

2009 HOUSE JUDICIARY

HB 1432

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1432

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8579, 8692

Committee Clerk Signature

*D. Amrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1432.

**Rep. Randy Boehning:** Sponsor, support. Explained the bill. I am offering an amendment that takes out the early licensed or childhood facilities. This bill won't put sex offenders out of their homes.

**Rep. Delmore:** I understand what you're trying to do with this bill and I commend you, but I think there are going to be some problems with enforcement of it. You mentioned problems with large cities and small cities. In Grand Forks, that amount of feet probably wouldn't be a problem to work with this. I think there are problems with the proximity issues in smaller cities. Are juvenile offenders included in this as well?

**Rep. Boehning:** The juveniles that would be classified as a level 3, they are the high risk offenders and would fall within this bill.

**Rep. Delmore:** What if that juvenile offender is in a school now. What would happen to them?

**Rep. Boehning:** Just from reading my local paper back home, I know that in the small schools, there are one or two sex offenders that schools have let in. I guess each individual school district would have to handle that, maybe it is a matter of homeschooling.

**Rep. Delmore:** Do you think this would encourage some of these people to not register; I think we have done a pretty good job; we've worked hard to make sure that we know where these people are. Do you think this could have an effect on them?

**Rep. Boehning:** It may have an effect; maybe 1,000 ft. is too much. We want them away from the schools, right now they can move right across the street from a school.

**Rep. Wolf:** What is the purpose of this, what is the reason why?

**Rep. Boehning:** Because after looking in Fargo, based on the radius around all of these schools and with childcare, there is actually probably no place where someone could locate. They need to have a place to live, too.

**Rep. Wolf:** Why did you choose the early childhood facilities instead of public parks?

**Rep. Boehning:** Because childhood facilities would have more of a chance of the kids being supervised, whereas the public parks could have more unsupervised play.

**Rep. Koppelman:** I think all of us understand the concept. Last session we had a couple of bills on this topic and I think the section of law that we're seeking to amend here, is what we ended up with instead, compromising on keeping sex offenders away from schools, etc. The state of Iowa tried something similar to this a few years ago, with the same good intentions you had, but it really backfired, and my concern is finding a pocket that's outside the circle which creates a sex offender ghetto. Obviously that's not good for those individuals. I heard from the police chief in West Fargo about this, and this really becomes an issue. Is there a solution to that?

**Rep. Boehning:** The reason we put in public parks was so that they couldn't be around unsupervised children.

**Rep. Koppelman:** The other thing I am hearing from local law enforcement, is that each sex offender has an officer that is assigned to them, and they know the movement, where they live.

Is the problem really where sex offenders live or is the problem keeping tabs on where they go and their behavior.

**Rep. Boehning:** You know where they live, and we don't want them to live next to a school or a public park.

**Rep. Koppelman:** The other concern is if you drive them underground, and you said it wasn't your intent to make them homeless, but that does happen. They can't find a place to live and so they live in a car, under a bridge, etc. and it's not easy to keep tabs on them. Do you know if sex offenders are more likely to commit a crime near where they live or in their home, or more likely to go somewhere else to do that?

**Rep. Boehning:** I don't have the statistics, but I would suppose that they would probably go somewhere else to commit any offenses.

**Rep. Delmore:** Is there a problem that they live within a 1000 ft. but they can still hang out in the parks, correct.

**Rep. Boehning:** That's correct. We can only control the dwelling, we can't control where they go.

**Rep. Delmore:** Wouldn't that be part of the problem that would be created with it.

**Rep. Boehning:** I don't think it would create a problem, it's just where they live; we can't control where they go. That's up to their Parole or Probation officer what they can do. This is only dealing with level 3's.

**Rep. Klemin:** On line 20, this isn't changing their residence if they live there. Does that mean you don't have to move if you already live within the 1000 ft.

**Rep. Boehning:** That's correct. There are some level 3 sex offenders that live within 1000 ft of schools, but they own their homes.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Rep. Lee Myxter:** Sponsor, support.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Paula Ekman, Fargo, ND:** Support (read letter from Linda Walker, attached).

**Rep. Delmore:** Do you have any idea of what monitoring is done with this particular class of sex offenders. I would think that monitoring where they are is as important as where they live, because if we know where they live, we know where they are. Do you know how the monitoring is done by the police department?

**Paula Ekman:** I'm being told that if we make it too difficult for them to find a place to live that they'll go underground; obviously they're going to break the law again. The reason we took out the childcare facilities was because we didn't want to remove places for them to live. I don't know how they are monitored.

**Rep. Koppelman:** We are sympathetic to your cause. I think it's a question of workability in the distances issue.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition or neutral.

**Jonathan Byers, Assistant Attorney General:** Opposed (attachment).

**Rep. Delmore:** What percentage of sex offenders are familiar with their victims.

**Jonathan Byers:** Actually, the statistics would show about 90% are either related to or know their victim, so our focus on the category of sex offenders that committed a crime against strangers, certainly they are dangerous offenders in that circumstance, but they are a very small portion of the actual level 3 sex offenders. This bill is crafted well in that it doesn't make sex offenders move that are already living in an area. The second thing, it does try to focus on the high risk offenders, while some of the other states have done it for all offenders.

**Rep. Delmore:** Of the percentage of level 3 offenders, would most of those be strangers rather than familial, can you give us a general idea.

**Jonathan Byers:** The percentage of high risk sex offenders typically run about 16% in North Dakota, of the total number of registered sex offenders; of that I would think that there would be a variance of both stranger and familial offenders.

**Rep. Boehning:** Do you know the number of registered sex offenders in the state.

**Jonathan Byers:** At any given time you may have living in-state and not incarcerated, we only have 1000 sex offenders and so about 16% of them are level 3, so about 160 high risk.

**Chairman DeKrey:** If you carve out a population figure, because rural ND, 1000 people may be a chunk of the town and so if you put in a population figure in, and the other thing in rural ND, if we have sex offenders in the town, we know about it. Everybody knows who he is and everything else. Do you diminish the constitutionality of it, or do you put an exception for the rural ND.

**Jonathan Byers:** I'm not sure about that. But I do know that it has more constitutional defensibility because of the fact that it is targeted to high risk offenders and that it doesn't make them move, if they are already residing there. Some of the states that have had problems with constitutionality where they have tried to make them move, if they were already residing there. The issue with the rural part of it, you might look at some type of equal protection. You bring up a good point that I was going to get to, and that's in many of the parole hearings we are always concerned about the sex offender registry restrictions. Sometimes it's better to have the offender in your area, because you know where they are living, law enforcement knows where they are at than out somewhere and we don't know where they are, and can't keep track of them.

**Rep. Boehning:** I guess we will know where they are living if they can't live 1000 ft of a school or if we amend it down to 500 ft of a school or park. I think there are places to live and think 1000 ft is workable.

**Jonathan Byers:** In a small community, the sex offender would have trouble finding a place to live. I really fear that sex offenders and having their place of residency limited to certain areas that we are going to see what happened in Iowa happen in ND.

**Chairman DeKrey:** I think one of the unintended consequences of what we've passed up to this point is, they have a tendency to come out to rural ND, because they can get housing that they can afford, but then they end up working 50 miles away from that area, because nobody in that area will give them a job, so then we've got them on the road, moving all the time. They have a residence, an address, but that's not really where they are.

**Jonathan Byers:** Correct.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Keith Witt, Chief, Bismarck Police Dept:** Opposed (attachment). There are currently 53 offenders residing in Bismarck right now. I fear that this bill will cause some of them to go underground because it is very hard to find a place to live when you are a level 3 risk offender.

**Rep. Koppelman:** We've heard another bill this morning that dealt with civil commitment. If you have somebody who has served their sentence or has not been convicted of a crime, if they're deemed to be high risk, likely to offend or reoffend, that you can seek civil commitment. I'm thinking of those folks out on the street versus those that you might recommend or others might recommend for commitment. How does your department reach those kinds of decisions? Do you look at the sex offenders living in the area and deal with the mental health practitioners at the State Hospital and come up with some recommendations on these people, who are too dangerous to leave out on the street, do you ever recommend that.

**Keith Witt:** We do it in several different ways currently in the Bismarck area. We've put a regional committee, a Sexual Containment Task Force Committee, which encompasses police, parole and probation, state's attorneys, and a number of different groups that deal with the issue of sex offenders. When there is an offender coming into the community, quite often, they will be on parole or probation, so this committee takes a look at the background, gauges what risk they might pose, especially in the high risk category they look at that. From there they make a determination to just monitoring or additional safeguards. I have an officer that primarily deals with that and that officer knows that this is somebody that is, at a minimum, are high risk offenders. They track some offenders on a monthly basis; but the high risk offenders are tracked more frequently, in case a bad situation might happen. In all honesty, sometimes you don't want these people out in the community, that they should be committed up to the State Hospital.

**Rep. Koppelman:** So at a certain point, they could be at the state pen.

**Rep. Delmore:** Do you know the number of level 3 sex offenders you have in Bismarck.

**Keith Witt:** Currently, as of yesterday, there were 11 high risk offenders. It is a relatively stable number in Bismarck.

**Rep. Delmore:** Do you monitor all registered sex offenders, do you not, to make sure that their residence is what they say it is, and so on. Is that pretty difficult in most police departments if major cities.

**Keith Witt:** Correct. We monitor all sex offenders; there are many different levels of offenders. High risk offenders are checked at least monthly, and sometimes more than that depending on how the risk is. The lower risk levels are checked a little less frequently.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Keith Ternes, Chief, Fargo Police Department:** Opposed (attached map). In Fargo, we currently have approximately 160 individuals who are required to register with the police department, as either a sex offender or someone who has offended against a child. We perform verification checks to keep track of the offenders. A police officer makes contact with the offender, usually at the offender's residence to verify that the address is accurate. In addition to police officer checking and verifying offender's residence, we also verify the place of employment. We go to see what vehicle the offender is using to get to work, we also check to see if the offender has made any significant changes to their appearance, and if so, we capture it and photograph the offender and the officer may obtain other applicable cursory observations. The verification checks are performed at least three times a year, or approx. once every three to four months. The current law has allowed us to keep very close tabs on the sex offenders who are residing in our community. Of the approx. 160 offenders registered with the Fargo Police Dept, 10 are categorized as level 3 or high risk offenders, and 39 are categorized as offenders who victimized a child under the age of 15, so we have a total of 49 offenders who are categorized as a high risk offender or someone who will offend against a child under the age of 15 with this bill, what it specifically addresses. We currently know who these individuals are, where they reside, and this allows us to keep very close track of where these offenders are in our community. I think that HB 1432 unintentionally threatens our ability to keep track of these offenders by potentially turning them in to homeless individuals. We've had several references to maps and I know that Chief Witt handed one that is specific to Bismarck, and I handed out a map on Fargo and how it would be impacted. Unfortunately, I wasn't aware of the amendment until this morning, so the map does include daycare facilities, but under the proposed legislation, if you place 1000 ft residency restriction around city schools or parks, unfortunately it makes residency almost impossible for the individuals in the

city of Fargo. In the upper left hand corner of the map, there is an area that is uncovered by a 1000 ft circle, that is the city's industrial park where there is virtually no homes or residency opportunities. Then the other area that sticks out is the I-29 corridor, which makes virtually any underpass along I-29 a viable option for one of these offenders. I question what the consequences are for the small pockets of neighborhoods that aren't covered by these 1000 ft barriers. My fear is that the neighborhoods are the ones that will become easily susceptible to deterioration due to becoming the areas where the high risk offenders either can or will be allowed to live, the so called the "sex offender ghetto" if you will. In addition, if this proposed legislation really is for ensuring the safety of our children, many of the offenders are subject to a parole or probation condition that may require them to avoid being near a school or park or other location where children may be present, there is nothing in this bill obviously that will prevent an offender from walking, biking, or otherwise loitering near a school or public park. The bill somehow suggests that simply restricting where offenders live will somehow make the communities and more specifically our kids safer. Unfortunately, it quite possibly or intentionally the bill offers nothing more than what I would describe as a false sense of security when it comes to managing sex offenders. Make no mistake, I want to be clear on this point, especially with Ms. Ekman here, my position and law enforcement personnel across the state share this, we in no way want our opposition to this bill be construed that we are easy or soft when it comes to managing sex offenders. It would be incredibly dangerous for us to become complacent or somehow be perceived as not taking this issue seriously. I would suggest that if you really are sincere in dealing with this issue, making sure that sex offenders do not pose a significant risk for our communities, or to our children, there are other ways to do that. I heard the state's attorneys earlier this morning, describe sex offenders are dangerous. I think the gentleman from Grand Forks even used the term diabolical. I would wholeheartedly agree with

that; but this is not the solution for dealing with these individuals. I would suggest that again, we want to be serious about this, we need to be able to identify and recognize that some of these offenders are, in fact, dangerous, they do pose a risk for our communities, and quite possibly the answer lies in both the stiffer penalties and keeping some of these individuals confined for longer periods of time. It also occurs to me that these individuals are released into our community, that we have a strong sense of concern as to who they are, where they are, and it's only after they are released into our community that start being concerned about what threat they pose to us. I would further suggest that we go looking for a place to put some, not all, of these individuals, especially the level 3 or those who pose the most significant risk. We don't need to look any further than the facilities that we already have; such as the Cass County jail. That's where some of these individuals should remain.

