

Sex Offenders

Will tough, new laws do more harm than good?

In response to horrific sex crimes against children, Congress and the states have passed hundreds of new laws in recent years to crack down on offenders. In addition to much longer sentences and more rigorous tracking of sex criminals upon release, some of the new laws place limits on where offenders can live, banning them from neighborhoods surrounding schools, parks and playgrounds. But critics warn the laws may prove counterproductive, driving sex offenders further underground. They also point out that most perpetrators are family members or other acquaintances of victims, so the new laws may shift resources away from treatment programs that could help more. Moreover, experts note sex offenders' low recidivism rates and a dramatic drop in child sexual-abuse cases. But with the media giving heavy coverage to the worst cases of abduction and abuse, it's no wonder that lawmakers are willing to approve any punishment or tracking technique that promises to prevent crimes against children.



Registered sex offender John Evander Couey confessed last year to kidnapping and killing 9-year-old Jessica Lunsford, of Homosassa, Fla.

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Sex Offenders

BY ALAN GREENBLATT

THE ISSUES

Kerry Skora thinks there are worse things than being known as a murderer.

Sex offenders still face penalties after they serve their sentences — including some that don't even apply to murderers. That's why Skora didn't want to be labeled as a sex offender when he was released from an Illinois prison this year after serving 15 years for a murder he committed at age 19. But because his victim was 16, that's how state law categorized him, even though his crime did not involve sex.

And in Illinois sex offenders have to register their whereabouts with police and are not allowed to live within 500 feet of schools or other public places where children gather — making it hard to find a place to live. Miami Beach, Iowa City and many other cities and states have similar laws.

"It's more like banishment than a zoning restriction," says Roxanne Lieb, executive director of the Washington State Institute for Public Policy. "There isn't any other group in society where we banish them. You could commit a double murder and come back and live somewhere, or be a three-time drug dealer, but not a sex offender."

The Illinois legislature agreed with Skora's complaint that it was unfair to tar him as a sex offender just because his victim was a minor. The state created a new registry for non-sexual violent criminals. The fact that sex offenders are subject to even more intense scrutiny than murderers demonstrates just how seriously lawmakers are taking the problem of sex crimes against children.



Getty Images/Citrus County Sheriff's Department

Jessica Lunsford's death last year led some two-dozen states to enact versions of "Jessica's Law," which requires more thorough tracking of sex offenders and stricter sentences. Congress also enacted a law this year that will prod states to track sex offenders more closely. Contrary to popular belief, sex offenders have relatively low recidivism rates, and family members, not strangers, are responsible for most reported sex crimes against children.

It's not hard to figure out their motivation. Sex crimes against children are among the most heinous imaginable. "Surely there can be no crime that inspires greater anguish among the general public than sexual crimes, especially violent sexual offenders," writes Karen J. Terry, an associate professor at the City University of New York's John Jay College of Criminal Justice.¹

The media have made several especially terrifying crimes into continuing national nightmares, vividly and repeatedly portraying both the victim and the crime. A case in point is the rape and murder of 6-year-old Colorado beauty queen JonBenet Ramsey a decade ago. After an Atlanta, Ga., man, John Mark Karr, said he killed the child, he was arrested in Thailand

and brought back to the United States. However, police said his DNA didn't match that found in her underwear, and he was not charged.

But there have been numerous other high-profile cases that have shocked the public and prompted increased legislative action. Last year, 9-year-old Jessica Marie Lunsford was abducted from her Florida home by a convicted sex offender, sexually assaulted and buried alive. Since then, two-dozen states have enacted versions of "Jessica's Law," which requires more thorough tracking of released sex offenders through means such as DNA samples, ankle bracelets and GPS (global positioning system).

California voters are expected to approve a particularly strict version of the law in November. Congress also enacted a law this year that will prod states to track sex offenders more closely.

"When you have someone taking a 9-year-old child and burying her alive, it just calls out for a legislative response," says Lieb.

What is particularly troubling about a case such as Jessica's, say those calling for stricter laws, is that her alleged assailant had a long criminal record, including sexual offenses. (The trial of John Evander Couey has not been able to proceed because it was impossible to seat an impartial jury in the county in which the crime occurred.)

"Whatever it takes to track these sex offenders must be done, because rehabilitation tends not to happen," says Stacie D. Rumenap, executive director of Stop Child Predators, which lobbies for passage of Jessica's Law in every state.

Child Sexual Abuse Dropped Significantly

The rate of identified sexual abuse of children in the United States fell by 50 percent from 1991 to 2004. David Finkelhor, director of the Crimes Against Children Research Center, thinks the declines may be linked to greater awareness about child maltreatment, improved parenting and more effective treatment for family and mental health problems, including psychiatric medications.

Child Sexual-Abuse Rates in the United States

(based on substantiated reports)

(per 10,000 children, ages 0-18)



Note: The data come from state child-protection agencies and cover offenses against children committed primarily by parents and other caretakers; they do not typically cover sex crimes against children committed by strangers.

Source: Crimes Against Children Research Center, University of New Hampshire, 2006

But Terry and other experts on deviancy dispute the frequently heard claim that sex offenders have a particularly high rate of recidivism. Tracking every sex offender — or even, as in Skora’s case, many non-sexual offenders — is a distraction, they argue, from concentrating attention on those who are most dangerous and most likely to commit more crimes.

“We have 41,000 names on our [sex offenders] registry,” said Allison Taylor, executive director of the Texas Council on Sex Offender Treatment. “If we could take our money and focus it on the 10 percent or so who are most likely to re-offend, we could make great progress.”²

Although a Gallup Poll last year found that more Americans are “very concerned” about child molesters than violent crime in general or even terrorism, the rates of sex crimes against

children have actually dropped significantly since the early 1990s.³ What’s more, such crimes are far more likely to be committed by a family member or someone else previously known to the victim than by a stranger. (See chart, p. 728.)

In fact, strangers are responsible for only 7 percent of reported cases of juvenile sex crimes, according to the Justice Department. Thirty-four percent are victimized by their own families, and 59 percent of cases occur among friends.⁴ According to the National Center for Missing and Exploited Children, only about 115 out of 260,000 children kidnapped each year are snatched by strangers.⁵

“We’re doing a disservice, essentially, with most of the legislation we’re seeing right now around sex offenders,” says Alisa Klein, public-policy consultant with the Association for the Treatment of Sex Offenders. “We’re creating

this myth that if we just know who the identified sex offenders are, you can keep your children safe.”

Some of the layers of sex-offender laws passed over the past decade do seem to conflict with each other. For instance, the recent rigid zoning restrictions are leading some sex offenders to lie about their whereabouts or to drop off law enforcement’s radar entirely, undercutting the effectiveness of registration and community-notification requirements.

But once anti-sex-offender legislation comes to a vote following an emotionally charged crime, the voices of skeptics are barely heard. “Everyone knew some parts of the bill were flawed,” says Republican Georgia state Rep. John Lunsford, referring to the state’s new zoning restrictions passed in April, parts of which have already been found to be unconstitutional. “Once it reached the floor, you were either voting for the perverts or voting for your constituency.”

Tough, new sex-offender laws tend to pass unanimously, or nearly so. If there are flaws in some of the approaches, advocates for the get-tough approach say, that is only more reason to keep working to strengthen them. If many sex offenders are slipping between the cracks, for instance, that makes it all the more necessary to ensure compliance through GPS or other methods.

The new federal law makes failure to register a felony and offers states money to buy GPS systems. “We track library books better than we do sex offenders,” complained Republican Florida Rep. Mark Foley, one of the bill’s sponsors.⁶

And if most sex offenders are family members or other close acquaintances of children, that’s still no reason not to try to protect children against violent and predatory criminals, such as the one who killed Jessica Lunsford.

“It’s not about the overall rate, it’s about wanting to make sure that events like this don’t occur,” says Lieb.

As the debate about the best way to prevent child molestation rages on, here are some of the questions people are debating:

Should sex offenders be allowed to live near children?

In May, Jim L'Etoile lost his job as director of California's Parole and Community Services Division because of his handling of sex offenders. It's not that he lost track of too many of them, or that they committed new crimes under his supervision. His mistake was placing 23 "high-risk" sex offenders — those considered most likely to commit repeat crimes — in hotels and motels within a few miles of Disneyland.

That placement showed "a total lack of common sense," says Democratic state Rep. Rudy Bermudez, a former parole officer. "When you place high-risk sex offenders where children are, you're almost violating the laws by putting children in harm's way."

Communities around the country don't want sex offenders living anywhere near children. They may not have attractions as glamorous as Disneyland, but 17 states and dozens, if not hundreds, of local governments have banned registered sex offenders from living near public places where children can be expected to gather, such as schools.

"I've had folks say, 'I don't want them anywhere in my town,' " says Charles Olney, a researcher at the U.S. Department of Justice's Center for Sex Offender Management. "Everyone wants these folks somewhere else."

As Democratic Miami Beach Mayor David Dermer puts it, "If you have a child, do you want a registered sex offender living next to you? Do you feel comfortable with that?"

His city passed an ordinance last year to block sex offenders from living within 2,500 feet of any school, public bus stop, day-care center, park "or other place where children regularly congregate." For all practical purposes, no sex criminals can live anywhere in the city.

