



**Banishment
or Facilitated Reentry:
A Human Rights Perspective**

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A Conflict of Rights?

Everyone has a right to be free from sexual assault.

Everyone also has a right to privacy, housing, and the right to human dignity.

Human Right to Security

Article 9 of the International Covenant on Civil and Political Rights ensures that everyone has the right to security of person.

Children have additional rights to safety.

Convention on the Rights of the Child

- Article 19* 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, **including sexual abuse**, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The Right to Privacy

Article 17 of the International Covenant on Civil and Political Rights

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The Right to Privacy

Continued....

2. Everyone has the right to the protection of the law against such interference or attacks.

The Freedom to Choose One's Own Residence

Article 12 of the ICCPR

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- ...
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

The consequences of violating privacy rights

- ⌘ Employment
- ⌘ Housing
- ⌘ Family integrity
- ⌘ Human dignity

What are we doing wrong?

Registration and community notification laws sweep far too broadly.

***Result:** Far too many people are subject to stigma and restrictions; resources and attention are unfocused.*

By labeling a person a “sex offender,” the state justifies denying that person fundamental human rights.

***Result:** “Sex offenders” are alienated, have little investment in the responsibilities that accompany human rights; there is a strong disincentive to register as a “sex offender.”*

Overbreadth

- ⌘ Offenses covered
- ⌘ Length of registration requirements
- ⌘ Mode of community notification
- ⌘ Amount of information available
- ⌘ Lack of review

Overly harsh collateral consequences

- § Residency restrictions
- § Interference with parental rights
- § State failure to protect against harassment and vigilantism

Non violent offenses

- § Prostitution Among Adults
- § Indecency offenses
- § Statutory Rape offenses

Prostitution Offenses

11 states plus Wash., D.C. require registration and community notification for prostitution offenses involving only adults.

Alabama, Delaware, Louisiana, Maine, Michigan, Missouri, Oregon, Tennessee, West Virginia, Wyoming, and D.C.

Indecency Offenses

9 states require people convicted of public exposure (streaking, public urination)--without qualification--to register:

Arizona, California, Colorado, Illinois, Nevada, Oklahoma, South Dakota, Vermont, Virginia

4 states require “flashers” to register on a second offense:

Idaho, Massachusetts, New Hampshire, Texas.

5 additional states allow for court discretion to order registration:

Delaware, Maryland, South Carolina, Washington, West Virginia.

Statutory Rape offenses

Sexual relations with someone below the age of consent that would not be criminal but for the age of the victim.

22 states require a 17 year old that engages in sex with a partner 14 or older, but under the age of consent, to register.

A Lifetime of Stigma

- 7 states require lifetime registration for all adult sex offenders

Alabama, Arizona, California, Hawai'i, Missouri, South Carolina, South Dakota

- An additional 10 states require lifetime registration, but allow sex offenders the right to petition for removal after a period of offense-free years.

Arkansas, Colorado, Florida, Idaho, Mississippi, Montana, Nevada, New Jersey, Oregon, Tennessee

New Federal Legislation

Children's Safety Act of 2005

(H.B. 3132 and S.B. 1086)

Would require lifetime registration for sexual offenses against children, and violent sex offenses.

Lack of Review

Only a handful of states allow someone convicted of a register offense to have a court determine whether registration and/or community notification is appropriate.

Community Notification

∅ All but 3 states have internet databases that are available to the public to search for sex offenders.*

∅ Other methods of community notification:

Mailings, posters in community centers/libraries, newspaper notices, TV broadcasts, door-to-door notification, fliers on telephone poles, text-messaging/emails, special license plates, signs on front lawn.

** New York, Vermont: restricted access.*

What can you learn from the website?

Most states list photo, name, DOB, technical name of the offense, and offender's address.

Few provide a description of the offense, and less than half of all states indicate any level of risk of the offender.

What can you learn from the website?

Increasingly, states are including:

- ∞ Description of the offender's car and license plate
- ∞ Online maps of the offender's residence
- ∞ Name and address of the offender's employer
- ∞ Easier search methods
- ∞ Click-to-print fliers for easy distribution

Every registrant a risk

At least 7 states list every kind of offender on the website, and give the viewer no indication of the offender's level of risk.

Alabama, Alaska, Idaho, Mississippi, South Dakota, Utah, Wisconsin

Prohibitions against misuse of registry information

At least seventeen states, and Washington, D.C., have statutes that specifically prohibit the misuse of registry information for purposes of harassment, discrimination, or acts of vigilantism.

California, Colorado, Connecticut, Florida, Idaho, Louisiana, Kentucky, Massachusetts, Michigan, Mississippi, New Jersey, New York, South Carolina, Utah, Vermont, Virginia, and Washington.

Residency Restrictions

In 2005, there has been a dramatic increase in the passage of local ordinances and regulations creating “sex offender free” communities and buffer zones that exclude registrants from living virtually anywhere.

This spring, the Eighth Circuit Court of Appeals upheld, in the interest of public safety, an Iowa statute which bans registrants from residing within 2,000 feet of a place where children may gather.

Doe v. Miller, No. 04-1568, U.S. 8th Cir. Ct. of Appeals, April 29, 2005.

Residency Restrictions

"If we can get these people out of our community, it's not that these crimes won't happen . . . It's just that they won't happen in my community."

Christopher J. Shipley, a real estate lawyer and member of the Mount Dora City Council, reported in John-Thor Dahlburg, Limits on sex offenders spread in Florida, LA Times, July 5, 2005.

Family Integrity

Registered sex offenders are often not allowed to have contact with minor children even in their own families.

County officials removed Melissa WolfHawk's newborn from her custody three days after his birth because of his father's conviction for a sex offense 22 years before.

AP, Child-welfare authorities seize newborn baby whose father is sex offender, St. Louis Post-Dispatch, October 23, 2005.

Threats, Harassment, and Vigilantism

Posting as an FBI agent, and armed with a “hit list” he printed from the Internet, Michael Anthony Mullen shot and killed two registered sex offenders in Bellingham, Washington on August 26, 2005.

Messages appearing on blogs days after the double murder praised the shooter. “Two down,” one poster wrote, “Let’s hope he continues his meetings with offenders in his city without interference from the boys in blue.” He continued in another post to the list: “The public must often do what our elected officials will not.”

What do registrants say?

"If a man is punished too much, ostracized too greatly and made to feel persecuted too constantly, that man will give up on staying in recovery and go over the edge, taking others with him."

Letter from a registrant to Sen. Arlen Specter on the Children's Safety Act of 2005, July 26, 2005, on file with Human Rights Watch.

What do registrants say?

“The feelings of desperation associated with being treated worse than animals has a direct effect on how people act and react, . . . All these laws are going to do is drive sex offenders away from the very thing that just may be keeping them from re-offending; the support of family & friends, a job, a stable home etc. It's no mystery that if you take away mans most basic survival needs; he will react in a negative way.”

Letter from a registered sex offender to Human Rights Watch,
Sept. 28, 2005.

For more information

... a copy of the final report, or to provide Human Rights Watch with additional information, please contact:

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