**Chairman DeKrey:** In a border city like Fargo, does Moorhead have a similar law in MN that we have.

**Keith Ternes:** Unfortunately, it's actually a more challenging issue for law enforcement in MN, because they focus almost exclusively on the level 3 offenders. Without knowing MN law verbatim, it's my understanding that there actually is no requirement to do anything as far as community notification or keeping track of those offenders beyond those that are classified as high. ND is actually doing more than MN.

**Rep. Zaiser:** I tried to get a hold of you a couple of times in the last couple of months. A lot of concerns that I hear from my people in my neighborhood is that there is an extreme concentration of sex offenders in my district. One of the complaints about this particular bill was that it would create ghettos, why is that the case.

**Keith Ternes:** You are right, the dots you see on the map are the 49 offenders who would fit into this category, the 10 high risk offenders, and the 39 who have offended against a child. In

the city of Fargo, it is pretty difficult for an offender to find residency. Landlords are reluctant to rent to them; neighborhood residents don't want them in their neighborhood. The map displays that most of the offenders live in or near the downtown or near south side of Fargo.

**Rep. Zaiser:** People have complained about property values, but property values in other small confined areas seemed to have dropped by up to 50% as well, by the concentration of sex offenders.

**Keith Ternes:** I don't disagree at all. Unfortunately, like I've mentioned, I think there are many landlords, not just maybe in Fargo, it could be virtually any city across the state, that don't want to rent to certain populations, such as sex offenders. I do know that there are some advocacy and church groups in Fargo that have been searching for alternatives. In fact, I had a conversation with a local authority yesterday, and they want to look for a facility, a large facility, someplace in Fargo, where they would cater to sex offenders who can't find other housing. On the surface that sounds like a very plausible idea; it may address the issue of having the offenders congregated in one area, unfortunately it may not be fair, but it is a reality that the second you place that facility in somebody's backyard, they don't want it. This is a difficult situation to address, concerning where the offenders are going to live, and that just leads to law enforcement's opposition to this because it would be imposing even further restrictions and having even smaller pockets where offenders would have to reside.

**Rep. Zaiser:** Would it make sense to have a housing facility that would house sex offenders, to have them all in one building. Would that work?

**Keith Ternes:** On one hand, I think it would make our job easier, instead of having to go to 15 or 20 different locations, we could go to one. But I think there will be several barriers, such as where to place it because of the surrounding area. I think there would be opposition to it. I am less concerned that one facility, with multiple offenders housed in one facility, would be a

breeding ground for some catastrophic problem. I think it's been mentioned before that most offenders are associated with their victims. Most offenders are not individuals who are working; they have time to waste, to find new victims. This issue goes beyond where these people are located, are they located in one facility; this problem transcends any number of factors.

**Rep. Zaiser:** Are there any grants that could be made available to provide housing assistance if they provide a facility to house offenders.

**Keith Ternes:** Like I mentioned, there are some advocacy groups that are searching for alternatives and resources they would need to come up with that facility; but specifically, no I'm not aware of any.

**Rep. Kretschmar:** Have any of these registered offenders that live in Fargo now, been apprehended for offending again.

**Keith Ternes:** No, I'm not aware of that; however, as we check on these 160 offenders that reside in Fargo, it is not uncommon for us to discover that an offender has absconded. In other words, they are no longer living at the address they provided to us, and they have not provided us with the updated information within the time required. Both the city police department, working with the state's attorney office, is very good about prosecuting those individuals. So it's less of an issue to find reoffending individuals, than it is that they haven't updated their new registration information.

**Rep. Koppelman:** They say these offenders are prone to recidivism. You stated that you aren't necessarily finding them reoffending, do you think that the measures we put in place are really working pretty well in terms of monitoring.

**Keith Ternes:** I can't say this with 100% certainty, but the example we've used in the past, is that it's working because law enforcement does keep very close tabs on these individuals; they

know we are watching them; we are paying attention to them. We stop and make a physical visit at three times a year. That doesn't seem like very often, and if I had additional resources, I would like to do it more often, but I would like to think that because law enforcement is keeping a very close eye on the individuals, that we cause them to be on the edge of their seat knowing that reoffending in Fargo or Bismarck, or wherever they are being monitored, is not the safest place to do that. We try to use all the tools that are available to us.

**Rep. Boehning:** Do you help sex offenders by giving them a list of housing possibilities, to help them find a place to live.

**Keith Ternes:** The police department does not; when they are released from incarceration, parole and probation may have a transitional housing facility that they go to, and I believe they may provide a minimal amount of assistance for finding permanent housing.

**Chairman DeKrey:** Thank you. Further testimony in opposition. We will close the hearing.  
**(Reopened in afternoon session).**

**Chairman DeKrey:** We will take a look at HB 1432.

**Rep. Delmore:** Weren't there some amendments to this. As it's written, I'm not sure that it really does what we want it to do. We should look at doing something that would address the concerns that law enforcement had when they testified earlier.

**Rep. Dahl:** Even if we work on this bill, when you look at the map they handed out, I'm not sure that it would even help them.

**Rep. Zaiser:** I think they clearly debunked the idea that where they lived maybe wasn't the problem they thought it was.

**Rep. Dahl:** If you start to get it down to 200 ft. that begins to become so arbitrary that it is sort of ineffective to have a law anyway.

**Rep. Klemin:** Well there might be another question on page 2, line 16, an introductory clause that says "except as otherwise allowed by this section", the section refers to 12.1-25, which is the section, and maybe that's supposed to be subsection; there is not any place else in this section where a sexual offender is allowed to reside near a school. I'm not sure why that's in there. I know you can be on school property, but that has nothing to do with living there. This whole new language is all about where you live. There is no other place in this existing language that seems to apply to this existing language, so I'm not sure that the "except as" clause means anything.

**Rep. Boehning:** LC drafted that.

**Rep. Griffin:** I move a Do Not Pass.

**Rep. Zaiser:** Second.

**Chairman DeKrey:** Further discussion.

**Rep. Boehning:** I brought this forward because of some of my constituents.

**Rep. Klemin:** I agree with the law enforcement people that testified, that while this is well intentioned, I think the negative impact outweighs any advantages that might be derived by placing this restriction in the law.

**Rep. Zaiser:** I think you could use law enforcement to explain to your constituents that they were overwhelmingly against this bill.

**12 YES 1 NO 0 ABSENT**

**DO NOT PASS**

**CARRIER: Rep. Zaiser**

90413.0301  
Title.

*Boehning*  
Prepared by the Legislative Council staff for  
Representative Boehning  
January 28, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1432

Page 1, line 2, replace the first comma with "and" and remove ", and licensed early childhood facilities"

Page 1, line 6, replace the first boldfaced underscored comma with "**and**" and remove "**, or licensed**"

Page 1, line 7, remove "**early childhood facilities**"

Page 2, line 22, replace the second underscored comma with "or" and remove ", or a licensed early childhood facility as"

Page 2, line 23, remove "defined in section 50-11.1-02"

Renumber accordingly

Date: 2/4/09  
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1432

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Griffin Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 1

Absent 0

Floor Carrier: Rep. Zaiser

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1432: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS**  
(12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1432 was placed on the  
Eleventh order on the calendar.

2009 TESTIMONY

HB 1432

Paula Eckman

# THE SURVIVING PARENTS COALITION

Magi and John Bish, Sharon Brooks, Rosemarie D'Alessandro, Rebecca DeMauro, Michelle Duffey, Karen Foster, Vicki Kelly, Joyce and Drew Kesse, Mary and Charlie Kozakiewicz, Mark Lunsford, Mary and Doug Lyall, Michelle Mesarchik, Mfka Moulton, Colleen Nick, Abby Potash, Ahmad Rivazfar, Erin Runion, Elaine Runyan-Simmons, Carol Ryan, Mark and Cindy Sconce, Dawn Semmler, Jayann Sepich, Hilary Sessions, Ed Smart, Missey and Greg Smith, Linda Walker and Dr. Maggie Zingman

February 3, 2009

Honorable Judiciary Chairman Lawrence Klemin,

It has come to the attention of the Surviving Parents Coalition that you will be having a hearing tomorrow on an amendment to House Bill #1432; which is asking that *no level III high-risk sex offender be allowed to live within 1000 feet of a school or park.*

As parents of children, who were abducted, sexually assaulted, murdered, recovered or still missing, we are passionate about the safety of our Nation's Children and look to those that have the ability to ensure that legislation, as the one that sits before you, will be passed.

We need to make those who Choose to prey on the most vulnerable to continue to be accounted for if, as a society, we don't want to keep sending mixed messages to those that have been preyed upon. We ask that our children don't hide behind the abuse and to come forward with the information so that we may help to ensure their safety, but then we send mix message by giving offenders 2<sup>nd</sup>, 3<sup>rd</sup>, and sometimes 4<sup>th</sup> chances.

If we are aware of where the **WORST OF THE WORST OFFENDERS** are to reside it will be valuable tool for the citizens of North Dakota.

Thank you for your leadership and for your time and consideration in this issue.

Sincerely,

*Linda Walker* mother of Dru Sjodin

[www.survivingparentscoalition.org](http://www.survivingparentscoalition.org)

In Honor of the Suffering of Our Children:

Molly Bish, Tamara Brooks, Andria Brewer, Joan D'Alessandro, Miranda Gaddis, Bonnie Craig, Tommy Kelly, Jennifer Kesse, Alicia Kozakiewicz, Jessica Lunsford, Suzanne Lyall, Dalton Mesarchik, Christopher Meyer, Morgan Nick, Samuel Potash, Sara and Sayeh Rivazfar, Samantha Runion, Rachel Runyan, Lindsey Ryan, Courtney Sconce, Jessica Rae Delatorre, Tiffany Sessions, Elizabeth Smart, Kelsey Smith, Dru Sjodin, Brittany Philips and the countless other child victims

# THE SURVIVING PARENTS COALITION

Magi and John Bish, Sharon Brooks, Rosemarie D'Alessandro, Rebecca DeMauro, Michelle Duffey, Karen Foster, Vicki Kelly, Joyce and Drew Kesse, Mary and Charlie Kozakiewicz, Mark Lunsford, Mary and Doug Lyall, Michelle Mesarchik, Mika Moulton, Colleen Nick, Abby Potash, Ahrnad Rivazfar, Erin Runnion, Elaine Runyan-Simmons, Caroly Ryan, Mark and Cindy Sconce, Dawn Semmier, Jayann Sepich, Hilary Sessions, Ed Smart, Missey and Greg Smith, Linda Walker and Dr. Maggie Zingman

## Surviving Parents Coalition

Linda Walker  
8769 Ruttger Road  
Pequot Lakes, MN 56472

218-543-4548

CC: Paula Ekman/Fargo, North Dakota



[www.survivingparentscoalition.org](http://www.survivingparentscoalition.org)

In Honor of the Suffering of Our Children:

Molly Bish, Tamara Brooks, Andria Brewer, Joan D'Alessandro, Miranda Gaddis, Bonnie Craig, Tommy Kelly, Jennifer Kesse, Alicia Kozakiewicz, Jessica Lunsford, Suzanne Lyall, Dalton Mesarchik, Christopher Meyer, Morgan Nick, Samuel Potash, Sara and Sayeh Rivazfar, Samantha Runnion, Rachel Runyan, Lindsey Ryan, Courtney Sconce, Jessica Rae Delatorre, Tiffany Sessions, Elizabeth Smart, Kelsey Smith, Dru Sjodin, Brittany Philips and the countless other child victims

**HOUSE BILL 1432 TESTIMONY  
HOUSE JUDICIARY COMMITTEE  
February 4<sup>th</sup>, 2009  
PRAIRIE ROOM**

**By Jonathan Byers, Assistant Attorney General**

Chairman DeKrey and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in opposition to House Bill 1432.