Few Sex Offenders Rearrested for Sex Crimes

Less than 4 percent of the sex offenders released from prison in the U.S. in 1994 were reconvicted of a new sex crime within three years of their release. Sexual assault is considered an underreported crime, however, and actual recidivism rates may be higher than indicated below. Studies of released sex offenders over longer periods of time show greater recidivism rates.

Percentage of Released Sex Offenders

Recidivism Measure	Child molesters	Rapists	Statutory Rapists
Within 3 years following release:			
Rearrested for any new sex crime	5.1%	5.0%	5.0%
Reconvicted for any new sex crime	3.5%	3.2%	3.6%
Total Released	4,295	3,115	443

Source: "Recidivism of Sex Offenders Released From Prison in 1994," Bureau of Justice Statistics, November 2003

"The whole city is basically covered by this," Dermer says. "As far as I'm concerned, it worked well."

Others worry that so-called proximity restrictions amount to an unfair extra dose of punishment brought against offenders who already have served their sentences. A federal judge has blocked a portion of Georgia's law, finding it unconstitutional to force sex offenders to move — even if the crimes they committed occurred many years earlier — when school bus stops are rerouted close to their homes.

Because of such concerns, 11 of the 17 states with proximity laws offer exemptions to those who lived within the buffer zones before the new laws were passed, according to Wayne A. Logan, a law professor at the College of William and Mary.

Even critics of the residency restrictions agree that convicted sex offenders should not be allowed to work in jobs, such as teaching, that would bring them into close proximity with children. It's dangerous when predators are able to establish relationships with children and build a level of trust that they can exploit.

Most sex crimes, after all, are perpetrated by someone known to the victim. (See chart, p. 728.)

But offenders' ability to establish such relationships has nothing to do with where they live, critics of the restrictions say. Criminals don't have to live near arcades or playgrounds to visit them. "Schools, parks and playgrounds aren't a factor in most sex-abuse cases," says Jill S. Levenson, a human-services professor and researcher at Lynn University, in Fort Lauderdale, Fla., who has coauthored studies of sex-offender residency restrictions.

"It sounds good in theory," Levenson continues, "but the big problem with residency restrictions, aside from the fact that there's no evidence that they work, is that they push sex offenders from cities into rural areas so they're more difficult to track and monitor and are farther from social services and psychiatric services." Those are factors associated with increased recidivism, not lower recidivism, Levenson says.

"When you ostracize these individuals, they're taken away from social-network support, job opportunities and family," says Logan, who is preparing

Sex Abuse Still Haunts Catholic Church

The Rev. Francisco Xavier Ochoa, a Catholic priest in Santa Rosa, Calif., confessed to local church officials on April 28 that he had kissed a 12-year-old boy and offered him \$100 to do a striptease. Ochoa also admitted to other incidents with boys elsewhere in earlier years. But in defiance of California law, church authorities failed to report Ochoa immediately to the police, instead waiting until May 1. In the meantime, Ochoa fled to Mexico.

"I made an error in judgment by waiting to report Rev. Ochoa's admissions," Bishop Daniel Walsh wrote in an August letter to parishioners. "I should have acted immediately and not delayed."

The bishop's apology didn't satisfy the Sonoma County Sheriff's Department, which recommended on Aug. 25 that criminal charges be filed against Walsh. It would be the first time a U.S. Catholic Church official faces criminal prosecution for failing to report sexual abuse.¹

The Catholic Church has arguably been damaged more by child sex-abuse scandals than any other institution in American life. The scandal appeared to peak in 2002, when the U.S. Conference of Catholic Bishops announced a sweeping set of reform measures intended to curb abuse and protect children.²

Since that time, legal settlements with victims of priestly abuse have forced dioceses in Tucson, Spokane and Portland, Ore., to declare bankruptcy, while many other dioceses have sold property to pay the bills. Abuse-related church expenses peaked last year at \$467 million.³

The 2002 reforms call for priests and other parish officials, as well as the laity and children, to undergo regular

training in spotting and preventing sexual abuse of children. The program includes educational videos, workshops and the development of a common language and policy for confronting people whose behavior is questionable, such as saying, "It's parish policy not to give long, lingering hugs to small children."

These efforts are subject to regular audits, and "the church urges that anyone who has been abused by a priest or deacon or person of authority report the abuse immediately and that the person be removed from their position," says Sister Mary Ann Walsh, spokeswoman for the bishops' conference.

"The church has addressed the problem very aggressively," she said. "We're horrified by it."

But critics of the church complain that Catholic leaders, while paying lip service to the problem, have failed to live up to their own promises. "The gap between what the bishops say publicly and what they do privately has never been greater," says David Clohessy, national director of the Survivor Network of Those Abused by Priests. "The reforms they've adopted since 2002 are essentially like speed limits, but no cops."

Several recent incidents suggest the church has not learned from the earlier round of scandals, in which its leadership allowed known molesters to continue working with children. In Chicago, the Rev. Daniel McCormack was allowed to continue in his ministry for four months after allegations surfaced that he had abused three boys. After a stinging audit, Cardinal Francis George said in March that he was "most truly sorry . . . for the tragedy of allowing children to be in the presence of a priest against whom a current accusation of sexual abuse has been made."⁴

a book on offender-registration laws. In one instance, 21 sex offenders wound up grouped together in a cheap motel outside of Cedar Rapids, Iowa, because they had been, in effect, banished from within the city limits.⁷ The fact that some sex offenders are being forced either into homelessness or into living arrangements with their ostracized peers may make them less likely to stay on the straight-and-narrow.

"Yes, it's an inconvenience — some folks will have to move," said Republican state Rep. Jerry Keen, majority leader of the Georgia House and sponsor of the state's proximity law. "But if you weigh that argument against the overall impact, which is the safety of children, most folks would agree this is a good thing."⁸

The foundation for residency restrictions on sex offenders was laid more than a decade ago, in 1994, when Congress required states to compel convicted sex offenders to register their addresses with local police. The requirement helped parole and probation officers supervise and monitor their charges. Two years later, "Megan's Law" required communities to provide citizens with information on sex offenders in their midst. The law was named in honor of Megan Kanka, a 7-year-old New Jersey child raped and murdered in 1994 by a convicted sex offender who lived across the street, Jesse Timmendequas.

But some critics of the proximity laws — including some prosecutors and law-enforcement officials — are now worried that the buffer-zone approach

also may erode the effectiveness of the registry and community-notification requirements. If it becomes too difficult for sex offenders to find an affordable place to live, they may change residences without notifying authorities, register false addresses or simply disappear, making it harder for law enforcement to do its job.

In Chicago, for example, more than 75 percent of the addresses given by 81 sex offenders were found to be bogus.⁹ In Iowa, the number of sex offenders who are unaccounted for on the state's list of 6,000 offenders has doubled since a statewide residence law took effect last September.¹⁰ "The truth is that we're starting to lose people," said Don Vrotsos, chief deputy of the Dubuque County sheriff's office.¹¹

That same week, New Hampshire's attorney general released an audit saying the church had failed to make sure all those who work with children pass criminal background checks. To get the state to agree to drop a criminal investigation, the church had to agree to conduct the background checks. And the church has lobbied hard against legislation in several states to extend the statute of limitations for bringing sex-abuse complaints.⁵

Even the National Review Board, a lay committee created in 2002 to investigate sex abuse, has sharply criticized church leaders. The board's chairman, a former governor, compared bishops to the mafia, while a former leader said the bishops had "manipulated" the group and had been far from forthcoming.⁶

At the local level, church officials say that the new policies and education programs are starting to take root. "I don't tend to use superlatives very often, but I think this is a program that is going to change lives," says Helen Osman, communications director for the diocese of Austin, describing the



Former Los Angeles Catholic priest Michael Wempe, right, was sentenced in May to three years in prison for child abuse.

AP Photo/Nick Ut

church's education efforts for children. "As far as sexual abuse, no one has reported anything to us."

Meanwhile, critics charge that the bishops remain impervious to outside oversight, relying too heavily on self-audits by dioceses to ensure compliance with the church's own rules and legal settlements, such as the one in New Hampshire that required thorough background checks.

"As long as there is that structure, with no checks and balances," says Clohessy, "with no oversight and no consequences for wrongdoing, there will continue to be sex crimes and cover-ups."

¹ John Cote, "Catholic Bishop May Face Jail," *San Francisco Chronicle*, Aug. 26, 2006, p. B1.

² For background, see Kenneth Jost, "Sexual Abuse and the Clergy," *CQ Researcher*, May 3, 2002, pp. 393-416.

³ Rachel Zoll, "Costs Soar as Clergy Sex Abuse Cases Rise," Associated Press, March 31, 2006.

⁴ T.R. Reid, "Catholic Leaders Fight Legislation on Suits," *The Washington Post*, April 1, 2006, p. A10.

⁵ *Ibid.*

⁶ Joe Feuerhard, "Review Board Head Charges Bishops 'Manipulated' Sex Abuse Panel and Withheld Information," *National Catholic Reporter Online*, May 11, 2004.

