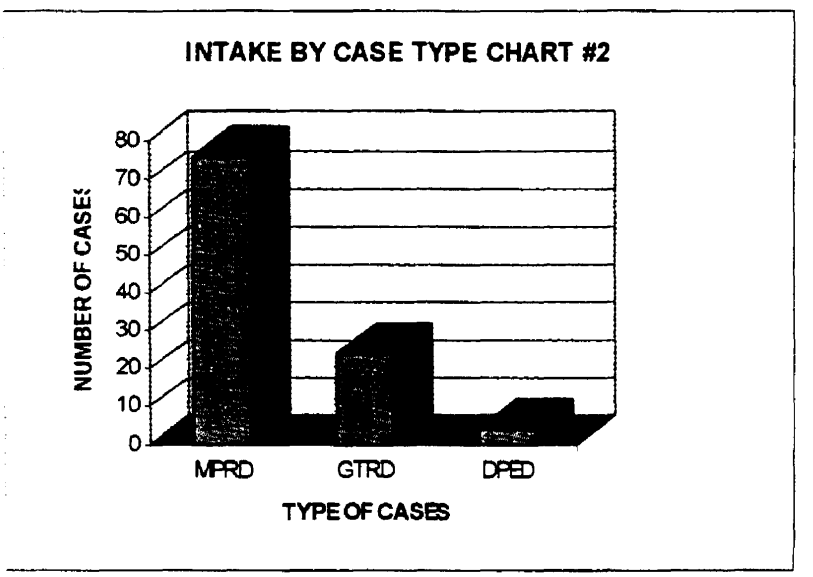
These cases were submitted by the Community Release Unit. In 1979, legislation was enacted to establish Mandatory Parole Release. Accordingly, prisoners who are not granted discretionary parole have at least six (6) months parole supervision.

*Good Time Release Date (GTRD) : # 24

This is the date a prisoner would be released after applying all good time earned to the total sentence. These cases were submitted by the Community Release Unit.

*Discretionary Parole Eligibility Date (DPED) : #4

This is the date on which prisoners become eligible for the granting of discretionary parole by the Virginia Parole Board. These cases were submitted by the Community Release Unit.

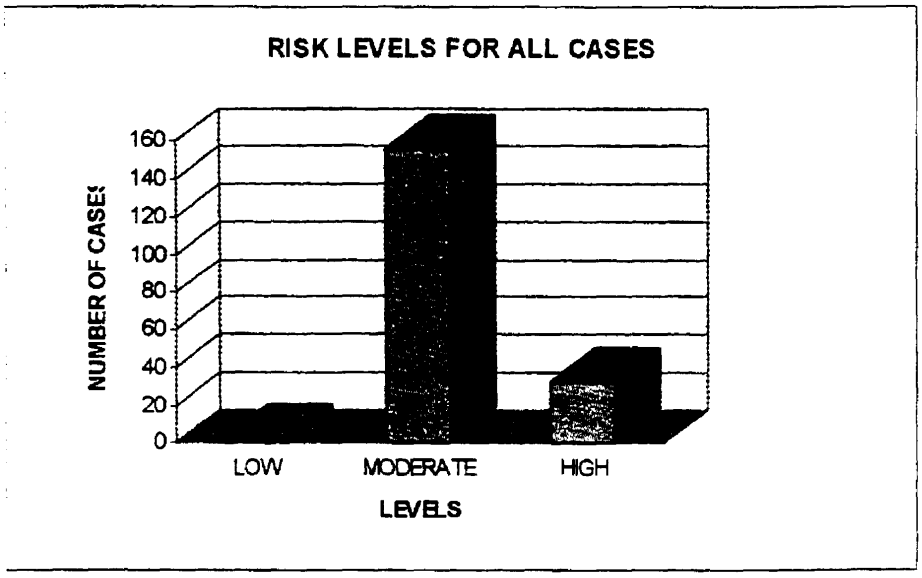


Risk Levels For All Cases

The Registrant Risk Assessment Scale (RRAS) is a three-tiered scale that is based on factors which increase or decrease the risk of recidivism. This risk assessment scale provided a numerical scoring process with cut-off points for low, moderate, and high-risk assessments.

The highest possible score was 126. The low range assessment cut-off point was 0-42. The moderate range assessment cut-off point was 43-85. The high range assessment cut-off point was 86-126.