I applaud the noble intentions behind this bill. Sexual crimes, especially against children, are among the most horrific and damaging forms of violence imaginable. Attorney General Stenehjem is as committed as anyone to the issues of public safety and child protection. However, there is an absence of any evidence that sex offender residency restrictions are effective in achieving those stated goals..

However, there is a growing body of evidence that residence restrictions have unintended consequences for sex offenders and communities. Homelessness and transience is one of the effects. When Iowa passed a similar law, approximately 40% of their registered offenders went underground. Another effect is clustering sex offenders in poor, rural, or socially disorganized neighborhoods.

I have attached a few articles which discuss the negative impacts of such laws in the states that tried them first, and are now having to rethink that decision. As well-



intentioned as this bill might be, the negative consequences outweigh any perceived benefit.

The Attorney General asks for a do not pass. I would be happy to answer any questions.



# The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?

Jill S. Levenson  
Leo P. Cotter

**Abstract:** *Several states have enacted public policies that prohibit sex offenders who have abused children from living within close proximity to a school, park, day care center, or school bus stop. The purpose of this exploratory study was to describe the impact of residence restrictions on sex offender reintegration and to better understand sex offenders' perceptions of these laws. A survey of 135 sex offenders in Florida was conducted. Most of the molesters who responded to the survey indicated that housing restrictions increased isolation, created financial and emotional stress, and led to decreased stability. Respondents also indicated that they did not perceive residence restrictions as helpful in risk management and, in fact, reported that such restrictions may inadvertently increase triggers for reoffense. Implications for policy and practice are discussed.*

**Keywords:** *sex offender; 1,000-ft rule; proximity; residence restrictions; reintegration; rehabilitation*

Public concern about the threat posed by sex offenders has inspired varied legislation designed to combat recidivistic sexual violence. For example, policies mandating sex offender registration, community notification, civil commitment, castration, "three-strikes and you're out," and nondiscretionary sentencing have been introduced. The newest wave of such statutes has come in the form of laws controlling where sex offenders can live. These restrictions prohibit sex offenders from residing within specific distances from schools or places where children congregate.

Thus far, 14 states (Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Ohio, Oklahoma, Oregon, and Tennessee) have enacted buffer zones that prohibit sex offenders from residing within close proximity to a school, park, day care center, or school bus stop. The least restrictive distance requirement is in Illinois (500 ft), but most common are 1,000- to 2,000-ft boundaries. California law does not allow certain sex offenders on parole to live within a quarter mile of an elementary school and prohibits parolees from living within 35 miles of a victim or witness.

There have been only a few studies investigating the relationship between housing and sex offending, and the results are mixed. In Arkansas, it was found that 48% of child molesters lived in close proximity to schools, day care centers, or parks compared with 26% of perpetrators convicted of sex crimes against adult victims (Walker, Golden, & VanHouten, 2001). The authors speculated that molesters who were motivated to reoffend might be more likely to purposely place themselves in close access to potential child victims. However, in Colorado it was found that molesters who reoffended while under supervision were randomly scattered throughout the study area and did not seem to live closer than nonrecidivists to schools or child care centers (Colorado Department of Public Safety, 2004). In Minnesota, sex offenders' proximity to schools or parks was not a factor in recidivism, nor did it affect community safety (Minnesota Department of Corrections, 2003). In fact, the opposite was found to be true: A sex offender was more likely to travel to another neighborhood in which he could seek victims without being recognized.

Public safety and child protection are understandably the primary considerations when sex offender restrictions are imposed. However, concerns have been raised that such mandates might exacerbate the shortage of housing options for sex offenders and force them to move to rural areas where they would be increasingly isolated with few employment and treatment options (Minnesota Department of Corrections, 2003). The dispersal of parks and schools may lead to overlapping restriction zones thus making it essentially impossible for sex offenders in some cities to find suitable housing. In some urban areas, offenders might be forced to cluster in high-crime neighborhoods. Such restrictions can lead to homelessness and transience, which interfere with effective tracking, monitoring, and close probationary supervision. Other scholars have concurred that sex offender statutes inadvertently may increase risk by aggravating the stressors (e.g., isolation, disempowerment, shame, depression, anxiety, lack of social supports) that can trigger some sex offenders to relapse (Edwards & Hensley, 2001; Freeman-Longo, 1996). The Colorado study recommended that residence restrictions do not appear to be a viable method for controlling sexual offender recidivism (Colorado Department of Public Safety, 2004).

Although sexual predator statutes are based on the presumption that sex offenders are repeatedly arrested in alarmingly high numbers, research suggests that sex offense recidivism rates are lower than commonly believed (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998). As well, ambiguity about the effectiveness of sex offender treatment (Furby, Weinrott, & Blackshaw, 1989) has led to pessimistic attitudes about the possibility of rehabilitation despite recent research suggesting more promising results (Hanson et al., 2002). Over the past decade, great gains have been made in the ability to assess and identify high-risk sex offenders (Epperson et al., 1999; Hanson, 1997; Hanson & Bussiere, 1998; Hanson & Harris, 1998, 2001; Hanson & Morton-Bourgon, 2004; Hanson & Thornton, 1999). Unfortunately, such research has not been consistently incorporated into policy development or implementation.

Most states continue to tighten their restrictions of sex offenders, whereas only a few states have questioned the benefits and consequences of proximity statutes. Recently, a U.S. District Court of Appeals judge in Iowa declared such restrictions unconstitutional and ordered that Iowa's statute, which prohibited sex offenders from living within a restricted zone of 2,000 ft, not be enforced (*Doe v. Miller & White*, 2004). The court opined that the law was punitive, it imposed restraints leading to housing disadvantages for sex offenders, and it hindered the right to conduct family affairs without interference from the state. Although the court noted that the public has a reasonable interest in restricting sex offenders' access to children, it found that the law went beyond what is necessary to protect the community and cited the lack of research indicating a relationship between proximity and recidivism. Constitutional issues notwithstanding, the impact of such statutes on offenders and communities remains largely unknown.

#### PURPOSE OF THE STUDY

The purpose of this exploratory study was twofold: to describe the impact of residence requirements on sex offender reintegration and to better understand sex offenders' perceptions of such restrictions. Specific hypotheses were not tested, but, using quantitative and qualitative techniques, the study attempted to ascertain (a) the proportion of sex offenders who report having suffered adverse effects as a result of housing restrictions and (b) the opinions of sex offenders about the utility of such restrictions. Florida was considered an ideal venue in which to conduct such research, because its residency limitations (often referred to as *1,000-ft rules*) are quite restrictive and have been in effect since 1997. The study was considered important because it can help policy makers to better understand the positive and negative, intended and unintended, consequences of proximity legislation. Such data ultimately can inform the development of evidence-based social policy and contribute to the effective management of sex offenders in the community.

#### METHOD

##### PARTICIPANTS

A nonrandom sample ( $N = 135$ ) was drawn from a pool of sex offenders from two outpatient sex offender counseling centers in Fort Lauderdale, Florida ( $n = 40$ ) and Tampa, Florida ( $n = 95$ ). All clients attending treatment at the facilities were invited to complete a survey about the impact of sexual offender policies on their community reintegration. Out of those who voluntarily completed the survey ( $n = 183$ ), this sample was made up of 135 who indicated that they were subject to residency restrictions. Clients had been on probation for an average of 40

months (median = 32 months, *SD* = 37 months). Slightly more than half had been in their current treatment group for 2 years or less, and 47% had been in treatment for more than 2 years.

Most of the respondents were between the ages of 25 and 64; 10% were younger than 25, and 6% were age 65 or older. About 68% were White, 14% were Black, 14% were Hispanic, and 4% described their race as "other." Marital status included 24% who were currently married with 35% reporting that they had never been married, 37% stating that they were divorced or separated, and 4% describing themselves as widowed. More than one third of the participants had graduated from high school (19%) or obtained a General Equivalency Diploma (16%), 33% had attended some college, and 14% were college graduates. About 77% reported an annual household income of less than \$30,000 per year. About 97% were identified as child molesters. The remaining 3% identified themselves as having an index victim older than the age of 18, although they had minor victims as well. Other reported offenses included voyeurism (9%), exposure (13%), and computer-related sex crimes (9%). The percentages do not add up to 100% because about 20% of participants endorsed more than one type of offense. Offender and victim characteristics are displayed in Table 1.

In Florida, residence restrictions apply only to sex offenders who were sentenced after October 1, 1997, for crimes involving victims younger than the age of 18 (*Special Conditions of Sex Offender Probation*, 1997). At the time of the data collection, the conditions of probationary supervision in Florida precluded sex offenders with minor victims from living within 1,000 ft of a school, day care center, park, playground, or other place where children regularly congregate. Shortly after the data were collected, Florida's law was amended by adding school bus stops to the list of prohibitions for child molesters released from prison (*Conditional Release Program*, 2004).

## INSTRUMENTATION

A survey was designed by the authors for the purpose of collecting data regarding the impact of residence restrictions on sex offenders. Client demographic data and information regarding offense history were elicited using forced-choice categorical responses to ensure anonymity. Participants were asked to rate 3-point and 5-point Likert scales indicating their degree of agreement with the issue in question and were also given the opportunity to provide narrative responses.

## DATA COLLECTION PROCEDURES

Clients were invited to complete the survey during a group therapy session. Respondents were instructed not to write their names on the survey and to place the completed questionnaire in a sealed box with a slot opening. The research was conducted in accordance with federal guidelines for the ethical treatment of human participants.

**TABLE 1**  
OFFENDER AND VICTIM CHARACTERISTICS

<i>Offender</i>	<i>Percentage</i>
Age	
Younger than 25	10%
25-64	84%
65 or older	6%
Race	
White	68%
Minority	32%
Currently married	24%
Education	
High school or equivalent	35%
Attended college or college graduate	47%
<i>Victim</i>	<i>Percentage</i>
Victim age	
Younger than 5	6%
Age 6-12	37%
Minor teen	54%
Relationship	
Extrafamilial only	67%
Intrafamilial only	20%
Both extra- and intrafamilial	12%
Gender	
Male only	14%
Female only	77%
Both genders	11%

#### DATA ANALYSIS

Descriptive and correlational statistics were used to interpret the quantitative results of the survey. Data analyses were conducted using SPSS version 12.

#### RESULTS

Overall, 50% of the respondents reported that proximity restrictions had forced them to move from a residence in which they were living, and 25% indicated that they were unable to return to their residence after their conviction (see Table 2). Nearly half reported that residence restrictions prevented them from living with supportive family members. A considerable proportion reported that the

TABLE 2  
IMPACT OF RESIDENCE RESTRICTIONS ( $N = 135$ )

<i>Item</i>	<i>Yes</i>
I have had to move out of a home that I owned because of the 1,000-ft rule.	22%
I have had to move out of an apartment that I rented because of the 1,000-ft rule.	28%
When released from prison, I was unable to return to my home.	25%
I have been unable to live with supportive family members because of the 1,000-ft rule.	44%
I find it difficult to find affordable housing because of the 1,000-ft rule.	57%
I have suffered financially because of the 1,000-ft rule.	48%
I have suffered emotionally because of the 1,000-ft rule.	60%

geographical limitations created a financial hardship for them, and nearly 60% agreed or strongly agreed that they have suffered emotionally because of the restrictions.