The Iowa County Attorneys Association has called for a repeal of the banishment law.

"You have to be very careful with those sorts of laws because we don't know if they're going to help, and they may hurt," says Carlos Cuevas, an assistant professor at Northeastern University's College of Criminal Justice.

Should sex offenders receive harsher punishments?

James Jenkins says he's "all for castration for certain sex offenders. It would do a lot to prevent recidivism and [reduce] the amount of money we have to spend on treatment centers."

Jenkins should know. He was sent to a sex-offender treatment center after he molested three young girls. Before

being sent to the institution, Jenkins castrated himself with a razor. "Castration has done precisely what I wanted it to do," Jenkins said. "I have not had any sexual urges or desires in over two years. My mind is finally free of the deviant sexual fantasies I used to have about young girls."¹²

Eight states allow either for chemical or surgical castration. It's one sign among many that over the past decade states and local communities have decided they need to toughen their laws against sex offenders.

In the wake of the community-notification requirements passed a decade ago, nearly half the states now have passed versions of Jessica's Law, which requires more aggressive tracking of sex offenders

through use of GPS (global positioning system) technology.

"You see the continual need for more pieces of the pie — tougher law enforcement and greater community awareness," says Rumenap, of Stop Child Predators. "We need to keep our children safe."

Anti-sex-offender laws rarely encounter much political resistance. Both houses of the Washington state legislature, for instance, earlier this year passed mandatory 25-year prison sentences for some sex offenders without a dissenting vote.

"In Oklahoma, we have no sympathy for those who would harm our children. We've increased penalties across the board for all forms of sex abuse against children," says Democratic Gov.

Most Victims Know Their Attacker

The vast majority of sexual-assault victims are attacked by family members or acquaintances, not strangers.

Offenders (by percentage)

Victim Age	Family member	Acquaintance	Stranger
All victims	26.7%	59.6%	13.8%
Juveniles	34.2	58.7	7.0
0-5 years old	48.6	48.3	3.1
6-11	42.4	52.9	4.7
12-17	24.3	66.0	9.8
Adults			
18-24	9.8	66.5	23.7
24 +	12.8	57.1	30.1

Source: "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics," Bureau of Justice Statistics, U.S. Department of Justice, July 2000

Brad Henry, who signed a law in June imposing the death penalty on certain repeat offenders who have abused children.

Oklahoma became the fifth state to impose the death penalty for sex crimes against children. (South Carolina had enacted its law one day earlier.)

The U.S. Supreme Court ruled in 1977 that the death penalty was disproportionate in cases involving the rape of adults, and thus amounted to "cruel and unusual punishment," which is banned by the Eighth Amendment. The court has not ruled on a death-penalty case involving an offense against a child.¹³

Lieb, of the Washington State Institute for Public Policy, says the new laws serve an important purpose — not just by imposing harsher sentences but in raising public awareness about sex crimes. "Personally, I think it's a very valuable change in our society. It's recognition of the harm," she says. "There's no doubt, looking at sex offenders who have committed horrific crimes and gotten out, the thing you would most wish for is that they got a longer sentence."

But Lieb questions laws that raise the level of punishment for sex offenses above those for murder, as in Washington. "There's been research that shows if you set mandatory sentences too high, then prosecutors won't file those charges, and judges and juries won't convict," she says.

It's not only a question of whether the legal system will apply the most rigorous penalties, says R. Karl Hanson, a psychologist and a corrections researcher with Public Safety and Emergency Preparedness Canada, that country's main public safety agency. Victims invariably find the court process a challenge, he says, and they are sometimes especially reluctant to press charges when the perpetrator is a relative or someone known to them, as is the case more often than not. Studies from the 1990s showed that 73 percent of molestation victims don't report the crime if the perpetrator is a relative or step-parent, while 70 percent don't report an acquaintance.¹⁴ Children sometimes fear further harm as a result of reporting.

"The consequences may be harsher than the victim wants," Hanson

says. "Many victims of sexual assault don't necessarily want a big punishment — they just want it to stop. Sometimes they're afraid to disclose the crime because it's their uncle who will have to go away forever."

Becky Rogers Martin, a Republican state representative in South Carolina, also has concerns that police and prosecutors may not enforce laws that they don't believe fit the crime. "Lots of times we'll put in real strict penalties so that even if they're cut down they'll still serve real time," she says. "But our concern was that if we made it so strict, they wouldn't take it seriously."

Others warn that longer sentences or even the death penalty won't act as a successful deterrent to crime. "People think it's effective because they confuse deterrence with retribution," says Murray A. Straus, a sociologist at the University of New Hampshire. "That doesn't mean that punishment never works as a deterrent. It does — but it has a very high failure rate."

"Offenders are going to become more aware that society doesn't want to deal with them on the street," says Christopher J. Murphy, deputy chief of the adult probation and parole department in Montgomery County, Pa. "But the majority of sex offenders that I've dealt with didn't think they were going to be caught to begin with."

Many criminologists also are concerned that contemporary laws dealing with sex offenders often lump them together broadly as a group. In some cases, men who were teenagers when found guilty of statutory rape may be subjected to the same kinds of living restrictions and community-notification requirements as older men who repeatedly molested young children. Even putting aside the question of fairness, they say, this amounts to a wasteful dilution of effort. Keeping track of hundreds of sex offenders is hard.

"We tend to put all sex offenders under one umbrella, and these laws are applied to them equally," says Terry, of

the John Jay College of Criminal Justice.

“We often apply the resources to the punishment rather than to the treatment,” she continues. “Personally, I think that there should be more of a focus on treatment.”

Can sex offenders be rehabilitated?

Many of the most disturbing violations of children in recent times have been perpetrated by repeat offenders. The suspect in the case of Jessica Lunsford, the

Florida girl whose kidnap, rape and murder has prompted half the states to pass stricter tracking requirements, is a previously convicted sex offender who had failed to register with police.

The idea that someone could molest children and then be set free to commit the same crime again — or an even more violent crime — is a central motivation behind the current push toward more stringent punishments and tracking.

“The problem with this type of crime is that the rate of recidivism is high,” contends Rumenap, of Stop Child Predators.

Referring to “To Catch a Predator,” the NBC “Dateline” series that investigates men who use the Internet to troll for minors, Rumenap says, “That show has been on five or six times, and they’re getting some of the same sex offenders showing up time and again.”

Determining the true rate of recidivism among sex offenders, though, is one of the most contentious points within the policy debate surrounding the issue. Some studies indicate that rates of recidivism among sex offenders are actually lower than for people who commit other violent crimes or property crimes.



President George W. Bush shakes hands with John Walsh after signing the Adam Walsh Child Protection and Safety Act on July 27; Mrs. Walsh is at left. Six-year-old Adam was murdered in 1981 after being abducted from a suburban shopping mall in Florida. John Walsh later became host of “America’s Most Wanted” and a leader in the push for victims’ rights.

APP/Getty Images/Tim Sloan

up again on charges doesn’t mean they haven’t perpetrated more crimes, he argues.

“Recidivism research measures crimes reported to law enforcement that result in arrest and conviction,” Allen writes. “But according to the Justice Department, crimes against children are the most underreported of all crimes. Researchers estimate that one-in-five girls and one-in-10 boys will be sexually victimized in some way before they reach adulthood. Yet only one-in-three will tell anybody about it.”¹⁷

A study by the Justice Department’s Bureau of Justice Statistics found that only 5.3 percent of sex offenders (defined as men who had committed rape or sexual assault) were rearrested for another sex crime within three years after their release from prison in 15 states. That was far below the 68 percent rearrest rate for non-sex offenders, 25 percent of whom were resentenced to prison for new crimes.¹⁵

A broader and widely cited Canadian study found that within five years of release 14 percent of sex offenders were brought up on new charges for a sexual offense. After 20 years of release, 73 percent of sex offenders had not been charged with another sexual offense.¹⁶

“It’s hard to argue that all sex offenders will inevitably re-offend,” says psychologist Hanson, coauthor of the Canadian study. “On average, the overall recidivism rate is lower than for general offenders, but they are more at risk for committing new sex offenses.”

Ernie Allen, president of the National Center for Missing and Exploited Children, disputes the idea that recidivism studies prove that sex offenders are relatively unlikely to strike again. Just because they aren’t brought

Even those who believe that most sex offenders are unlikely to strike again concede that such criminals will never entirely shed their destructive impulses. But they say that the behavior of many sex offenders can be managed, just as incurable diseases such as diabetes can be managed.

“We don’t talk about it in terms of a cure,” says Levenson, of the Center for Offender Rehabilitation and Education. “Some may always be attracted to children, but they can certainly learn to control that and not act on it.”

Hanson says crunching the data from 17 different studies about sex-offender management shows a five-year recidivism rate of 10 percent for those who had undergone some form of treatment, compared with a 17 percent rate for those who hadn’t. “The evidence suggests that those offenders who go to treatment are less likely to re-offend than those who don’t,” he says. “That may be partly because the more cooperative offenders are more likely to go.”

Trying to sort out which criminals are going to be more compliant is just one of the tricks involved in successful sex-offender management. Criminologists say that sex offenders are more

Many Victims Are Under Age 6

One of every seven victims of sexual assault (14 percent) reported to law-enforcement agencies was under age 6, and more than a third of all victims were under 12.