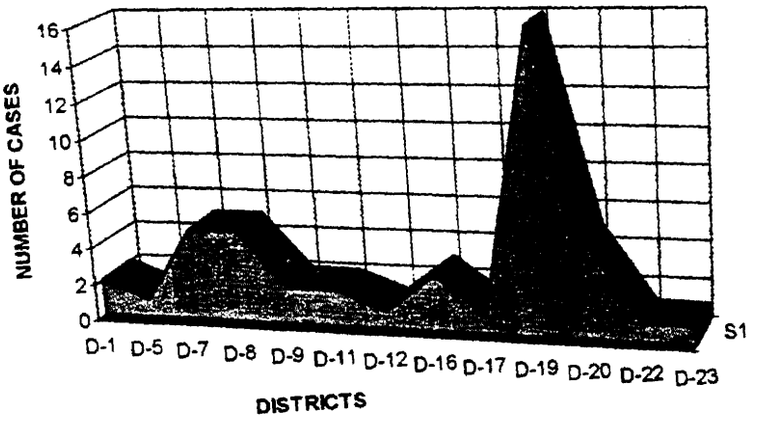
This chart shows that three (3) cases were scored in the low range, 156 in the moderate range, and 33 cases in the high range.



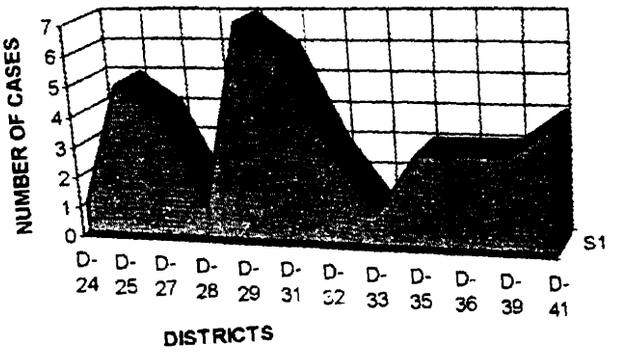
Other Information: *Intake by Probation and Parole Districts*

Intake from the P&P section was provided by twenty five (25) of the forty (40) P&P Districts in the state. **This chart shows the <u>Number of Cases</u> received from each of the twenty five (25) P&P districts that participated in the project.**

INTAKE BY P & P DISTRICTS CHART # 1



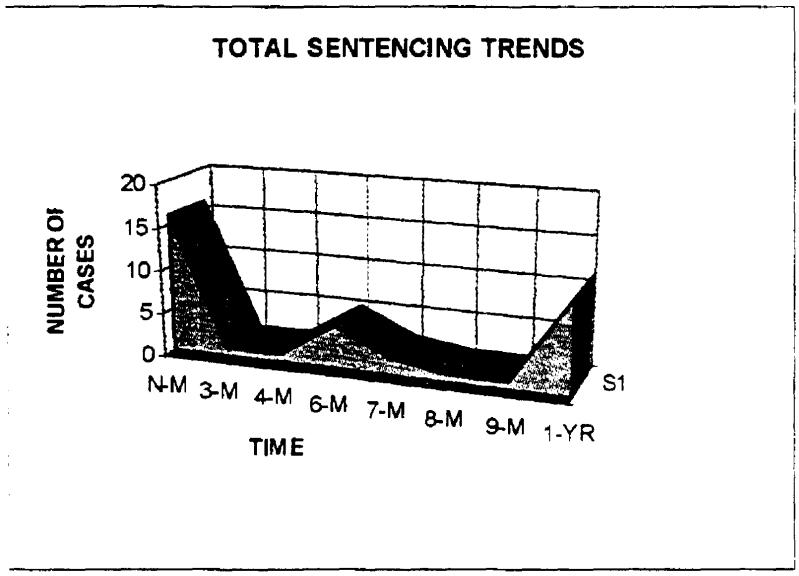
INTAKE BY P &P DISTRICTS CHART # 2



Other Information: *Total Sentence Trends*

The total sentence is the combination of all felony and misdemeanor sentences imposed upon an inmate and reflected under the current incarcerations. **This chart shows the sentencing trends for those cases received with a total sentence for a year or less.**

Inmates that were given a sentence of probation or a number of days are reflected in the <u>no month (N.M)</u> category in this chart.