Age was significantly related ( $p < .05$ ) to being unable to live with family ( $r = -.17$ ) and difficulty finding affordable housing ( $r = -.19$ ) with younger offenders being more likely to report these events. There was also a significant inverse relationship between being married and the inability to find affordable housing ( $r = -.19$ ), and minority race was related to having to move from a residence ( $r = .20$ ). There was no significant relationship between adverse events and income, education, or length of time on probation.

In addition to the structured survey responses, narrative comments were also examined. There were 2 respondents who agreed that residency restrictions were a deterrent to offending, commenting, "It doesn't tempt you" and "It's good because you can't just walk from your home to a school." Overwhelmingly, however, the participants reported that they did not find the 1,000-ft rule to be practical or helpful, although some suggested that such restrictions should be imposed on a case-by-case basis. Several common themes emerged.

Importantly, many offenders emphasized their need for social support and believed their risk increased with isolation from supportive family and friends. For example, they commented, "I believe you have a better chance of recovery by living with supportive family members" and "What helps me is having support people around. . . . Isolating me is not helpful." Another respondent expressed distress that geographical restrictions kept him from living with and caring for his infirm mother. One reported concern at having to live alone because of the location of his family's home, and several young adults said they were unable to live with parents and younger siblings after committing what they referred to as a "statutory" offense. Some respondents indicated that they had to relocate several times, and one said he was forced to move to a "ghetto."

On the other hand, several participants reported that they had successfully petitioned the court for an exception to the rule and were then allowed to reside within 1,000 ft of a school. Such requests to the court were reportedly initiated for various reasons, the most common being home ownership or a desire to reside with family. What was most remarkable about these exceptions is that they were seemingly granted in the absence of an assessment of risk or relevant offender characteristics. They seemed to be based solely on the offender's request that the court eliminate a hardship created by the statute.

The majority of respondents emphatically proclaimed that the 1,000-ft rule would have no effect on their risk of reoffense. Many pointed out the need for internal motivation to prevent reoffense and said that if a sex abuser wanted to reoffend, the rule would not stop him. Their comments included "has no effect at all on offending," "does not make an impact on my life," "I follow the rule, but it has had little impact," "It's a childish rule," "You can walk as far as you want if that [child abuse] is what you're after," "Living 1,000 ft away compared to 900 ft doesn't prevent anything," and "It doesn't matter where a sex offender lives if he sets his mind on reoffending. . . . He can just get closer by walking or driving. The 1,000-rule is just a longer leash, I don't see the point."

Many opined that if an offender is not committed to treatment and recovery, "the 1,000-ft rule is inconsequential. If a person wants to offend, it doesn't matter how close he is to a convenient place to find kids." Another pointed out that "if a person wants to reoffend, he will, regardless of what laws are made up or what treatment they go through. . . . It's entirely up to him." Referring to his victim empathy training received in therapy, one offender suggested that some exposure to children might be a good thing: "When I see kids in the park, I can see them as real people with real lives and real feelings, not just an object."

Other respondents were somewhat more analytical and thoughtful about the issue. One questioned if there is a "link between sex offending and distance from schools," and another suggested that "resources would be better used by identifying dangerous individuals who [*sic*] the rule should apply to."

Noteworthy is that many respondents pointed out that they have always been careful not to reoffend in close proximity to their homes, so geographical restrictions provided little deterrence. The rule "serves no purpose but to give some people the illusion of safety," said one respondent. Others expressed similar sentiments: "I think that if someone wanted to reoffend, then they would do it at a place away from home instead of putting themselves at more risk of getting caught [near home]." Another reported, "It is better for me not to have sexual contact with neighborhood kids—less chance of being recognized," and others agreed, "Most people would worry more about being caught in their own neighborhood." One offender wryly noted, "I never noticed how many schools and parks there were until I had to stay away from them."

Some participants pointed out the myth of *stranger danger*: "It doesn't matter where you live; most offenses happen with someone you know or live with." Another commented, "Most abuse happens in homes or with family or close friends, not at bus stops or schools." Although acknowledging that they would be unlikely to abduct a child from a school or park, they did point out a chilling and ironic reality: "You can live one door to a minor but not a school," said one offender, and another agreed, "You don't want me to live near a school where the kids are when I'm at work. The way it is now, when I get home from work, they're home, too—right next door." One offender asked, "What is the point if the houses on your same block are full of kids?" Another offender noted a similar and equally illogical experience:

I couldn't live in an adult mobile home park because a church was 880 ft away and had a children's class that met once a week. I was forced to move to a motel where right next door to my room was a family with three children—but it qualified under the rule.

## DISCUSSION

Most of the molesters who responded to this survey indicated that housing restrictions increased isolation, created financial and emotional hardship, and led to decreased stability. The data further suggested that offenders do not perceive residence restrictions as helpful in risk management. Although this study did not measure risk or recidivism, the findings appear to confirm prior speculation that proximity rules might increase the types of stressors that can trigger reoffense (Minnesota Department of Corrections, 2003). Research regarding dynamic risk has indicated that a lack of positive social support and depressed mood, anger, and hostility are all associated with recidivism (Hanson & Harris, 1998, 2001). Restricting lower risk offenders unnecessarily, in ways that potentially interfere with their recovery, may be counter-productive. In Colorado, it was found that sex offenders who had more social support had a lower number of probation violations (Colorado Department of Public Safety, 2004).

On the other hand, sexual interest in children and access to victims are factors also associated with recidivism (Hanson & Harris, 1998, 2001; Hanson & Morton-Bourgon, 2004), so it makes sense that risk might be managed by reducing some molesters' exposure to children and prohibiting them from living near places where children congregate. However, blanket restrictions may fail to address individualized risk factors that are related to potential offending patterns. For example, proximity laws are usually designated only for sex offenders convicted of child molestation, even though research suggests that up to 50% of rapists have committed undetected sex crimes against child victims (Ahlmeyer, Heil,

McKee, & English, 2000). It is well established that most sex offenders have many more victims (and a variety of victims) than those for which they have been arrested (Abel et al., 1987; Abel, Becker, Cunningham-Rathner, Mittleman, & Rouleou, 1988; Ahlmeyer et al., 2000; Heil, Ahlmeyer, & Simons, 2003), and therefore, some may pose risks not readily apparent by relying solely on their documented offense history.

What we can learn from these sex offenders' responses is that they will circumvent restrictions if they are determined to reoffend. Therefore, restrictions must be sensible and feasible and should be based on a thorough assessment of past offense patterns and current risk factors. Practitioners and probation officers should collaborate in determining treatment plans and supervision restrictions that are most applicable to individual offenders' needs and risks. Noteworthy is that several respondents in our study had successfully petitioned the court for a modification of residence restrictions, seemingly without an assessment of risk by the treatment provider or probation officer. Restrictions are likely to be most effective when combined with appropriate assessment, support, monitoring, and rehabilitation. A more individualized approach to sex offender management can enhance public safety while promoting successful reintegration for offenders.

This study was preliminary and exploratory, and it was limited by the inherent problems of self-reported data. The data were collected from two large, metropolitan areas in Florida and therefore probably reflect urban implementation statewide but may fail to capture other problems or benefits more specific to rural communities. It is unknown whether these results can be generalized to other states, and continued research will assist us to more fully understand the national impact of residence restrictions on sex offender reintegration. Ultimately, empirical investigation must clarify the effect of proximity restrictions on recidivism to determine whether such policies are successful in achieving their stated goals.

Prevention of sexual violence requires a well-planned, comprehensive, interdisciplinary response that begins with developing clear goals and objectives, implementing strategies based on empirical research, and collecting and analyzing data on an ongoing basis (Center for Sex Offender Management, 2002). Some states (Minnesota and Colorado) have elected to study the relationship between housing and recidivism before implementing proximity restrictions. These states ultimately determined that the potential benefits of such legislation do not seem to outweigh the possible negative consequences. Social policy should be solidly grounded in empirical evidence and informed by theoretical literature. It is clear that public concern about sexual crimes sometimes leads to legislation that is not driven by data or science but rather by outrage and fear. Scientists and practitioners have a responsibility to assist lawmakers to respond to the problem of sexual violence by advocating for the development of evidence-based policies that protect women and children and rehabilitate perpetrators as well.

## REFERENCES

- Abel, G. G., Becker, J. V., Cunningham-Rathner, J., Mittleman, M. S., Murphy, M. S., & Rouleou, J. L. (1987). Self-reported crimes of nonincarcerated paraphiliacs. *Journal of Interpersonal Violence*, 2, 3-25.
- Abel, G. G., Becker, J. V., Cunningham-Rathner, J., Mittleman, M. S., & Rouleou, J. L. (1988). Multiple paraphilic diagnoses among sex offenders. *Bulletin of the American Academy of Psychiatry and the Law*, 16(2), 153-168.
- Ahlmeyer, S., Heil, P., McKee, B., & English, K. (2000). The impact of polygraphy on admissions of victims and offenses in adult sexual offenders. *Sexual Abuse: A Journal of Research & Treatment*, 12(2), 123-138.
- Bureau of Justice Statistics. (2003). *Recidivism of sex offenders released from prison in 1994*. Washington, DC: U.S. Department of Justice.
- Center for Sex Offender Management. (2002). *Managing sex offenders in the community: A handbook to guide policymakers and practitioners through a planning and implementation process*. Washington, DC: U.S. Department of Justice.
- Colorado Department of Public Safety. (2004). *Report on safety issues raised by living arrangements for and location of sex offenders in the community*. Denver, CO: Sex Offender Management Board.
- Conditional Release Program, Florida Statute 947.1405 (2004).
- Doe v. Miller & White, U.S. District Court, Southern District of Iowa (2004).
- Edwards, W., & Hensley, C. (2001). Contextualizing sex offender management legislation and policy: Evaluating the problem of latent consequences in community notification laws. *International Journal of Offender Therapy and Comparative Criminology*, 45(1), 83-101.
- Epperson, D. L., Kaul, J. D., Huot, S. J., Hesselton, D., Alexander, W., & Goldman, R. (1999). *Minnesota sex offender screening tool—revised (MnSost-R): Development performance, and recommended risk level cut scores*. Retrieved March 1, 2004, from www.psychology.iastate.edu/faculty/epperson
- Freeman-Longo, R. E. (1996). Prevention or problem? *Sexual Abuse: A Journal of Research & Treatment*, 8(2), 91-100.
- Furby, L., Weinrott, M., & Blackshaw, L. (1989). Sex offender recidivism: A review. *Psychological Bulletin*, 105(1), 3-30.
- Hanson, R. K. (1997). *The development of a brief actuarial scale for sexual offense recidivism*. Ottawa, Canada: Department of the Solicitor General of Canada.
- Hanson, R. K., & Bussiere, M. T. (1998). Predicting relapse: A meta-analysis of sexual offender recidivism studies. *Journal of Consulting and Clinical Psychology*, 66, 348-362.
- Hanson, R. K., Gordon, A., Harris, A. J. R., Marques, J. K., Murphy, W., Quinsey, V. L., et al. (2002). First report of the collaborative outcome data project on the effectiveness of treatment for sex offenders. *Sexual Abuse: A Journal of Research & Treatment*, 14(2), 169-194.
- Hanson, R. K., & Harris, A. J. R. (1998). *Dynamic predictors of sexual recidivism*. Ottawa, Canada: Department of the Solicitor General of Canada.
- Hanson, R. K., & Harris, A. J. R. (2001). A structured approach to evaluating change among sexual offenders. *Sexual Abuse: A Journal of Research & Treatment*, 13(2), 105-122.
- Hanson, R. K., & Morton-Bourgon, K. (2004). *Predictors of sexual recidivism: An updated meta-analysis*. Ottawa, Canada: Public Works & Government Services.
- Hanson, R. K., & Thornton, D. (1999). *Static 99: Improving actuarial risk assessments for sex offenders* (No. User Report 1999-02). Ottawa, Canada: Department of the Solicitor General of Canada.
- Heil, P., Ahlmeyer, S., & Simons, D. (2003). Crossover sexual offenses. *Sexual Abuse: A Journal of Research & Treatment*, 15(4), 221-236.