Ages of Sexual-Assault Victims
(1991-1996)

Victim Age	All sexual assault	Forcible rape	Forcible sodomy	Sexual assault with object	Forcible fondling
0-5	14.0%	4.3%	24.0%	26.5%	20.2%
6-11	20.1	8.0	30.8	23.2	29.3
12-17	32.8	33.5	24.0	25.5	34.3
18-24	14.2	22.6	8.7	9.7	7.7
25-34	11.5	19.6	7.5	8.3	5.0
34+	7.4	12.0	5.1	6.8	3.5

Source: "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics," Bureau of Justice Statistics, U.S. Department of Justice, July 2000

heterogeneous than other types of violent criminals, with a wider range of age and education.

They also vary widely in terms of their tendencies toward violence. For that reason, management programs need to be tailored to take into account particular offending patterns and proclivities. A program that works for a middle-aged offender, for instance, won't work for a teenager.

"If you have sex offender-specific treatment, it can work, for those offenders who want to take advantage of it," says Murphy, the Pennsylvania probation official. "Unfortunately, you don't know which ones are which."

BACKGROUND

Cycles of Concern

Throughout the 20th century, the legal and political response to sex offenders has evolved through a series

of cycles. At certain junctures, horrific crimes have sparked stepped-up efforts to combat the problem. Over time, however, as tensions ease, more liberal approaches come into fashion, such as a greater focus on rehabilitation. But then some new and shocking event shakes society's complacency, and tougher laws again sweep the land.

A series of "Jack the Ripper" serial-murder cases in several states drew public attention during the early 1900s, some of which involved child molestation. The killings led to a widespread belief that sex crimes were perpetrated by a deviant person from outside the community. "It is always the crime of a mentally unbalanced, feeble-minded person," editorialized *The New York Times* in 1915. "Moral degenerates are easily discoverable without waiting until acts of violence put them in the category of harming children."¹⁸

Reflecting such concerns, police began to investigate men with suspicious collections of photographs of children, believing they might mark a potential "ripper." And most states between 1905 and 1915 passed new laws for

sex offenders that imposed open-ended sentences. By 1921, New York state permitted offenders considered mentally defective to be imprisoned for life (overseen by a doctor rather than a warden), regardless of whether they had been convicted of a crime.

"Failure to require actual conviction on a specific charge reflected the therapeutic assumption that no real harm could come from merely being diagnosed and treated medically, and the social assumption that merely being charged demonstrated that a person was a troublemaker of some kind," writes Philip Jenkins, a historian and religious-studies professor at Pennsylvania State University, in his 1998 book *Moral Panic*.¹⁹

The twin mixing of civil and criminal penalties and penology with treatment would remain the legal model for decades. The social and political climate shifted during the 1920s, however, and by the end of the decade charges of offenses against morality and chastity had plummeted. Police and the media turned their attention to Prohibition and the culture of gangsters, while a National Commission on Law Observance and Enforcement barely mentioned sex crimes in its 1931 report on pressing criminal-justice issues.

The period's relative quiet was disturbed by the 1934 apprehension of Albert Fish, who was charged with the murder, mutilation and cannibalism of Grace Budd, a 12-year-old from White Plains, N.Y. Fish had experimented with numerous perverse activities, which he recorded in his diaries. His shocking trial exposed the public to the outer reaches of sexual deviancy, engendering the sense that dangerous perverts were on the loose and waiting to strike. Fish's execution preceded by three months that of Bruno Hauptmann, who had kidnapped and killed the infant son of aviation pioneer Charles Lindbergh. Their stories often jostled for space on the front pages of the nation's newspapers

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Chronology

1940s-1970s

Ineffective civil-commitment statutes lead to a backlash against tough sex-offender laws.

1949

During “horror week” in November, three young girls across the country are raped and murdered or left to die. In response, 15 states establish commissions to study the sex-offender problem.

1955

After nearly 20 states pass laws allowing sexual-psychopaths to be held indefinitely, the population of state mental hospitals reaches 550,000, more than double the total 25 years earlier.

1974

Congress passes the Child Abuse Prevention and Treatment Act, mandating the reporting and investigation of abuse allegations.

1975

U.S. Supreme Court rules there is no constitutional basis for confining mental patients unless they present an immediate danger to themselves or their communities.

1980s-1990s

Sex crimes, particularly those against children, re-emerge as a major legislative concern.

1981

Two members of Congress are accused of having sex with teenage congressional pages.

1982

Wayne B. Williams is convicted for two out of a string of 23 murders of children that shocked Atlanta from 1979 to 1981.

1990

Washington state passes a law that becomes a model for other states, requiring dangerous sex offenders to register with police and reopening the possibility of civil commitment following prison sentences. . . . After six years of criminal trials in California, there are no convictions in the McMartin preschool case, in which a teacher and administrator had been accused of ritual sex abuse involving hundreds of children despite a lack of physical evidence.

1992

The number of reported child sex-abuse cases peaks at about 150,000.

1993

Polly Klaas and Jacob Wetterling, pre-teens who were abducted and either killed or presumed dead, spark massive public interest, leading to the pictures of missing children appearing on milk cartons and further legislation against sex offenders.

1994

As part of a larger crime bill, Congress passes the Jacob Wetterling Act, requiring sex offenders to register their whereabouts with police. . . . New Jersey becomes the first state to pass “Megan’s Law,” requiring community notification when a sex offender lives in the area; it honors murdered 7-year-old Megan Kanka.

1996

Congress passes a federal version of Megan’s Law requiring all states to enact sex-offender registries or forfeit law-enforcement grants. . . . California requires chemical castration of offenders twice convicted of child molestation. . . . JonBenet Ramsey, a 6-year-old beauty queen, is found murdered and sexually assaulted in her home in Boulder, Colo., on Dec. 26.

2000s

Congress and the states crack down further on sex offenders, despite declining rates of such crimes.

2002

Bringing a year of scandal to a close, the U.S. Conference of Catholic Bishops adopts sweeping new sex-abuse prevention policies that mandate education in each diocese and call for tougher action against priests accused of pedophilia or other sex offenses involving children.

2005

Jessica Lunsford, a 9-year-old Florida girl, is abducted, sexually assaulted and buried alive. In response, two-dozen states enact “Jessica’s Law,” requiring stricter tracking of convicted sex offenders. . . . In all, states pass more than 100 new sex-offender laws, the most ever in a given year.

2006

U.S. marshals lead a 27-state dragnet from April 17-23 that nabs 1,102 wanted sex offenders. . . . On June 9 Oklahoma becomes the fifth state to approve the death penalty for sex offenders. . . . A U.S. district judge rules on June 29 that portions of Georgia’s residence-restriction law, passed in April, are unconstitutional. . . . President Bush on Aug. 27 signs the Adam Walsh Act, requiring sex offenders to provide DNA samples and states to maintain offender registries on the Internet and impose criminal penalties for offenders who fail to register. . . . On Nov. 7 California voters are expected to approve a strict version of Jessica’s Law, imposing mandatory minimum sentences on convicted sex offenders.

Online Predators Worry Experts

Kids who spent this past summer camping at Island Lake in Starrucca, Pa., were encouraged to write about their experiences online but not to say exactly where they were. Camp officials were worried about Internet sex predators.

Many camps have banned the use of their names or logos from Web pages and blogs set up by campers. Some even ban digital cameras from their grounds. "The information that kids share today often is personal and private information that allows predators to track them down," said Peg Smith, chief executive officer of the American Camp Association.¹

Of course, children and youth don't have to go away to camp to make their presence known on the Internet. Social-networking sites such as MySpace and Facebook have loads of information about millions of children and youths — their names, their photographs, their diaries and pet peeves and favorite songs — even their eating habits and relative tendency to motion sickness.²

All of that is rich material for sex predators, who typically try to "groom" potential victims by getting to know them and building up trusting relationships. "The social-networking sites have become, in a sense, a happy hunting ground for child predators," says Rep. Michael G. Fitzpatrick, R-Pa.

Fitzpatrick's Deleting Online Predators Act passed the House, 410-15, on July 26.³ The bill would ban access to chat rooms and a variety of online forums in public schools and libraries. Some groups, such as the American Library Association, say that it could have the effect of blocking students from finding information on legitimate sites, such as Yahoo, that host legitimate social forums.

Congress has tried for years to fashion laws that would protect children from the perils of the Internet. The Communications Decency Act of 1996 made it a crime to transmit "patently offensive" material over the Internet in a way that would be accessible to minors. The Supreme Court struck the law down the next year on free-speech grounds, however.

But the court in 2003 upheld the Children's Internet Protection Act of 2000, which requires libraries that accept federal funds to install anti-pornography filtering software. "The interest in protecting young library users from material inappropriate for minors is legitimate," Justice Anthony Kennedy wrote.⁴

Justice Department officials have grown particularly concerned about Internet pornography because, says a senior counsel at the Department of Justice, "the price of admission" for access to some pornography sites may be images of child sex abuse that in many cases may be homemade — suggesting that "mere possession of child porn may indicate a dangerous person."