REGISTRANT RISK ASSESSMENT SCALE

Criteria	Low Risk	0	Moderate Risk	1	High	3	Total	Source
Seriousness of Instant Offense x 3								
1. Degree of Force	no physical force; no threats		threats; minor physical force		violent; use of weapon; significant victim harm			
2. Degree of Contact	no contact; fondling over clothing		fondling under clothing		penetration/oral, anal digital or object			
3. Age of Victim	18 or over		13 - 17		under 13			
					Subtotal	x 3 =		
Offense History x 5								
4. Victim Selection	household/family member		acquaintance		stranger/or established for purpose of victimization			
5. Number of Offenses/Victims	first known offense/victim		two known offenses/victims		three or more offenses/victims			
6. Duration of Offensive Behavior	less than 1 year		1 to 2 years		over 2 years			
7. Length of Time Since Last Convicted/Known Offense	5 or more years		more than 1 but less than 5 years		1 year or less			
8. History of Reported Anti-Social Acts	no history		limited history		extensive history			
					Subtotal	x 5 =		
Characteristics of Offender x 2								
9. Response to Treatment	good progress		limited progress		prior unsuccessful treatment/no progress in current treatment/ no treatment			
10. Substance Abuse	no history of abuse		in remission		not in remission			
					Subtotal	x 2 =		
Community Support x 1								
11. Therapeutic Support	current/continued involvement in therapy		intermittent		no involvement			
12. Residential Stability	stable and appropriate		unstable but appropriate		inappropriate			
13. Employment/Educational Stability	stable and appropriate		intermittent but appropriate		inappropriate or none			
14. Relationship Stability	stable and supportive		intermittent but appropriate		inappropriate or none			
					Subtotal	x 1 =		
					TOTAL	=		

Scoring: Highest possible total score = 126

Low Range: 0-42 Moderate Range: 43-85 High Range: 85-126

Offender Name (print)	Marital Status	VASID #	Docket #	Risk Level
Assessor's Signature:			Date:	

A. Overrides (If any override is circled, offender is presumptively a Level 3).

1. Offender inflicted serious physical injury or caused death during a sex related offense.
2. The offender has made a recent threat that he will reoffend by committing a sexual or violent crime.
3. There has been a CLINICAL assessment that the offender has a psychological, physical, or organic abnormality that significantly impairs ability to control sexual Behavior.

B. Departure

1. A departure from the presumptive risk level is warranted. YES NO
2. If yes, circle the appropriate risk level. 1 2 3
3. If yes, explain the basis for departure (use back of page if necessary).

C. See back for further room for comments (specific or general).

* The completion of the Registrant Risk Assessment Scale should be filled out using the MOST EXTENSIVE REVIEW of records possible.