- Minnesota Department of Corrections. (2003). *Level three sex offenders residential placement issues*. St. Paul, MN: Author.
- Special Conditions of Sex Offender Probation. Florida Statute 948.03 (1997).
- Walker, J. T., Golden, J. W., & VanHouten, A. C. (2001). The geographic link between sex offenders and potential victims: A routine activities approach. *Justice Research and Policy*, 3(2), 15-33.

**Jill S. Levenson, Ph.D.**  
Center for Offender Rehabilitation and Education  
5950 W. Oakland Park Blvd., Suite 107  
Ft. Lauderdale, Florida 33313  
USA  
E-mail: jsljwm@bellsouth.net

**Leo P. Cotter, Ph.D.**  
S.H.A.R.E.  
7819 N. Dale Mabry, Suite 212  
Tampa, Florida 33614-3267  
USA

## SEX OFFENDER RESIDENCY RESTRICTIONS

### *Position Statement*

NASW, Iowa Chapter, believes the state of Iowa has a responsibility to develop comprehensive programs to interdict sexual predation, incarcerate and rehabilitate offenders, provide services to victims and families, and provide education to help prevent future sexual crimes. Sex offender legislation should be designed, implemented, and assessed from an evidence-based 'best practice' approach, with the goal of keeping children and communities safe from all offenders.

### *Discussion*

Sexual crimes, especially against children, are among the most horrific and damaging forms of violence imaginable. Two of society's most important goals are protecting children and preventing violence. To address the sexual predation of children, Iowa legislators enacted a residency restriction, barring persons convicted of sexual offenses against a minor from living within 2000 feet of a school or day care center. While the law was laudable in its concern for child and community safety, it was based on flawed assumptions, has had unintended consequences, has been difficult to enforce, and offers little in the way of meaningful treatment.

- *Flawed assumptions*

Iowa's residency restrictions are based on the assumption that children are most at risk of "stranger danger" and that restricting the residency of known sex offenders is an effective means of limiting would-be perpetrators' access to children. Research suggests that both assumptions are flawed. Studies show that in 80-90% of sexual crimes, perpetrators were familiar with their victims (Roos & Rood, 2005; Iowa County Attorneys Association [ICAA], 2006). Family members, friends, baby-sitters, and persons who supervise or have authority over children or young people are more likely than strangers to commit a sexual assault. Additionally, many victims who are sexually assaulted by intimates, friends or acquaintances do not or cannot report these crimes to police. Nationally, only about 38% of sexual assaults against those age 12 or older are reported (U.S. Department of Justice, 2005). Sexual assault of children under age 12 is more difficult to measure, but it is generally assumed to be equally under-reported. Given the low rate of reporting, the number of convicted sex offenders who are subject to the residency restrictions represents a small percentage of those living in Iowa communities.

Research also has shown no correlation between the proximity of a sex offender's residence to a potential victim and his/her likelihood of re-offending (Levenson & Cotter, 2005; ICAA, 2006). Thus, residency restrictions may create a false sense of security that children are safely beyond an offender's grasp when that is not the case. When sex offenders in Florida were asked about the residency restrictions in that state, they commented: "Living 1,000 ft away compared to 900 ft. doesn't prevent anything," and "It doesn't matter where a sex offender lives if he sets his mind on reoffending. . . . he can just get closer by walking or driving" (Levenson & Cotter, 2005, p. 174).

Parents, children, and community members must understand that the 2,000-foot residency restriction imposed on convicted sex offenders does not ensure child safety. ICAA (2006) recommends the development of education programs that not only focus on the risks of "stranger danger" but also highlight the dangers of sexual abuse posed by family members and acquaintances with ordinary access to children. Additionally, any meaningful approach to the problem must include victim services to assist children and families in overcoming the impact of such trauma when it does occur.

- *Unintended consequences*

ICAA (2006) has identified a number of unintended consequences stemming from the sex offender residency restrictions. These include, but are not limited to the following issues:

- Large restricted zones bar sex offenders from living anywhere in many communities.

- Lack of housing options has forced offenders to reside in near-homeless settings such as motels, trailer parks, interstate rest stops, parking lots and tents; this has led some to falsely report their place of residence while others have simply gone “underground”.
- Families of offenders who attempt to remain together are effectively subjected to the same restrictions, meaning that they too are forced to move, and may have leave jobs, de-link from community ties, and remove their children from schools and friends.
- Physically or mentally impaired offenders who depend on family for regular support are prevented from living with those on whom they rely for help.
- Threat of family disruption may leave victims of familial sexual abuse reluctant to report the abuse to authorities, thereby undermining the intention of the law.
- Threat of being subjected to the residency restriction has led to a significant decrease in the number of offenders who, as part of the trial process, disclose their sexual offenses; consequently, fewer offenders being held accountable for their actions.
- Loss of residential stability, disconnection from family, and social isolation run contrary to the “best practice” approaches for treatment of sex offenders and thus put offenders at higher risk of re-offense.
- No distinction is made between those offenders who pose a real risk to children and those, who pose no known threat.

- *Enforcement issues*

The residency restrictions also have presented particular challenges for law enforcement. Offenders are required to periodically register with authorities and provide their current addresses. Officers report that they have simply lost track of offenders who falsely reported their residence or who failed to provide an address and simply ‘disappeared’. In March of 2006, over 6000 individuals were listed on Iowa’s sex offender registry; of these, 400 offenders were listed as having their “whereabouts unconfirmed” or as living in “non-structure locations” -- tents, parking lots or rest areas (Davey, 2006). This was a significant increase from the previous summer when the number of unaccounted persons was 140. ICAA (2006) notes that when the whereabouts of sex offenders are unknown, the integrity of the sex offender registry, intended as a public safety tool, is compromised.

ICAA (2005) has identified other issues for law enforcement as well. Unlike the sex offender registry, there is no time limit on residency restrictions. Once offenders leave the registry, they are no longer required to report their address, thereby making it virtually impossible for law enforcement to track them, as required by the residency statute. Additionally, no exception is made for supervised parolees who are residing in approved housing. If the housing falls within the restricted zone, paroled offenders are required to relocate despite the fact that it may be the most appropriate and secure setting for both the offender and the community.

- *Best practice issues*

Iowa’s current approach to sexual predation is a ‘get-tough’ policy that does little to improve community safety or provide meaningful treatment and prevention. Residency restrictions are built on the assumption that all perpetrators re-offend and that treatment is ineffective. Studies by the U.S. Department of Justice and various researchers (as cited in Levenson, in press) have shown that recidivism rates, despite under-reporting, average around 15%, suggesting that most persons do not re-offend. Additionally, perceptions about treatment ineffectiveness are based on out-dated reports of older treatment modalities and studies from the 1970s-1980s. Newer studies have shown promising results -- with 40% reductions in recidivism -- using cognitive behavioral therapies (as cited in Levenson, in press). Clearly, Iowa needs to revamp its policy and develop programs that utilize current ‘best practice’ approaches to treatment and prevention.

***Recommendations***

The state of Iowa should address the problem of sexual crimes by enacting measures to remedy the ineffectiveness, unintended consequences, unenforceable elements of the present 2000-foot residency statute, and by providing meaningful approaches to treatment and prevention.

- Replace the current statute with one which defines certain protected areas – schools, parks, play grounds, day-care centers, etc. – where sex offenders are barred from entering except in special, pre-approved circumstances, such as parent-teacher conferences.

- Provide appropriate funds to staff and develop evidence-based 'best practice' programs for the treatment of convicted sex offenders
  - Create a tiered-system to distinguish between levels of risk, and differentiate between offenders who are amenable to treatment and those who are not
  - Apply a target mix of incarceration and treatment to limit the reoccurrence of sex crimes
  - Utilize a system of electronic monitoring and tracking to enhance community safety
  - Provide research funds to evaluate program effectiveness
- Provide appropriate funds to staff, deliver and evaluate programs that provide confidential, effective treatment and support for sexual abuse victims and their families.
- Provide statewide community education programming
  - Develop a media campaign to deliver comprehensive and accurate information to Iowans about sexual assault, risks and resources
  - Provide funding to ensure the delivery of age-appropriate curricula for children and teens designed to deliver information about the risks of and means to avoid sexual predation
  - Continue to support and evaluate parent education programs

### **References**

Davey, M. (2006, March 15). Iowa's residency rules drive sex offenders underground. *The New York Times*. Retrieved November 4, 2007 from: [www.nytimes.com/2006/03/15/national/15offenders.htm](http://www.nytimes.com/2006/03/15/national/15offenders.htm)

Iowa County Attorneys Association. (2006, February 14). *Statement on Sex Offender Residency Restrictions in Iowa*. Retrieved November 4, 2007 from: <http://www.cacj.org/PDF/2006/Statement%20Sex%20Offender%20Residency%20Restrictions.pdf>.

Iowa Sex Offender Treatment and Supervision Task Force. (2006, January 15). *Report to the Iowa General Assembly*.

Levenson, J. (in press). Sex offender residence restrictions. *Sex Offender Law Report*. Civil Research Report. Retrieved November 4, 2007 from: <http://theparson.net/so/Levenson.pdf>

Levenson, J. & Cotter, L. (2005). The impact of sex offender residence restrictions: 1000 feet from danger or one step from absurd? *International Journal of Offender Therapy and Comparative Criminology*, 49 (2), 168-178.

Lieb, R., Quinsey, V. & Berliner, L. (1998). Sexual predators and social policy. *Crime and Justice*, 22, 43-114.

Roos, J. & Rood, L. (2005, December 26). Critics: offender laws need to fit risk. *The Des Moines Register*, pp. A1, A9.

U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2005) *Criminal Victimization in the United States: 2005 Statistical Tables. National Crime Victimization Survey*.

# Iowa County Attorneys Association

---

Hoover State Office Building ◇ 1<sup>st</sup> Floor ◇ Des Moines, Iowa 50319  
Telephone: (515) 281-5428 ◇ Fax: (515) 281-4313

## STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA

December 11, 2006

The Iowa County Attorneys Association believes that the 2,000 foot residency restriction for persons who have been convicted of sex offenses involving minors does not provide the protection that was originally intended and that the cost of enforcing the requirement and the unintended effects on families of offenders warrant replacing the restriction with more effective protective measures.

The ICAA has the following observations concerning the current restriction:

1. Research shows that there is no correlation between residency restrictions and reducing sex offenses against children or improving the safety of children.
2. Research does not support the belief that children are more likely to be victimized by strangers at the covered locations than at other places.
3. Residency restrictions were intended to reduce sex crimes against children by strangers who seek access to children at the covered locations. Those crimes are tragic, but very rare. In fact, 80 to 90 percent of sex crimes against children are committed by a relative or acquaintance who has some prior relationship with the child and access to the child that is not impeded by residency restrictions. Only parents and caretakers can effectively impede that kind of access.
4. Law enforcement has observed that the residency restriction is causing offenders to become homeless, to change residences without notifying authorities of their new locations, to register false addresses or to simply disappear. If they do not

register, law enforcement and the public do not know where they are living. The resulting damage to the reliability of the sex offender registry does not serve the interests of public safety.

5. There is no demonstrated protective effect of the residency requirement that justifies the huge draining of scarce law enforcement resources in the effort to enforce the restriction.
6. The categories of crimes included in the restriction are too broad, imposing the restriction on many offenders who present no known risk to children in the covered locations.
7. A significant number of offenders have married or have been reunited with their victims; and, in those cases, the residency restriction is imposed on the victims as well as the offenders.
8. Many offenders have families whose lives are unfairly and unnecessarily disrupted by the restriction, causing children to be pulled out of school and away from friends, and causing spouses to lose jobs and community connections.
9. Many offenders are physically or mentally disabled but are prohibited from living with family members or others on whom they rely for assistance with daily needs.
10. The geographic areas included in the prohibited 2,000 foot zones are so extensive that realistic opportunities to find affordable housing are virtually eliminated in most communities. The lack of transportation in areas not covered by the restriction limits employment opportunities. The adoption of even more restrictive ordinances by cities and counties exacerbates the shortage of housing possibilities.
11. The residency restriction has no time limit; and, for many offenders, the restriction lasts beyond the requirement that they be listed on the sex offender

registry. For this reason, there are many offenders who are subject to the residency restriction but who are not required to inform law enforcement of their place of residence, making enforcement nearly impossible.