Internet companies had resisted calls from the Bush administration that they share more information about their users

with law-enforcement agencies, citing privacy concerns. But five leading Internet service providers, including AOL, Yahoo and Microsoft, announced in June that they will jointly build a database of child-pornography images and develop tools to help law enforcement prevent their distribution.⁵

A large percentage of those who possess illicit images of children, says the Justice official, who asked not to be named, may actually be offenders or contact children. "The Internet is a wonderful connector," he says, "but it brings dark alleys and dangerous places into your home, putting deviants together with their prospective victims."

As part of its Project Safe Childhood initiative, the Justice Department has stepped up its investigation and coordination of "enticement cases" in which predators contact children through the Internet and arrange to meet with them in person. NBC has broadcast an occasional series called "To Catch a Predator" that has resulted in nearly 100 arrests.⁶

According to a study released last month by the University of New Hampshire's Crimes Against Children Research Center, about 13 percent of children ages 10 to 17 have been solicited online for sexual activity or conversations. That was down from a total of 19 percent five years earlier. Researchers attributed the drop to warnings and education campaigns.

But "the most serious kinds of sexual solicitations, those in which solicitors make offline contact with young children, did not decline."⁷

Larry D. Rosen, a psychologist at California State University-Dominquez Hills and an expert on Internet socializing, says that sites such as MySpace are not "inherently scary or dangerous," but can, in fact, be healthy ways for teens to develop a sense of community and their own identity.

The major issue he found in a recent study is that "parents simply ignore their children's activities on MySpace. This is particularly striking, given that through the media parents are convinced that MySpace is ripe with sexual predators."⁸

¹ Pam Belluck, "Young People's Web Postings Worry Summer Camp Directors," *The New York Times*, June 22, 2006, p. A16.

² For background, see Marcia Clemmitt, "Cyber Socializing," *CQ Researcher*, July 28, 2006, pp. 625-648.

³ Kathryn A. Wolfe, "Minors' Use of Social Web Sites at Schools and Libraries Targeted," *CQ Weekly*, July 31, 2006, p. 2125.

⁴ Jan Crawford Greenburg, "Justices Back Porn Filters at Libraries," *Chicago Tribune*, June 24, 2003, p. 1.

⁵ The Associated Press, "Internet Firms to Step Up Child-Porn Fight," *Los Angeles Times*, June 27, 2006, p. C7.

⁶ Julia Rawe, "How Safe is MySpace?" *Time*, July 3, 2006, p. 34.

⁷ "Youth Online Exposed to More Porn But Fewer Sexual Solicitations, According to New Study," University of New Hampshire press release, Aug. 9, 2006.

⁸ Larry D. Rosen, "Adolescents in MySpace: Identity Formation, Friendship and Sexual Predators," June 2006; www.csudh.edu/psych/Adolescents%20in%20MySpace%20-%20Executive%20Summary.pdf.

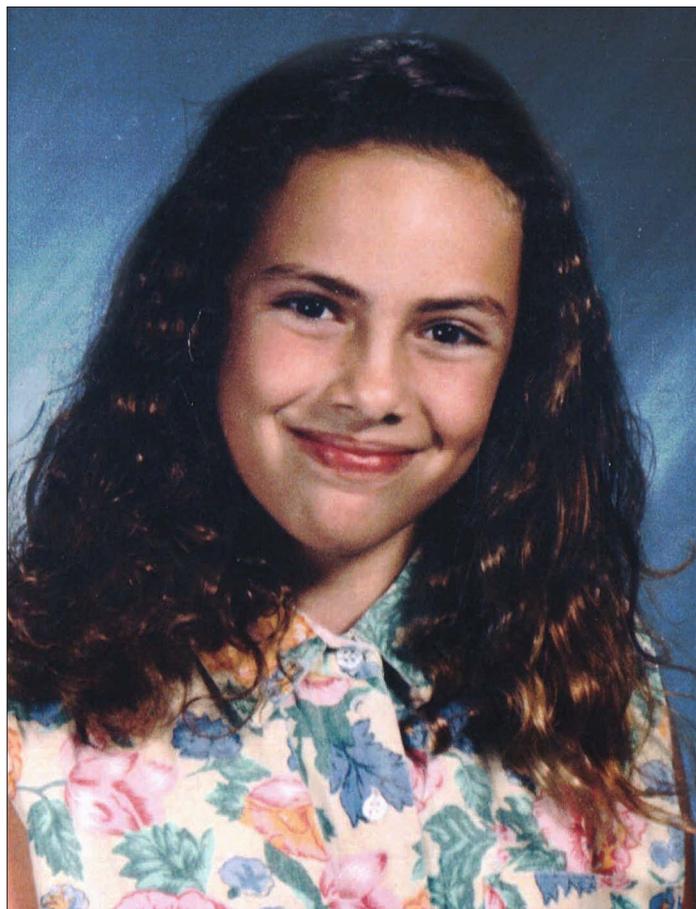
Continued from p. 730

and “may have encouraged readers to see the generalized danger to children in sexually explicit terms,” Jenkins writes.²⁰

The Fish case and several other notorious crimes over the next decade put sex offenders squarely back on the radar of both media and law enforcement. In the years following World War II, 15 states established commissions to study the problem. In a widely quoted article — “How Safe Is Your Daughter?” — FBI Director J. Edgar Hoover asserted, “The most rapidly increasing type of crime is perpetrated by degenerate sex offenders,” and his agency distributed posters urging children to be wary of strangers and not to accept rides from them.²¹

A third of Americans surveyed agreed with the proposition that “prison is too good for sex criminals. They should be publicly whipped or worse.”²²

More than half the states passed so-called sexual-psychopath statutes allowing dangerous offenders to be held for treatment for indeterminate periods (the Pennsylvania statute authorized a sentence of “one day to life”).²³ “The sexual psychopath gets locked up, and that’s the end of it,” said a Wisconsin administrator.²⁴ The statutes assumed that psychopaths were compulsive and would progress naturally from one type of crime to something worse, so they were broadly defined. Swept into the dragnet were not just rapists and molesters but also those charged with “public masturbation (without indecent exposure);” “the following of a white female by a



Twelve-year-old Polly Klass was murdered after being kidnapped at knife-point from her home in Petaluma, Calif., by Richard Allen Davis, who is now awaiting execution at San Quentin Prison.

AP Photo

Negro”; and “a non-aggressive homosexual convicted of passing bad checks.”²⁵

No Constitutional Basis

Although sexual-psychopath laws continued to be passed into the 1960s, they drew increasing criticism for being overly broad and for violating ordinary rules of due process. A consultant for New Jersey’s sex-offender commission said that prosecutors came to view them “merely as a useful tool to be employed or avoided in accordance with their own convenience.”²⁶

Sexual-psychopath laws soon became completely ineffective or were nullified in most of the states that had passed

them. (Only about 200 offenders a year were committed annually by the end of the 1950s.²⁷) Sociologist Edwin H. Sutherland wrote in 1950, “The concept of the ‘sexual psychopath’ is so vague that . . . the states which have enacted such laws make little or no use of them.”²⁸

In a backlash against the earlier panic, judges and legislators during the 1960s and early ’70s sharply curtailed forced civil commitments and indeterminate sentencing for several psychopaths. Many media accounts of sex crimes turned their focus to miscarriages of justice or racial bias.

This shift in attitudes was exemplified by sociologists who began to claim that rape was an overreported phenomenon and that women seldom resisted their assailants, instead filing complaints only after they’d been jilted or abandoned. And the profes-

sional literature of the era also downplayed the damaging effects of molestation on children. “In every way,” Jenkins writes, “scholarship of this era presented the plight of the abuse victim in language that seems stunningly callous to modern ears.”²⁹

The courts began to afford more protection to defendants. In the famous *Miranda* case, which involved a sex offender, the Supreme Court found in 1966 that police had to respect the due-process rights of defendants or forfeit evidence they’d acquired. In subsequent years, courts rejected indeterminate sentencing, the confinement of mental patients who posed no immediate danger to themselves or others and sexual-psychopath statutes that set an impossibly high bar for release.

Mandatory Reporting

But even as the courts were reflecting the notion that child molestation was not a significant problem, the broader societal pendulum was once again swinging back toward fear about the issue. The feminist movement joined with conservatives to draw attention to problems of rape, incest and child abuse, generating renewed media interest and prompting legislative action. In 1974, Congress passed the Child Abuse Prevention and Treatment Act, which mandated the reporting and investigation of abuse allegations and provided matching funds to states that identified abused children and prosecuted abusers. This led to the creation of an infrastructure of agencies, both public and private, devoted to investigating mistreatment.

The advent of mandated reporting swelled abuse statistics. States began to ease physical-evidence requirements, and the number of reported rapes — which had been 22,467 in 1965 — quadrupled to more than 100,000 by 1990.³⁰ The media also began to report that huge numbers of children — as many as 100,000 — were caught up in pornography rings. Although the figures were largely uncorroborated, increased attention to child pornography and abuse meant that actual incidents were more likely to be reported, which in turn stimulated further investigation and legislation. Sex-abuse claims increased by a factor of 18 between 1976 and 1985, while various surveys indi-

cated that upwards of 20 percent of Americans had been sexually abused as children.