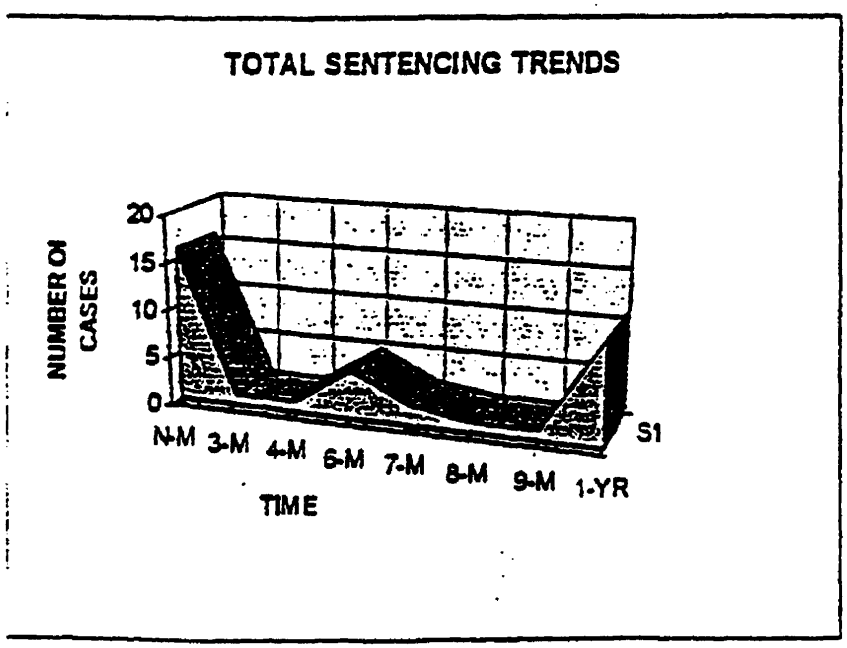
Appendix E

Minnesota Sex Offender Treatment Program
Cost Benefits and Outcomes

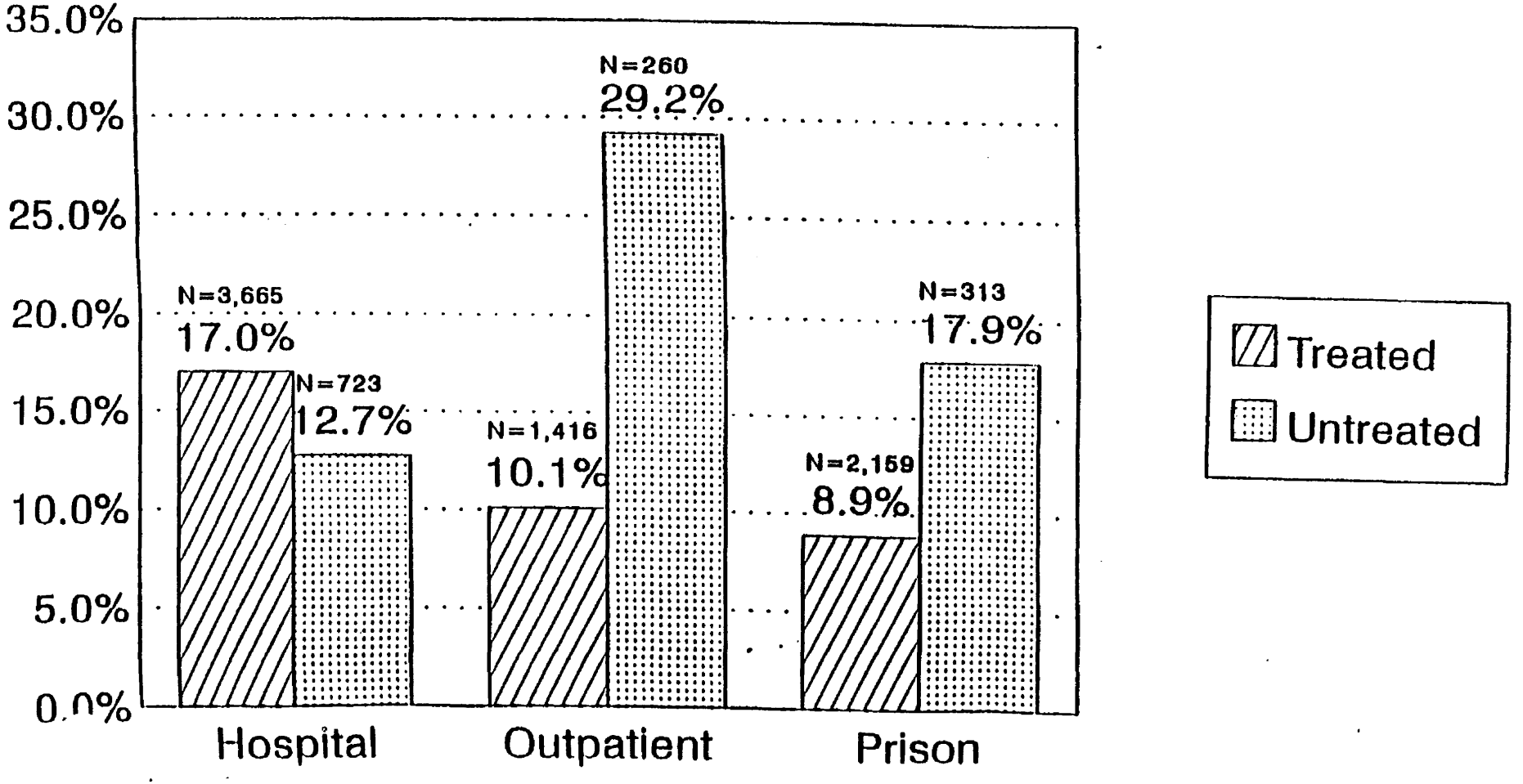
Other Information: *Total Sentence Trends*

The total sentence is the combination of all felony and misdemeanor sentences imposed upon an inmate and reflected under the current incarcerations. This chart shows the sentencing trends for those cases received with a total sentence for a year or less.

Inmates that were given a sentence of probation or a number of days are reflected in the no month (N.M) category in this chart.



Question 1: Which Location Has the Least Recidivism?