12. There is no accommodation in the current statute for persons on parole or probation supervision. These offenders are already monitored and their living arrangements approved. The restriction causes many supervised residential placements to be unavailable even though they may be the most appropriate and safest locations for offenders to live.
13. Many prosecutors have observed that the numerous negative consequences of the lifetime residency restriction has caused a reduction in the number of confessions made by offenders in cases where defendants usually confess after disclosure of the offense by the child. In addition, there are more refusals by defendants charged with sex offenses to enter into plea agreements. Plea agreements are necessary in many cases involving child victims in order to protect the children from the trauma of the trial process. This unforeseen result seriously jeopardizes the welfare of child victims and decreases the number of convictions of sex offenders to accurate charges. Consequently, many offenders will not be made fully accountable for their acts and will not be required to complete appropriate treatment or other rehabilitative measures that would enhance the safety of children. Similar unintended negative effects often accompany well-intended efforts to increase prison sentences with mandatory provisions.
14. The drastic reduction in the availability of appropriate housing, along with the forced removal of many offenders from established residences, is contrary to well-established principles of treatment and rehabilitation of sex offenders. Efforts to rehabilitate offenders and to minimize the rate of reoffending are much

more successful when offenders are employed, have family and community connections, and have a stable residence. These goals are severely impaired by the residency restriction, compromising the safety of children by obstructing the use of the best known corrections practices.

For these reasons, the Iowa County Attorneys Association supports the replacement of the residency restriction with more effective measures that do not produce the negative consequences that have attended the current statute. For example, the ICAA would support a measure that includes the following:

- A statute creating defined protected areas (“child safe zones”) that sex offenders would be prohibited from entering except in limited and safe circumstances. Such areas might include schools and childcare facilities.
- Entrance into the protected areas would be allowed only for activities involving an offender’s own child and only with advance notice and approval from those in charge of the location.
- The restriction should cover offenses against “children” (under age 14), rather than “minors” (under 18).
- The statute should specifically preempt local ordinances that attempt to create additional restrictions on sex offenders. Such ordinances result in a variety of inconsistent rules and promote apprehension among local authorities that they must act to defend themselves from the perceived effects of the actions of other communities.
- Most important, any restriction that carries the expectation that it can be effectively enforced must be applied to a more limited group of offenders than is covered by the current residency restriction. This group should be

identified by a competent assessment performed by trained persons acting on behalf of the state. The assessment should be directed at applying the statutory restriction only to those offenders that present an actual risk in public areas to children with whom the offender has no prior relationship

- Children will be safer with clarification and strengthening of certain child sex abuse laws, including, sex abuse by deception, sexual exploitation of a person “reasonably believed to be a minor,” using a position of authority to cause children to engage in a sex act, and requiring admission at trial of a defendant’s prior acts of sexual abuse.
- Sex offender treatment both inside and outside of prison should be fully funded and improved.
- Measures should be enacted that aim at keeping all young people safe from all offenders. This should include programs that focus on the danger of abuse that may lie within the child’s family and circle of acquaintances. It is important to help children and parents recognize the signs and dangers of sex abuse by persons with ordinary access to children.
- Recognize that child safety from sex offenses is not amendable to simple solutions by creating a Sex Offender Treatment and Supervision Task Force to identify effective strategies to reduce child sex offenses.

These observations of Iowa prosecutors are not motivated by sympathy for those committing sex offenses against children, but by our concern that legislative proposals designed to protect children must be both effective and enforceable.

Anything else lets our children down.

The Iowa County Attorneys Association strongly urges the General Assembly and the Governor to act promptly to address the problems created by the 2,000 foot residency restriction by replacing the restriction with measures that more effectively protect children, that reduce the unintended unfairness to innocent persons and that make more prudent use of law enforcement resources, and strengthen the child sex abuse laws and prosecution. The ICAA stands ready to assist in any way with this effort.

**Contact Information:**

**Corwin Ritchie, Executive Director**

**Phone: 515-281-5428**

**Email: [corwin.ritchie@ag.state.ia.us](mailto:corwin.ritchie@ag.state.ia.us)**



Law and technology  
resources for legal  
professionals

## Criminal Justice Resources: Sex Offender Residency Restrictions

By Ken Strutin, Published on July 20, 2008

There are laws in more than 20 states and hundreds of communities limiting or proscribing where convicted sex offenders may live and work. See *Lawsuits Test Crackdown On Sex Criminals*, Stateline.org, April 18, 2008; *Sex-Offender Residency Laws Get Second Look*, USA Today, Feb. 26, 2007. These residency zones or exclusions are frequently imposed in conditions of probation and parole or as a facet of registration laws. They raise constitutional issues in addition to the practical problems created by shutting off access to family members, affordable housing, employment, therapeutic treatment and public services.

This article collects recent court decisions, research papers and reports that have addressed the efficacy of exclusionary zoning laws and the impact of these restrictions on sex offenders reentering their communities. For additional resources on Megan's Law and the Adam Walsh Act, see *generally* Ken Strutin, *Sex Offender Laws*, LLRX, Sept. 28, 2007; and *Sex Offender Resources* (NACDL).

### Case Law

Restrictions have been challenged on a variety of constitutional grounds, such as substantive due process, equal protection, right to travel, ex post facto, bill of attainder (e.g., banishment), and taking of property. See *Anti-Sex-Offender Zoning Laws Challenged*, Stateline.org, Dec. 9, 2006. Recent appellate decisions show how these laws fare in the gristmill of constitutional analysis, and offer insight into possible paths to Supreme Court resolution. See *Exactly When And How Will Scotus Confront Sex Offender Residency Restrictions?*, Sentencing Law and Policy Blog, May 14, 2008.

- **Georgia:** *Mann v. Dept. Of Corrections*, 282 Ga. 754, 653 S.E.2d 740 (2007)  
"Although we earlier determined appellant's property interest in his rent-free residence at his parents' home to be 'minimal,' *Mann, supra*, 278 Ga. at 443 (2), we find appellant's property interest in the Hibiscus Court residence he purchased with his wife to be significant. As a registered sex offender, the locations where appellant may reside are severely restricted by OCGA § 42-1-15 (a); as recognized by other states, those locations may also be subject to private limitations, see *Mulligan v. Panther Valley Prop. Owners Assn.*, 766 A2d 1186 (N.J. Super. Ct. App. Div. 2001) (discussing homeowner association covenants prohibiting sale of property to sex offenders), and we note that HN5 nothing in OCGA § 42-1-12 et seq. expressly precludes Georgia cities and counties from enacting additional restrictions. See Wernick, *In Accordance with a Public Outcry*:

- Zoning Out Sex Offenders Through Residence Restrictions in Florida, 58 Fla. L. Rev. 1147, 1163-1164 (2006) (discussing ordinances enacted by local governments in Florida that have expanded state statutory buffer zones). Nevertheless, appellant and his wife were able to find and purchase a house that complied with the residency restriction in OCGA § 42-1-15. The evidence is uncontroverted that the Hibiscus Court property was purchased for the sole purpose of serving as their home. OCGA § 42-1-15, by prohibiting appellant from residing at the Hibiscus Court house, thus utterly impairs appellant's use of his property as the home he shares with his wife."
- **Illinois:** People v. Morgan, 377 Ill. App. 3d 821, 881 N.E.2d 507, 317 Ill. Dec. 339 (Ill. App. Ct. 3d Dist. 2007)  
"Defendant, [a convicted sex offender] . . . , was convicted following a jury trial of knowingly residing within 500 feet of a school building that persons under the age of 18 attended (720 ILCS 5/11-9.3(b-5) (West 2006). Defendant was sentenced to 30 months' probation and fined. Defendant appeals his conviction and fines. We affirm in part and vacate and remand in part. Turning to the subsection at issue in the instant case, we adopt the reasoning and analysis employed by the Fifth District in Leroy and apply it to the subsection under consideration before us. In doing so, we find that the law is constitutional. We conclude that, in accordance with the analysis employed by the court in Leroy, section 11-9.3(b-5) does not constitute an impermissible ex post facto law. Therefore, defendant's argument must fail."
  - **Indiana:** State v. Pollard, No. 05A02-0707-CR-640 (Ind. Ct. App. May 13, 2008)  
"For all of these reasons, we hold that Indiana Code section 35-42-4-11, otherwise known as the residency statute, is an ex post facto law as applied to a person in Pollard's circumstances. The residency statute is a criminal statute that criminalizes residency because of the resident's status as a sex offender. In addition, the statute's effect is punitive because it is applied retroactively to sex offenders who established ownership and property rights in a residence prior to the effective date of the statute, and because it forces them to relinquish some or all of their ownership rights or face a felony charge. Perhaps most importantly, Indiana's residency statute does not exempt ownership established prior to the statute, provide a constitutional taking procedure, or exempt ownership impacted by later construction of a protected facility or area."
  - **Iowa:** Wright v. Iowa Dept Of Corrections, No. 01 / 06-0863 (Iowa April 11, 2008)  
"Floyd Wright, who was convicted of a sexual offense against a minor in 1977, challenges the district court's ruling that he was subject to the residency restrictions of Iowa Code section 692A.2A (2005), which prohibits sex offenders from residing within two thousand feet of certain facilities such as schools. Wright contends that he is not subject to the statute because he was not a "registered" sex offender. Even if the statute were applicable, Wright contends it would violate his equal protection and substantive due process rights and would be invalid as a bill of attainder. The district court rejected his arguments, and so do we."
  - **Missouri:** R.L. v. Missouri Department Of Corrections, 245 S.W.3d 236 (Mo. 2008)  
"The same long-standing principles applied in Phillips apply in this case. As with the registration requirements in Phillips, the residency restrictions at issue in this case impose a new obligation upon R.L. and those similarly situated by requiring them to

change their place of residence based solely upon offenses committed prior to enactment of the statute. Attaching new obligations to past conduct in this manner violates the bar on retrospective laws set forth in article I, section 13."

- **Ohio:** *City of Middleburg Heights v. Brownlee*, 2008 Ohio 2036, 2008 Ohio App. LEXIS 1739 (Ohio Ct. App., Cuyahoga County May 1, 2008)  
"Defendant John F. Brownlee, Jr. (appellant) appeals the court's granting an injunction prohibiting him from residing within 1,000 feet of a school. After reviewing the facts of the case and pertinent law, we reverse the court's ruling and order the injunction vacated. In the instant case, appellant bought his home in 1972; he committed the offensive acts in February and March 2003; and the statute's effective date is July 31, 2003. Accordingly, the court erred when it applied R.C. 2950.031 to appellant, and his first assignment of error is sustained."
- **Ohio:** *Hyle v. Porter*, 117 Ohio St. 3d 165, 2008 Ohio 542, 882 N.E.2d 899 (2008)  
"We hold that HN1R.C. 2950.031 does not apply to an offender who bought his home and committed his offense before the effective date of the statute. The judgment of the First District Court of Appeals is reversed."
- **United States:** *Validity Of Statutes Imposing Residency Restrictions On Registered Sex Offenders*, 25 ALR6th 227  
"In recent years, a number of state or local statutes imposing residency restrictions on registered sex offenders have been enacted. In *Doe v. Miller*, 405 F.3d 700, 25 A.L.R.6th 695 (8th Cir. 2005), cert. denied, 126 S. Ct. 757, 163 L. Ed. 2d 574 (U.S. 2005) (applying Iowa law), the court of appeals held that an Iowa statute that prohibited persons who had committed a criminal sex offense against a minor from residing within 2,000 feet of a school or child care facility, did not violate the Due Process Clause of the Fourteenth Amendment, was not retroactive criminal punishment in violation of the Ex Post Facto Clause, did not interfere with the right of sex offenders to travel, and did not violate the right against self-incrimination under the Fifth Amendment. This annotation collects and summarizes those cases in which the courts have determined the validity of state or local statutes imposing residency restrictions on registered sex offenders."