States throughout the 1980s made it easier for children to testify in abuse cases, lifting the obligation that victims



Peggy McMartin Buckey was cleared in the infamous McMartin preschool case in 1990 after testimony indicated false allegations of an abusive sex ring at the Los Angeles school had been the result of inappropriate coaching of witnesses by police and social workers.

AP Photo/Nick Ut

— or survivors, as they were becoming known — had to face defendants against whom they were testifying. In a series of rulings in the early 1990s, the Supreme Court made clear that it would favor child protection over established constitutional assumptions about the rights of defendants. In 1992, the court ruled that hearsay testimony offered by doctors, police or family could be offered in lieu of forcing a child to testify.³¹

Studies of treatment programs conducted in the 1970s and '80s found no evidence of reduced recidivism. But therapists and others dealing with sex offenders made important strides during the 1980s, developing cognitive-behavioral therapy programs and relapse training. "Offenders were finally trained to recognize and manage their

fantasies and behavior that could not be cured," writes Terry, of the John Jay College of Criminal Justice.³² In the 1990s, the use of polygraphs also strengthened sex-offender management, offering insights into offenders' honesty (or lack thereof) about their behavior between sessions.

However, shocking cases garnered much more public attention than rehabilitation methods. In the infamous McMartin preschool case in Manhattan Beach, Calif., sensational allegations of satanic sex rituals at the school ultimately proved false. As the case dragged on throughout the 1980s, it became clear that the allegations had been the result of inappropriate coaching of testimony by police and social workers after initial complaints had been brought by a delusional woman. Fear of satanic and ritual sex rings led to other instances in which children who had been coached began, as with the Salem witch trials of the 17th century, to direct charges against investigators once they ran out of other adults they could plausibly accuse.³³ (The validity of repressed or "recovered" memories of abuse that emerged under therapeutic intervention also came into question.³⁴)

"Part of the problem is that you had really little kids — 3, 4 and 5 years old — and people interviewing them who had almost no awareness of children's suggestibility," says John E.B. Myers, director of the criminal-justice program at the University of the Pacific's McGeorge School of Law.

But other cases were real enough and again focused attention on "stranger danger." In 1989, Earl K. Shriner

assaulted and mutilated a 7-year-old boy in Washington state. Shriner had a long criminal record and, while in prison, had designed a van he intended to use for abducting, torturing and killing children. After it became clear that authorities had released an offender who clearly meant to do more harm, the legislature, under enormous pressure to act, in 1990 required dangerous sex offenders to register with police. The law also allowed the state to detain an offender past his release date pending a hearing on civil commitment. (As a *New York Times* headline explained, "Strategy on Sex Crimes Is Prison, Then Prison." ³⁵)

The Washington law drew questions about its constitutionality but nonetheless became a model for at least 16 other state laws, as well as federal legislation enacted in 1994. Before 1994, only five states required sex offenders to register their addresses.

That year, 7-year-old Megan Kanka was raped and strangled. Within weeks, the New Jersey legislature had passed a statute modeled on Washington state's, with the added requirement that police notify neighbors and schools about high-risk offenders in their community. "Megan's Law" had been passed in 35 other states by the time Congress enacted its version in 1996. ■

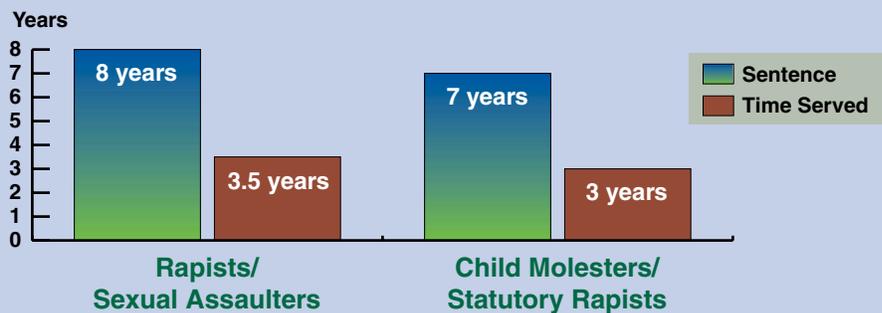
CURRENT SITUATION

New Legislation

The pace of sex-offender legislation has never been quicker than it is today. In 2005, 45 states passed more than 150 sex-offender laws, according to the National Conference of State Legislatures. That was the most

Average Molester Serves Three Years

Convicted child molesters who were released from prison in 1994 were sentenced to about seven years in prison, on average, but served an average of about three years. Rapists and sexual assaulters served slightly longer before release.



Note: The data are based on 9,691 rapists and 4,295 molesters released in 1994 in 15 states (Ariz., Calif., Del., Fla., Ill., Md., Mich., Minn., N.J., N.Y., N.C., Ohio, Ore., Texas, Va.)

Source: "Recidivism of Sex Offenders Released From Prison in 1994," Bureau of Justice Statistics, November 2003

ever passed in a single year and twice the amount of legislation in 2004.

States have kept up the pace, joined by federal lawmakers. Congress this summer passed the Adam Walsh Child Protection and Safety Act, requiring states to maintain publicly accessible offender registries on the Internet, in effect creating a national registry. The new law also requires that sex offenders provide DNA samples and be subject to more frequent in-person verification of their homes and workplaces. Offenders who don't register or update their information are subject to 10-year prison terms, and those who commit violent crimes while registered face five-year minimum sentences. The law also imposes a 30-year minimum sentence for those who have sex with a child younger than 12. ³⁶

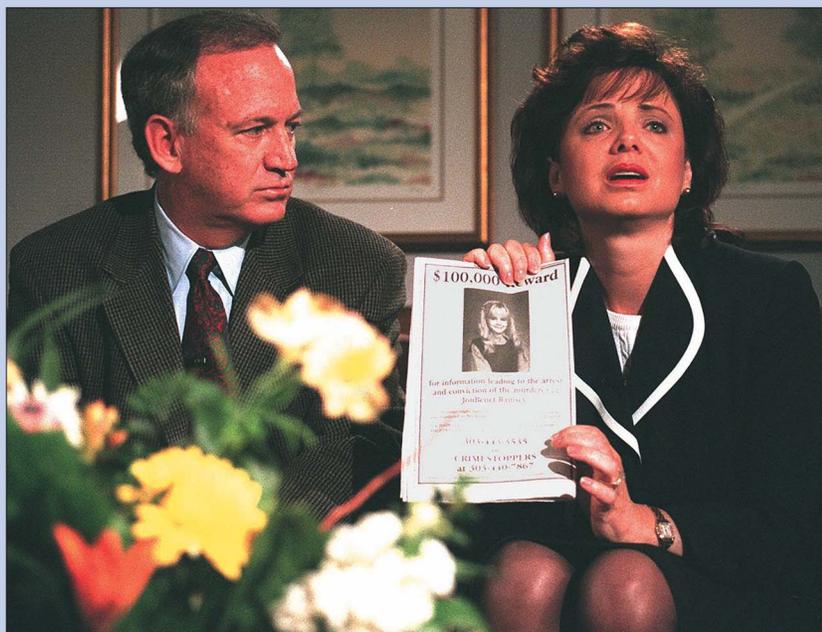
President Bush signed the bill into law on July 27, the 25th anniversary of the murder of the 6-year-old boy, who was abducted while shopping with his mother in Hollywood, Fla. His killer has never been found. Adam was the son of John Walsh, who became a victims'

rights advocate and host of the TV show "America's Most Wanted." "This may be the toughest piece of child-protection legislation in 25 years," Walsh said.

The U.S. Department of Justice has also made fighting sex offenders a top priority. The Adam Walsh Act authorized the department's Project Safe Childhood program, launched earlier this year, which seeks to combat Internet predators by providing grants to states and coordinating federal, state and local law enforcement agencies. "This is an area where effective government is not an option — we *must* be effective," says a DOJ senior counsel.

As part of an annual dragnet in April, the U.S. Marshals Service rounded up 1,102 people wanted for violent sex crimes or for failing to register as a sex offender. The operation "targeted the worst of the worst," said U.S. Attorney General Alberto R. Gonzales. ³⁷

At the state level, the signature sex-offender law of the last two years is Jessica's Law, after Jessica Lunsford, a 9-year-old Florida girl who was abducted, raped and buried alive in 2005.



AFP/Getty Images/Patrick Davison



Getty Images/Paula Bronstein

False Confession in Ramsey Case

The sensational sexual assault and murder of 6-year-old beauty queen JonBenet Ramsey, of Boulder, Colo., in December 1996 focused suspicion on her parents, John and Patricia, holding a reward poster. John Mark Karr, a teacher from Atlanta, Ga., confessed to the crime after his recent arrest in Thailand, but DNA testing indicated he was not the killer, and he was not charged.

Two-dozen states have passed versions of Jessica's Law, which generally imposes mandatory minimum sentences of 25 years on some categories of offenders and requires those who have committed specific sex crimes to wear satellite-tracking devices for life.