Cost of a New Offense:

Offender-related Expenses	Total:	$169,029
Victim Related Expenses	Total:	$ 14,304
Total Expenses Per Offense	TOTAL:	$183,333

Assuming offender returns for seven years

ource: Prentky and Burgess, American Society of Orthopsychiatry, 60 (1), January 1990

COST OF TREATMENT

Massachusetts
1959 to present
129 Child Molesters

	Charges of New SO
129 Child Molesters	5 yrs. 25%
Untreated Child Molesters	5 yrs. 40%

EXPECTED COSTS ASSOCIATED WITH RE-OFFENSE

TYPE OF OFFENDER	
Untreated	$231,968
Treated	$163,979
COST OF INCARCERATION	$158,645
COST OF TREATMENT	$118,146

Source: Prentky & Burgess, American Society of Orthopsychiatry, 60 (1) January 1990

TSOP COST CHART (Minnesota)
July 1989-1991

TREATMENT COSTS: 41 Bed Unit

Salary:

3 additional positions
+ travel
+ supplies
+ by 100 inmates
+ by 365 days = $7.73 a day

PRISON COST $67.21 a day

OFFENDER COST = $7.73 X 320 days = $2,473.60

COST OF NEW OFFENSE $183,333

PREVENTING ONE NEW SEX OFFENSE

WOULD PAY FOR TREATING

74 SEX OFFENDERS!!

Source: Nancy Steele, Minnesota Department of Corrections LinoLakes Facility

Appendix F

Vermont Sex Offender Treatment Program
Cost Benefit Analysis

Estimated Cost Savings of Sex Offender Treatment in Vermont in 1987

(Parameters: Married offender with two children, adjudicated to 10 year maximum sentence (serves 5 years in prison with 2 years parole), one victim who receives treatment for 2 years.)

Source	Cost	Total Cost
SRS Intake Investigation	$250	$250
Child in SRS Custody	$3,000-10,000/year	$6-20,000
Police Investigator	$120	$120
Emergency Room Physician	$210	$210
Emergency Room Tests	$150	$150
Prosecutor's Investigator	$575	$575
Defender's Investigator	$575	$575
Evaluation of Victim	$350-600	$350-600
Victim Treatment	$2,500/year	$5,000
Presentence Investigation	$250	$250
Offender Psychosexual	$500-600	$500-600
Prosecuting Attorney	$1200	$1200
Public Defender	$1200	$1200
District Court Judge	$888	$888
Incarceration of Offender	$17,000/year	$85,000
Welfare to Offender's Family	$6,600/year	$33,000
Parole Supervision	$1,500/year	$3,000
	Total Cost	$138,268 - $152,618

Cost Comparison (per offender):

5 years of treatment while incarcerated	$27,500
5 years incarceration without treatment	$138,268 - $152,618
Release, reoffense, and second prison term	$276,536 - $305,236

At a cost of $5,500 per year, intensive, residential, sex offender treatment may be provided which significantly lessens the likelihood of continued sexual abuse and a potential returning to prison. Each time effective treatment enables the prevention of a second sexual offense and prison term, society saves between $110,768 and $117,118 (total of costs associated with investigation, prosecution, and reincarceration for 5 years without treatment ($138,268 to $152,618) - cost of treatment during initial 5 years incarceration ($2,750) = savings ($110,768 to $117,118)). The expense of five years of effective treatment is approximately one-fifth the cost an additional investigation and five year term of incarceration ($27,500/$138,268 = .20).

If 80 offenders are treated with an efficacy rate of 85% (i.e., 15% of all treated offenders recommit), 68 offenders will

refrain from further sexual abuse. Considering that the 5 year treatment program for 80 offenders would cost $2,200,000, the actual savings resulting from effective treatment could be between $7,202,224 and $8,178,024 (savings created by avoiding reincarceration of 68 nonrecidivists - cost of treating 80 sex offenders = savings attributable to treatment). Of course, this analysis makes the faulty assumption that all untreated sexual offenders reoffend.

More conservatively, if one assumes that long term recidivism of untreated sex offenders reaches 50%, while the recidivism rate of treated offenders is 15%, savings resulting from treating 80 offenders in Vermont would fall between $1,671,504 and $2,073,304 (savings created by the 35% reduction in recidivism - cost of treating 80 offenders = savings attributable to treatment).

Although effective sex offender treatment programs represent financial benefits to state governments, the most important savings cannot be expressed monetarily.

Estimated Cost Savings of Sex Offender Treatment in Vermont in 1987

Parameters: Married offender with two children, adjudicated to 10 year maximum sentence (serves 5 years in prison with 2 years parole), one victim who receives treatment for two years.)

Source	Cost	Total Cost
SRS Intake Investigation	$250	$250
Child in SRS Custody	$3,000-10,000/year	$6-20,000
Police Investigator	$120	$120
Emergency Room Physician	$210	$210
Emergency Room Tests	$150	$150
Prosecutor's Investigator	$575	$575
Defender's Investigator	$575	$575
Evaluation of Victim	$350-600	$350-600
Victim Treatment	$2,500/year	$5,000