## Articles

Scholars and researchers have examined the effectiveness of residency restrictions on sex offender behavior and its lawfulness as punishment.

- *Banishment By A Thousand Laws: Residency Restrictions On Sex Offenders*, 85 Wash. U. L. Rev. 101 (2007)  
"Across America, states, localities, and private communities are debating and implementing laws to limit the places of residence of convicted sex offenders. Nineteen states and hundreds, if not thousands, of local communities have adopted statutes which severely limit the places where a sex offender may legally live. In this article, I trace these new laws to historical practices of banishment in Western societies. I argue that the establishment of exclusion zones by states and localities is a form of banishment that I have termed 'internal exile.' Establishing the connection to banishment punishments

helps to explain the unique legal, policy, and ethical problems these laws create for America. Ultimately, residency restrictions could fundamentally alter basic principles of the American criminal justice system. While those supporting these laws have the interests of children at heart, the policies they are promoting will be worse for children and society."

- Constitutional Collectivism And Ex-Offender Residence Exclusion Zones, 92 Iowa L. Rev. 1 (2006)

"The US has often been imperiled by the competing interests of individual states, and while past threats have most frequently assumed economic or political form, this article addresses a different threat: state efforts to limit where ex-offenders (those convicted of sex crimes in particular) can live. The laws have thus far withstood constitutional challenge, with courts deferring to the police power of states. This deference, however, ignores the negative externalities created when states jettison their human dross, and defies Justice Cardozo's oft-repeated constitutional tenet that "the peoples of the several states must sink or swim together." The article discusses the continued need for this tenet in the face of state expulsionist tendencies and invokes in support the Court's decisions invalidating state laws barring entry of the poor and solid waste. In both instances, the Court, while acknowledging the exigencies motivating states, invalidated the laws because they betrayed the national imperative of dealing with challenges faced by all states. As the article establishes, a kindred understanding and resolve is now necessary as states seek to isolate themselves from the shared national responsibility of offender reentry."

Controlling Sex Offender Reentry: Jessica's Law Measures In California (SSRN 2006)

"This paper examines current research on the effectiveness of electronic monitoring and residential restrictions in preventing recidivism amongst sex offenders in California, as well as the experiences of other states that have experimented with these techniques. The paper focuses on four questions: 1) What are the trends in California sex offense data and other states with sizable sex offender populations? 2) What does research and other state experiences tell us about the effectiveness of electronic monitoring in preventing recidivism and absconding of sex offenders? 3) What does research and other state experiences tell us about the effectiveness of residential restrictions in preventing recidivism of sex offenders? 4) In light of California's sex offender population, and CDCR's current methods for supervising paroled sex offenders, what challenges would CDCR and other state agencies likely face in implementing expanded electronic monitoring and residential restrictions?"

- Does Residential Proximity Matter? A Geographic Analysis Of Sex Offense Recidivism, 35 Crim. Just. & Behavior 484 (2008)

"In an effort to reduce sex offense recidivism, local and state governments have recently passed legislation prohibiting sex offenders from living within a certain distance (500 to 2,500 feet) of child congregation locations such as schools, parks, and daycare centers. Examining the potential deterrent effects of a residency restrictions law in Minnesota, this study analyzed the offense patterns of every sex offender released from Minnesota correctional facilities between 1990 and 2002 who was reincarcerated for a new sex offense prior to 2006. Given that not one of the 224 sex offenses would have likely been

prevented by residency restrictions, the findings from this study provide little support for the notion that such restrictions would significantly reduce sexual recidivism."

- Has Georgia Gone Too Far-Or Will Sex Offenders Have To?, 35 Hastings Const. L.Q. 309 (2008) \$  
"Given the wide range of issues that were presented by Georgia's latest sex offender residency restriction, this note will discuss how Georgia's new residency restriction statute, as originally written, violated (1) the Ex Post Facto Clause, (2) the Eighth Amendment, (3) Procedural Due Process under the Fourteenth Amendment, and (4) the Free Exercise Clause of the First Amendment. Lastly, the note will analyze potential issues under the Dormant Commerce Clause and other policy considerations to argue that, in practice, the use of such harsh residency restrictions might make for a more dangerous situation for children, sex offenders, and the rest of society."
- How To Stop A Predator The Rush To Enact Mandatory Sex Offender Residency Restrictions And Why States Should Abstain 86 Or. L. Rev. 219 (2007) "A new trend in state legislation emerged as twenty-two states entered legally unsettled waters by enacting various residency restrictions for convicted sex offenders. Legislators tout the need for such residency restrictions to reduce child sex offenders' opportunities for contact with potential victims. However, courts disagree whether these new laws are constitutional, and research increasingly questions their utility. This Comment will first look at the primary legal questions facing the courts, examining various legal challenges to state residency restrictions and the limited research surrounding the efficacy of such restrictions. Next, this Comment will address the 2006 California ballot measure Proposition 83, which serves as a practical case study of these new restrictions and their unsettled legal ramifications. Finally, this Comment will examine Oregon's nonmandatory residency restriction and explain why it serves as the best model for achieving the goals of protecting our children, monitoring the sex offender population, and withstanding judicial review. Ultimately, this Comment will attempt to show that research on mandatory residency restrictions may affect the way future courts rule on these restrictions. This Comment will also attempt to persuade those presently in favor of mandatory residency restrictions that more flexible, nonmandatory restrictions will increase the likelihood of achieving their stated objectives."
- In The Zone: Sex Offenders And The Ten Percent Solutions (SSRN 2008)  
"This Article challenges prevailing judicial orthodoxy that many sex offender residency restrictions are constitutional under the federal Ex Post Facto Clause. The paper applies the analytical framework in Smith v. Doe, the Court's most recent case involving sex offender legislation. It also forges a new way of thinking about these regimes as land-use policies that "negatively" zone individuals out of the urban cores. The paper proposes an innovative "positive" zoning scheme, the Sex Offender Containment Zone, that zones high-risk convicted sex offenders back into the city and that is effective, humane, and constitutional."
- Irregular Passion: The Unconstitutionality And Inefficacy Of Sex Offender Residency Laws, 102 Nw. U. L. Rev. 307 (2008)  
"The Comment concludes that non-tailored residency laws are unconstitutional. These same laws are also unwise and ineffective in terms of their stated goals, rendering them

poor policy decisions. Given their ineffectiveness and the threat they pose to fundamental rights, this Part argues that it is important that courts assess the laws rigorously and without bias, particularly because the political outlash against sex offenders is immense, irrational, and hard for legislators to reverse. Until courts correctly deem these non-tailored residency laws unconstitutional, both the rights of sex offenders and the safety of their potential victims will be at risk due to the crippling political outrage surrounding the issue."

- **Never Going Home: Does It Make Us Safer? Does It Make Sense? Sex Offenders, Residency Restrictions And Reforming Risk Management Law, 97 J. Crim. L. & Criminology 317 (2006)**

"One of the most hotly debated issues in criminal law today is how to manage the perceived risk of sex offenders loose in the community. Beyond mandatory registration and community notification, over a dozen states, including Illinois, have enacted residency restrictions that forbid sex offenders from living within a certain distance of schools, parks, day care centers, or even "places where children normally congregate." This Comment scrutinizes these laws to see if they make sense, and more importantly, if they make us safer. The answer to both questions appears to be no. After detailing the statistical, political, and constitutional problems that render these restrictions ineffective and unconstitutional, I shift my attention to envisioning a better system of risk management. I end by critically examining best practice methods of states across the country that more effectively allocate finite resources to identify and control high risk offenders to prevent them from harming again, while allowing the vast majority of offenders who are low risk to better re-integrate into and become productive members of society."

- **Off To Elba: The Legitimacy Of Sex Offender Residence And Employment Restrictions, 40 Akron L. Rev. 339 (2007)**

"This article will look at why sex offenders are treated differently than other criminal offenders. Sex offenders are subject to sanctions and prohibitions above and beyond what other criminal offenders must face. Next, the article will look at some of the residence and employment restrictions placed on sex offenders to determine if they are rationally related to any legitimate government interest without overbearing the sex offender's constitutional rights. Finally, the article will offer an alternate means of sex offense prevention that encourages sex offender assimilation back into society instead of further exclusion."

- **Reentry And Reintegration: Challenges Faced By The Families Of Convicted Sex Offenders, 20 Fed. Sent. R. 88 (2007) \$**

"Our article will focus on the adult family members of convicted sex offenders and the many challenges they face in reuniting with their loved ones post-incarceration. We will explore the general knowledge on families of prisoners and incorporate preliminary findings from our ongoing research on the experiences and needs of families of convicted adult, male sex offenders."

- **Sex Offender Re-Entry: A Summary And Policy Recommendation On The Current State Of The Law In California And How To 'Safely' Re-Introduce Sex Offenders Into Our Communities (SSRN 2006)**

"This paper attempts to provide a comprehensive review of the current and pending sex offender legislation in California, examine their effectiveness or ineffectiveness and any possible loopholes, and conclude with a broad recommendation on where the state of California's law and policies surrounding the safe release and supervision of sex offenders into the community should be heading. In doing so, the paper will rely on current statistics on sex offenders in California, policy recommendations by various organizations on this topic, media profiles and case histories of recent real-life sex crimes, and actual data from the California online sex offender registry to discover the profile of the "real" sex offender in California. This paper will also examine the roll of public outcry and moral panic in the implementation of these laws and the effect this may have had on their specific provisions and eventual effectiveness in order to provide a more comprehensive review of the impetus behind such regulations and hopefully to inform future legislation of the lessons of the past."

- Sex Offender Residence Restrictions: Sensible Crime Policy Or Flawed Logic?, 71 Fed. Prob. 2 (Dec. 2007)

"Although 22 States now have laws that restrict where sex offenders can live, with 1,000 to 2,500-foot exclusionary zones being most common, research on the effects of sex-offender residence restrictions is limited. Only one study (Minnesota Department of Corrections, 2007) has specifically examined the relationship between residence restrictions and reoffending. That study was prospective, because no such law was in place where the study was conducted (Minnesota). There is a growing body of evidence, however, that residence restrictions have unintended consequences for sex offenders and communities. These adverse effects include homelessness for sex offenders; transience; lack of accessibility to social support, employment, and rehabilitative services; registry invalidity; and the clustering of sex offenders in poor, rural, or socially disorganized neighborhoods. Residence laws are often based on erroneous assumptions about sex-offender high reoffending rates and the belief that most sex offenders target strangers for victimization. In addition, they are rarely coupled with the administration of proven risk-assessment instruments and procedures. In the absence of evidence that residence restrictions are effective in achieving their intended goal of improved community safety, their unintended adverse effects may outweigh their benefits. It is crucial that research be conducted to determine whether residence restriction laws are effective."

## Reports

State legislatures and government bureaus along with civil rights and other interested groups have published reports on the outcomes of residence and employment restrictions for sex offenders.

- IX. Residency Restriction Laws in No Easy Answers: Sex Offender Laws In The U.S. (Human Rights Watch 2007)

"The inability of convicted sex offenders to find housing when they are released from prison has become a significant barrier to their successful reintegration into society. This

is particularly problematic for registrants who have limited resources, or for those who because of work, community, or family obligations want to live in particular locations. Residency restrictions prevent offenders from living in the areas closest to jobs and public transit, since schools, daycare centers, and parks are often built in the center of main residential areas of cities and towns."