California voters are expected to overwhelmingly pass a strict version of Jessica's Law in November. In addition to a minimum-sentencing requirement (25 years for child rapists) and satellite tracking, the measure would bar offenders from living within 2,000 feet of schools and increase prison terms for a variety of crimes, including possession of child pornography and Internet luring.

A Florida State University study released this year of more than 75,000 offenders placed on home confinement found that those who were tracked by GPS were 90 percent less likely to abscond or re-offend, compared with those who were not electronically monitored.³⁸

"We will not mess around with those who mess with our children," Gov. Arnold Schwarzenegger, R-Calif., said in June. "We will find them. We will put them in jail. And we will keep them there."³⁹ Schwarzenegger's opponent for re-election, Democratic state Treasurer Phil Angelides, has also endorsed the initiative.

The California Legislative Analyst's Office has estimated that Jessica's Law could cost the state \$200 million annually after 10 years because of the cost of electronic monitoring and extra parole officers. "It costs an awful lot of money, and it's going to have virtually no effect," said Ron Kokish, a spokesman for the California Coalition on Sexual Offending, a group of treatment providers, public defenders and probation officers.⁴⁰

Such groups have had a hard time getting heard in most legislative debates. In Prince George's County, Md., the public-defender's office lobbied against

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At Issue:

Should California voters approve Jessica's Law?



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WRITTEN FOR *CQ RESEARCHER*, SEPTEMBER 2006



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EXCERPTED FROM *CALIFORNIA VOTER INFORMATION
GUIDE*, AUG. 14, 2006

With more than 560,000 registered sex offenders in the United States (over 100,000 of them living in California) it should come as no surprise that one-in-five girls and one-in-10 boys are sexually exploited.

In Florida last year a registered sex offender with arrests for sexual assault and fondling a minor was accused of abducting, molesting and burying alive 9-year-old Jessica Lunsford. In Idaho, a twice-convicted registered sex offender was charged with kidnapping and molesting 8-year-old Sasha Groene, molesting and murdering her brother and killing the rest of the family. And these are just a couple of examples of the horrific crimes committed against our nation's children.

As these examples make clear, sex offenders are often released back into society too soon. According to the Justice Department's Bureau of Justice Statistics, the average sentence imposed on a child molester released in 1994 was seven years, although the average offender was released after serving only three — despite the fact that sex offenders are four times more likely than other criminals to commit a sexual offense.

Fortunately for the voters of California, they have the opportunity to protect their children by voting "yes" this November on Proposition 83, "Jessica's Law." Proposition 83 increases penalties for violent sex offenders to 25 years to life in prison and requires lifelong tracking of sex offenders upon release — with costs of the monitoring system paid by the offender. Proposition 83 also bans sex offenders from living within 2,000 feet of any school or park and allows prosecutors to classify possession of child pornography as a felony.

Some critics may argue that mandatory sentencing takes away judicial discretion. As recent court cases demonstrate, however, such discretion is not always in the public's best interest.

In Vermont this past January, Judge Edward Cashman came under fire for handing out a light sentence to a man who confessed to repeatedly raping a young girl over a four-year period. More recently, Judge Kristine Cecava of Nebraska placed a five-foot-one-inch man convicted of sexually assaulting a 12-year-old girl on probation rather than giving him prison time because she was afraid of what might happen to him in jail.

At the very least, mandatory sentencing ensures that judicial indiscretion will not put predatory criminals immediately back on the streets.

We cannot afford another Jessica Lunsford tragedy. It is time for California to join the 24 states that have already passed Jessica's Law by voting "yes" on Proposition 83.

Proposition 83 would cost taxpayers an estimated \$500 million but will not increase our children's safety. Instead, by diluting law-enforcement resources, the initiative would actually reduce most children's security while increasing the danger for those most at risk.

The initiative proposes to monitor every registered sex offender on the misguided theory that each is likely to re-offend against strangers. But law-enforcement experience shows that when sex registrants re-offend, their targets are usually members of their own household. This proposition would do nothing to safeguard children in their own homes, even though they are most at risk.

Second, the proposition would not focus on the real problem — dangerous sex offenders — but would instead waste limited resources tracking persons who pose no risk. The new law would create an expensive tracking system for thousands of registrants who were convicted of minor, non-violent offenses, perhaps years or decades ago. Law-enforcement's resources should be directed toward high-risk individuals living in our neighborhoods.

Proposition 83 would have other dangerous, unintended consequences. The proposition's monitoring provisions would be least effective against those posing the greatest danger. Obviously, dangerous offenders would be the least likely to comply, so the proposed law would push the more serious offenders underground, where they would be less effectively monitored by police. In addition, by prohibiting sex offenders from living within 2,000 feet of a park or school, the initiative would force many offenders from urban to rural areas with smaller police forces. A high concentration of sex offenders in rural neighborhoods will not serve public safety.

Prosecutors in the state of Iowa know from sad experience that this type of residency restriction does not work. In 2001, Iowa adopted a similar law, but now the association of county prosecutors says that it does not provide the protection that was originally intended and that the cost of enforcing the requirement and unintended effects on families of offenders warrant replacing the restriction with more effective protective measures.

Residency restrictions do not reduce sex offenses against children or improve children's safety. Residency restrictions will not be effective against 80 to 90 percent of the sex crimes against children because those crimes are committed by a relative or acquaintance of the child. Residency restrictions cause sex registrants to disappear from the registration system.

The laws also cause unwarranted disruption to the innocent families of ex-offenders.

Continued from p. 736

state legislation requiring GPS tracking and bans on rapists and child molesters from school grounds. The office had no success with its arguments that the GPS technology is uncertain and that it may not be practical to notify churches and schools every time an offender moves. “The problem I’m having is that this is such an emotional issue,” said Public Defender Brian C. Denton. “I mean, no one’s for sex offenders.”⁴¹

Another popular type of legislation, however, appears to be attracting increasingly louder criticism. Seventeen states and numerous localities have passed such laws, which prohibit sex offenders from living near schools, parks, playgrounds and other places where children congregate.

For supporters, it only makes sense to try to protect children from sexually violent predators. “This is something that is taking root all over the country,” said state Rep. Keen, sponsor of a Georgia proximity law enacted in April. “People are putting a premium on the safety of kids.”⁴²

But critics say residency-restriction laws are counterproductive. In states where they have taken effect, such as Iowa, there is already evidence that sex offenders are no longer registering. (Groups that follow the issue generally estimate that approximately 100,000 of the 550,000 known sex offenders nationwide have absconded, or gone missing.) The Iowa County Attorneys Association favors repeal of the law.



A newly installed facial-recognition camera linked to a Sheriff’s Department database of registered sex offenders monitors Royal Palms Middle School, near Phoenix, Ariz., in December 2003. The school removed its two cameras last year after no suspects were spotted entering the school after two years.

Getty Images/Jeff Topping

In addition to the problem of offenders who abscond, critics say, offenders who comply but are forced to move because their homes are located too near to schools or other facilities that serve children often must go to rural areas with fewer support services. “We know that for people who have a tendency to violence, if they have no support or basic comforts, that really creates an incredibly heightened risk for re-offense,” says Klein of the Association for the Treatment of Sex Offenders.

Vigilantism also has been a problem. Last Easter, a Canadian man shot two

registered sex offenders in their Maine homes after tracking them down via the state’s sex-offender registry Web site. One had been convicted as a sexual predator. The other was 17 when he was arrested for being in a relationship with a 15-year-old girl. The state temporarily took down its registry after the shootings.⁴³

Where to Put Ex-Offenders?

With sex offenders facing either legal banishment or, in many cases, community ostracism and protests, it’s become tough to know where to put them once they get out of prison. In Colorado, there has been talk of creating a separate town for sex offenders. In Solano County, east of the San Francisco Bay area, California corrections officials have resorted to letting a few sex offenders sleep on cots in a parole office due to a lack of other options.⁴⁴

Perhaps the most controversial approach has been the revival in some states of permanent or semi-permanent civil commitment — holding offenders involuntarily in mental institutions and similar facilities. In an echo of the sexual-psychopath laws of the 1930s, 17 states now allow prisoners to be held for evaluation and treatment after serving their sentences. At the end of 2004, nearly 3,500 prisoners nationwide were being held, according to the Washington State Institute for Public Policy.

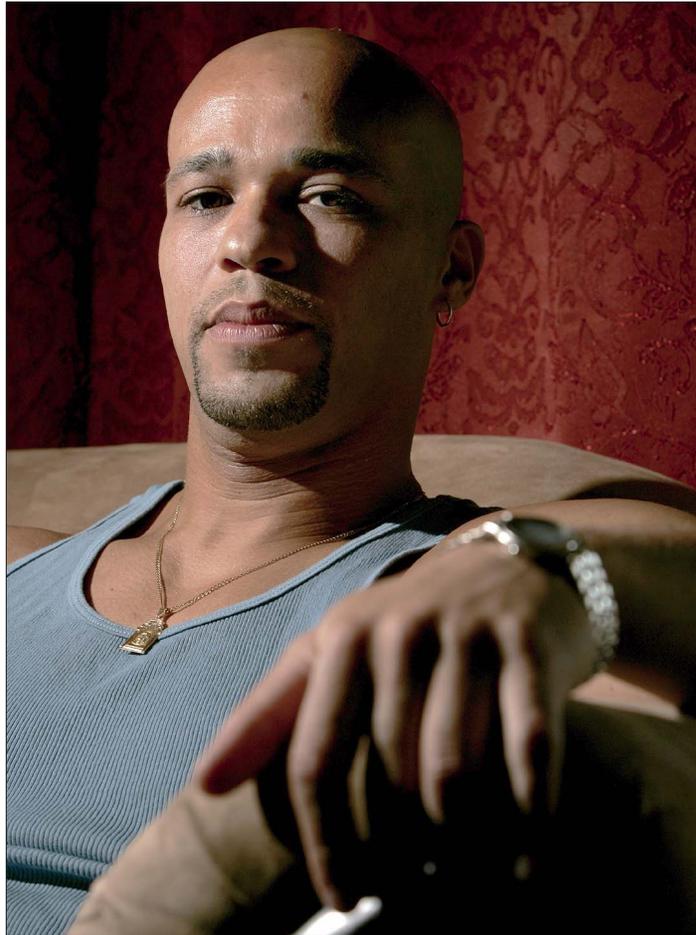
Civil commitment is expensive, costing in the neighborhood of \$100,000

per year per inmate. In January, Gov. Tim Pawlenty, R-Minn., proposed borrowing \$44.6 million to build a 400-bed locked residential building.⁴⁵ Republican New York Gov. George E. Pataki has proposed turning an upstate, rural prison into a civil-commitment facility, with a \$130 million price tag.⁴⁶

In addition to cost concerns, civil-commitment laws have drawn frequent legal challenge. The U.S. Supreme Court upheld a Kansas law in 1997, saying the state can commit individuals who are likely to engage in predatory acts of violence due to mental abnormality or personality disorder. But the court narrowed states' latitude in 2002, saying they must prove offenders have "serious difficulty" controlling their behavior before they can be committed.⁴⁷

Several other recent sex-offender laws have drawn legal scrutiny. A U.S. district judge found a portion of the Georgia residency-restriction law unconstitutional in June. Iowa's proximity law also was struck down by a district judge in 2004, but an appeals court subsequently ruled that sex-offenders' rights were superseded by the state's compelling interest in protecting its citizens.

In general, concern about citizens' safety has led courts to be tolerant of recent crackdown laws. Some of the laws would seem to violate the Constitution's ex post facto clause — which prohibits laws that impose new punishments for crimes committed prior to



Kerry Skora served 15 years for murder but was labeled as a sex offender after his release because his victim had been a minor. Skora's complaint about the policy led the Illinois legislature to create a new registry for non-sexually violent criminals.

AP Photo/Jeff Roberson

articles, in some ways it's disturbing," she says. "You see the same thing going on. It's taught me a certain amount of patience."

Opponents of the contemporary crackdown, however, are happy that the Adam Walsh Act calls for the attorney general to study different containment and treatment methods. They hope that a thorough look at modern treatment techniques will reveal the value of providing programs to offenders who can benefit from them. For instance, juvenile offenders have lower recidivism rates than adult offenders if they undergo treatment, but they tend increasingly to be lumped in with the adults under many of the new laws.

Treatment programs tend to be underfunded, particularly in prison settings. Many officials are skeptical of them, recalling their poor record in early studies and noting that some of the most notorious offenders were treatment failures. In the current environment, though, treatment and rehabilitation are bound to be greeted with more skepticism than stricter punishment.

Approximately 60 to 70 percent of sex offenders are given either probation or a combination of jail and probation, with nearly 90 percent of those required to participate in treatment. But there aren't enough programs to go around and even fewer available in prisons, reports John Jay College criminologist Terry. "The politicians, community and media alike tend to focus only on the risk-management failures of this group of offenders, thereby presenting the supervision

the law's passage — such as requiring men who committed sex crimes years earlier to wear satellite-tracking ankle bracelets. Others would seem to violate the double-jeopardy rule — meaning the state can't punish an offender twice for the same crime — such as subjecting an offender to a sanity hearing and civil commitment after his prison term. In general, the courts have held that such laws are regulatory, rather than punitive, and within the state's charge of maintaining public safety.

The return to indefinite civil commitment troubles Lieb, of the Washington State Institute for Public Policy, who has favored other tough, new punishments. "When I read historical

agencies as largely ineffective,” she writes.⁴⁸

New York Assembly Speaker Sheldon Silver, for instance, proposed legislation this year to require at least two years of treatment for all prisoners incarcerated for a felony sex offense and continued treatment upon release. That measure failed. But the legislature expanded the categories of offenders whose registration information had to be made available to the public while greatly extending the length of time offenders would have to remain on registries. Lawmakers also increased penalties for sexual assaults against children and lengthened the statute of limitations on sex crimes. ■

adults are stable. The attention paid to sex crimes in the wake of high-profile cases has made communities more aware and perhaps more vigilant in keeping children safe.

For some, that’s not entirely a good thing. Aside from the incidents of vigilante violence — like Connecticut man charged with stabbing his 2-year-old daughter’s alleged molester on Aug. 29 — some observers worry that people are not equipped to deal with the amount of information now available about sex offenders in their midst. The number of Internet searches looking for neighboring sex offenders, for instance, spikes every year around Halloween (several states have made it illegal for registered offenders to hand out candy).

“If I read [online] there’s a sex offender in the community, give me some guidance on what I ought to be doing about it,” says Fred Berlin, an associate professor of psychiatry at Johns Hopkins University who has been treating sex offenders for 25 years. “That’s not happening in a universal way.”

Others worry that since sex crimes are overwhelmingly perpetrated by people previously known to the child, all of these laws that try to insulate children from strangers will have the unwarranted effect of making parents feel falsely secure. Moreover, most sex crimes perpetrated by strangers are the work of first-time offenders, against whom background checks, registries and residence restrictions offer no protection.

“Teaching our children about stranger danger sends them the wrong message if that’s the only message we give,” said Robert Schilling, lead detective in the Seattle Police Department’s Sex and Kidnapping Offender unit. “Parents get the idea that Internet predators and strangers in the bushes are who sex offenders are. They don’t realize that is one out of thousands. The message has to change.”⁴⁹

But fear of sex crimes is likely to extend the push for increasingly strict laws. In California, for instance, the number of forcible rapes dropped by nearly 23 percent from 1999 to 2004 while other sex felonies remained flat, according to the state attorney general’s office. Nevertheless, California voters are expected to overwhelmingly approve one of the toughest sex-offender laws in the nation come November.

“The benefit of having laws like these in all 50 states is that there’s no place for sex offenders to hide,” says Rumenap, of Stop Child Predators.

The current cycle of anti-sex-offender lawmaking, which extends back for more than 20 years, is already longer than any other such cycle during the 20th century and shows no signs of abating. “There’s certainly a movement for longer sentences, often life sentences,” says John Jay College criminologist Terry. “Instead of cognitive-behavioral treatment, we’re moving toward more chemical castration. There’s a move in many states toward civil-commitment laws where they don’t already have them.”

Beyond the debate about the wisdom and effectiveness of sex-offender legislation, which will certainly be gauged carefully in the coming years, it’s clearly one issue that will not go away. “It’s not likely state policymakers are going to come up with a solution that will eliminate these problems,” says Lieb, of the Washington State Institute for Public Policy. ■

OUTLOOK

Tougher Laws?

The rate of reported sex crimes against children continues to be low compared to the levels reached 15 years ago. Experts say the tougher laws could be starting to have an effect — either through deterrence or by simply keeping more offenders behind bars or under surveillance. In addition, there has been a 400 percent increase in sex-offender convictions over the past decade. Sex crimes against

About the Author



Alan Greenblatt is a staff writer at *Governing* magazine. He previously covered elections, agriculture and military spending for *CQ Weekly*, where he won the National Press Club’s Sandy Hume Award for political journalism. He graduated from San Francisco State University in 1986 and received a master’s degree in English literature from the University of Virginia in 1988. His recent *CQ Researcher* reports include “The Partisan Divide” and “Media Bias.”

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FOR MORE INFORMATION

Association for the Treatment of Sex Offenders, 4900 S.W. Griffith Dr., Suite 274, Beaverton, OR 97005; (503) 643-1023; www.atsa.com. A nonprofit, interdisciplinary organization that fosters research, develops practice guidelines and promotes professional education in the field of sex-offender evaluation and treatment.

Bureau of Justice Statistics, U.S. Department of Justice, 810 Seventh St., N.W., Washington, DC 20531; (202) 307-0765; www.ojp.usdoj.gov/bjs/welcome.html. A primary source for crime statistics; collects, analyzes and publishes information on crime and criminal offenders.

Center for Sex Offender Management, 8403 Colesville Rd., Suite 720, Silver Spring, MD 20910; (301) 589-9383; www.csom.org. A group supported by the U.S. Department of Justice that works to improve means of managing adult and juvenile sex offenders who are not incarcerated.

National Center for Missing and Exploited Children, 699 Prince St., Alexandria, VA 22314; (202) 274-3900; www.missingkids.org. A nonprofit group that works to prevent child abduction and sexual exploitation.

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