- Impact Of Residency Restrictions On Sex Offenders And Correctional Management Practices: A Literature Review (California Research Bureau 2006)  
"Today some communities in the United States banish sex offenders from living in their midst, resulting in a difficult dilemma: where can these offenders live, and where can they best be supervised and receive treatment, if available? This report describes local ordinances and state statutes restricting where a sex offender may reside, discusses what research has found so far about the success of these restrictions, considers the impact that these restrictions are having on criminal justice management practices and sex offender treatment regimens, and examines constitutional implications."
- Residential Proximity & Sex Offense Recidivism in Minnesota (Minnesota Department of Corrections 2007)  
"In an effort to curb the incidence of sexual recidivism, state and local governments across the country have passed residency restriction laws. Designed to enhance public safety by protecting children, residency restrictions prohibit sex offenders and, in particular, child molesters from living within a certain distance (500 to 2,500 feet) of a school, park, playground or other location where children are known to congregate. Given that existing research has yet to fully investigate whether housing restrictions reduce sexual recidivism, the present study examines the potential deterrent effect of residency restrictions by analyzing the sexual reoffense patterns of the 224 recidivists released between 1990 and 2002 who were reincarcerated for a sex crime prior to 2006." See also Sex Offender Recidivism in Minnesota (Minnesota Department of Corrections 2007).
- Sex Offender Residence Restrictions (Report to the Florida Legislature 2005)  
"Sexual violence is a serious social problem and policy-makers continue to wrestle with how to best address the public's concerns about sex offenders. Recent initiatives have included social policies that are designed to prevent sexual abuse by restricting where convicted sex offenders can live, often called "sex offender zoning laws," or "exclusionary zones." As these social policies become more popular, lawmakers and citizens should question whether such policies are evidence-based in their development and implementation, and whether such policies are cost-efficient and effective in reaching their stated goals."
- Statement On Sex Offender Residency Restrictions In Iowa (ICAA 2006)  
"The Iowa County Attorneys Association believes that the 2,000 foot residency restriction for persons who have been convicted of sex offenses involving minors does not provide the protection that was originally intended and that the cost of enforcing the requirement and the unintended effects on families of offenders warrant replacing the restriction with more effective protective measures."

House Bill 1432 – Opposition Testimony  
Keith Witt  
February 4, 2009

Good morning Chairman DeKrey and members of the House Judiciary Committee. My name is Keith Witt and I am Chief of the Bismarck Police Department. I am here to speak in opposition to House Bill 1432. I am a strong supporter of the current regulations concerning registered sex offenders and am definitely concerned about the risks they pose within a community. Therefore, I find myself in an unusual position testifying in opposition to a bill that has the intent of making the children and citizens of North Dakota safer. However, I believe that this bill would do just the opposite of its intent.

House Bill 1432 would prohibit a high risk sexual offender or a sexual offender whose victim was under fifteen years of age from changing residence so as to reside within 1000 feet of a public or nonpublic elementary, middle, or high school, a public park, or a licensed early childhood facility. I have provided a map of Bismarck that shows the 1000 foot radius around the schools, public parks, and licensed early childhood facilities within the city limits of Bismarck. As you can see, very little of the city is not within the prohibited areas. The remaining areas are primarily zoned for commercial or industrial purposes or are residential areas that do not provide availability of rental or median priced housing.

Currently in Bismarck there are 53 registered offenders who would fit the definition of those prohibited from changing residence to those locations identified on the map. Within the Bismarck Police Department there is one officer who spends approximately 75% of his time in monitoring and performing duties associated with registered offenders. This includes performing at a minimum, a monthly verification check on high risk offenders. This officer believes that if this proposed legislation would be adopted, many of the affected offenders would fail to adhere to registration requirements and would still be in the community and it would be extremely difficult, if not impossible at times to track and monitor them. These offenders would likely report false addresses, become homeless, live in their vehicles, or go underground. Others may be forced to live in rural areas where there are limited law enforcement resources to monitor them, and there is less access to employment or necessary mental health services.

I believe that the consequences of this proposed legislation would truly make it more difficult, if not impossible to track and monitor registered offenders, thereby creating a more dangerous environment for our communities. I urge you to thoughtfully consider the likely consequences of this legislation and to oppose this bill.

# Bismarck

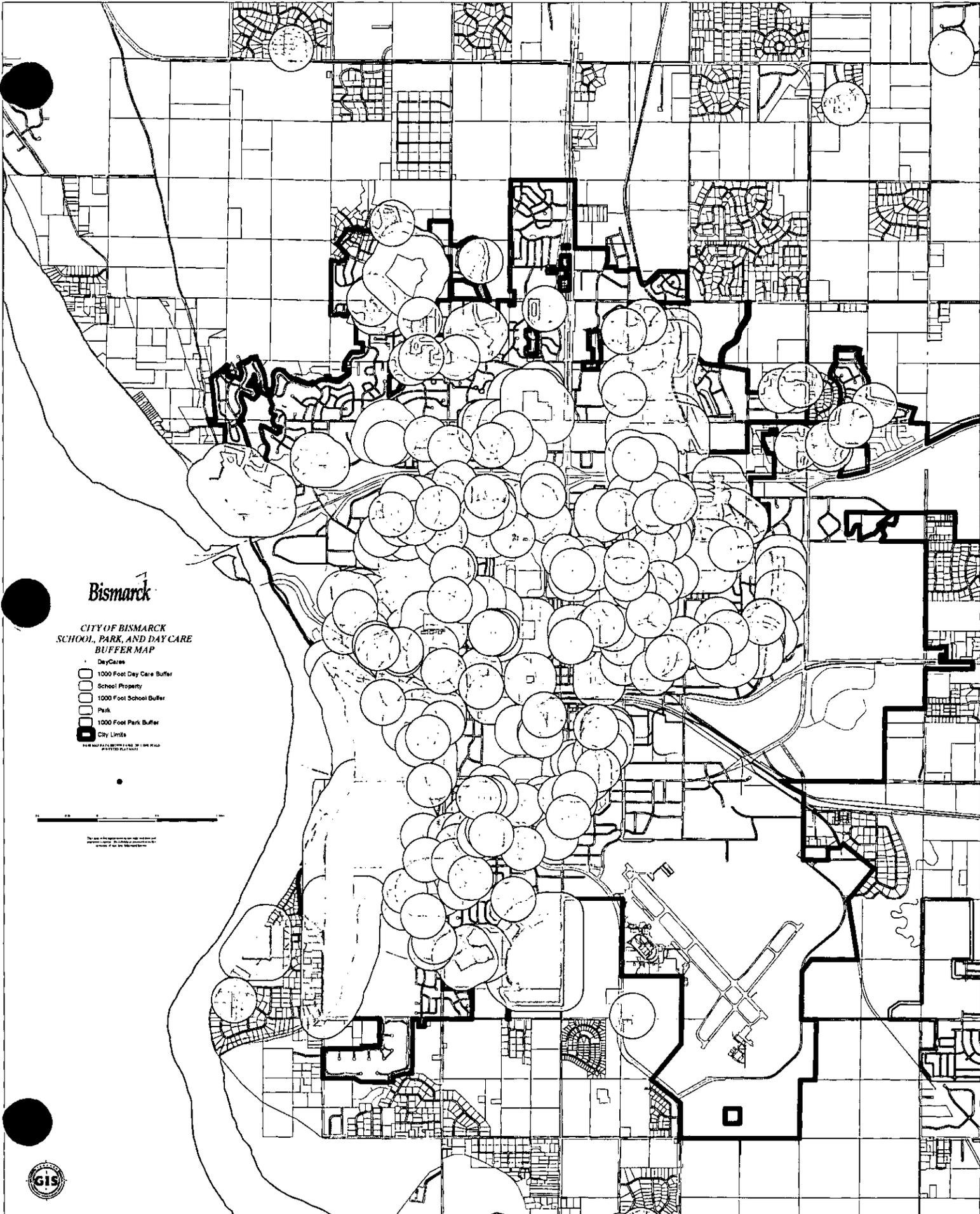
## CITY OF BISMARCK SCHOOL, PARK, AND DAY CARE BUFFER MAP

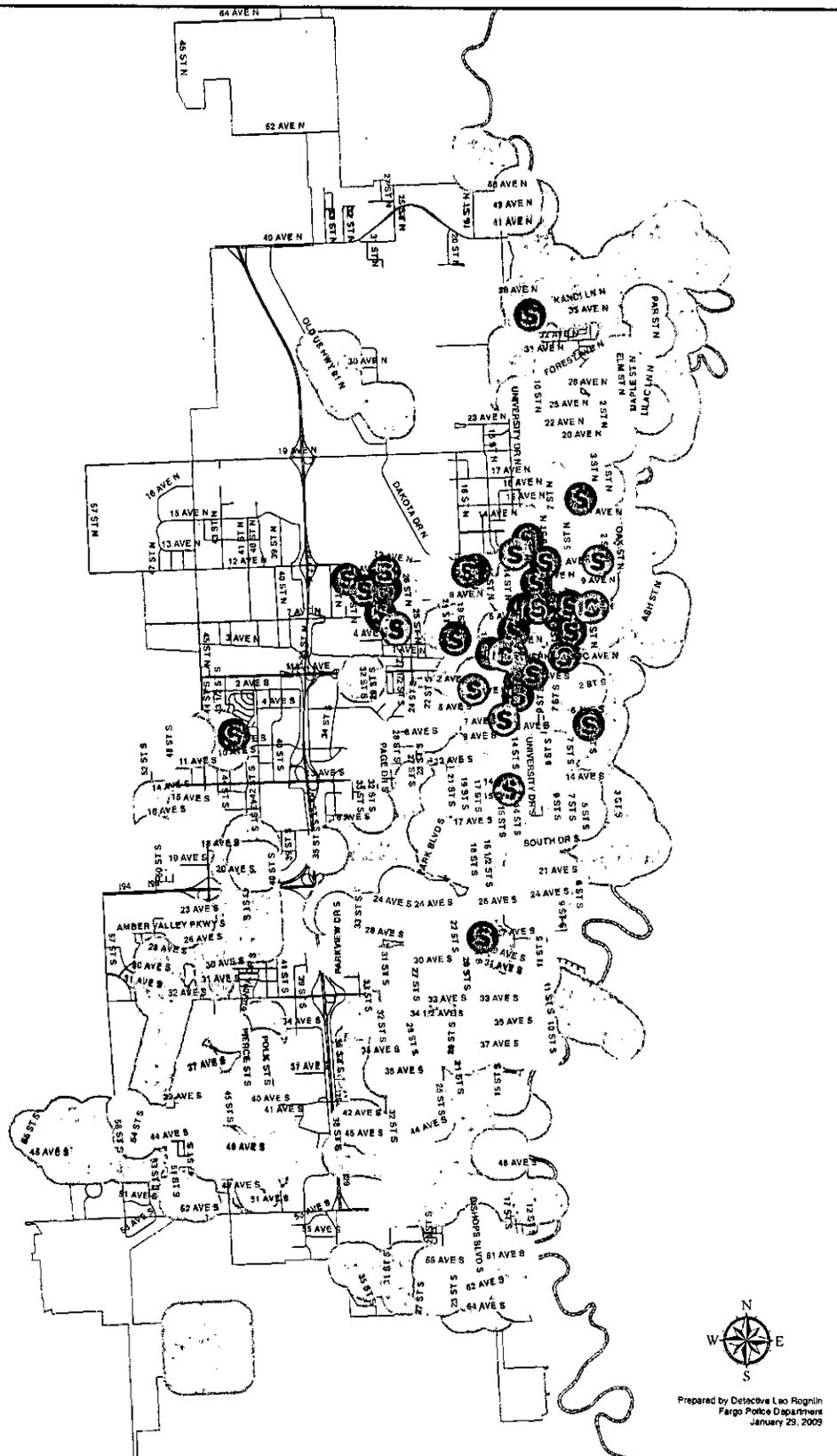
- DayCares
- 1000 Foot Day Care Buffer
- School Property
- 1000 Foot School Buffer
- Park
- 1000 Foot Park Buffer
- City Limits

FOR ALL PARKS, BUFFERS OF 1000 FEET  
SHOULD BE MAINTAINED



This map is for informational purposes only and should not be used for legal or financial decisions.





  
 Prepared by Detective Leo Roghlin  
 Fargo Police Department  
 January 29, 2009

# Fargo North Dakota

-  Level III (High Risk) Sex Offenders
-  Sex Offenders with Victims Under 15
-  Early Childhood Facility with 1000 Foot Buffer
-  Fargo Public School Property with 1000 Foot Buffer
-  Fargo Parks Property with 1000 Foot Buffer