

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

DOCKET 2013-0496

John Doe

v.

State of New Hampshire

Appeal from Merrimack County Superior Court

Brief of *Amicus Curiae* Citizens for Criminal Justice Reform
in Support of Appellant John Doe

Michael Sheehan, Esq. #6590
3 North Spring Street, #101
Concord, NH 03301
603-225-5240

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37 NYU Review of Law and Social Change 727 (2013) 11

Interest of Amicus Curiae

Citizens for Criminal Justice Reform (CCJR) is a §501(c)(3) tax exempt New Hampshire nonprofit organization founded to promote a fair, humane and restorative judicial and correctional system through research, public education, legislative advocacy, coalition building, community organizing and litigation. CCJR supports rational, cost-effective programs and policies that rehabilitate prisoners, divert them from prison in the first place, reduce crime, lower recidivism rates and make society safer. A CCJR priority is to work toward evidence-based sex offender policies. See www.ccjrn.org.

CCJR circulated a draft of this brief to the following organizations, all of which authorized CCJR to represent to this court that they support CCJR's filing.

Citizens United for Rehabilitation of Errants (CURE) is a Washington-based national organization with many state chapters working for a humane and restorative criminal justice system. The group believes in the abolition of sex offender registries. See www.curenational.org.

Human Rights Defense Center is a nonprofit corporation headquartered in Florida that works for the human rights of, and litigates for, people held in U.S. detention facilities. It also publishes the journal *Prison Legal News*, which has written extensively about sex offender issues. The Center believes using sex offender registries as a means to protect the public is fundamentally flawed. See humanrightsdefensecenter.org/.

Women Against Registry is a volunteer organization that advocates for the hundreds of thousands of innocent women and children who are wrongly and unfairly

punished because they have a family member convicted of a sexual offense. Members of the group are painfully aware that the whole family appears on the registry with the former offender. *See* www.womenagainstry.org.

Reform Sex Offender Laws, Inc., is a national civil rights and justice reform organization based in Cambridge, Massachusetts, with thousands of supporters working to reverse the laws that target former sexual offenders, especially those who have completed their court-imposed sentences. *See* www.nationalrsol.org.

Statement of the Issues

1. Overwhelming statistical evidence since *Smith v. Doe* demonstrates that the United States Supreme Court was misinformed about the risk of recidivism among former sexual offenders.

2. The superior court erred in not finding RSA 651-B to be an ex post facto law because, first, there is clear evidence that RSA 651-B was enacted in 2008 with punitive intent and, second, regardless of legislative intent, a growing body of statistical and anecdotal evidence shows public sex offender registries have a punitive effect which far exceeds that considered by this court in prior decisions.

Statement of the Case and of the Facts

CCJR accepts the statement of facts and of the case set forth in the brief of appellant John Doe. For CCJR's purposes, the relevant facts are that John Doe is a former sex offender who is subject to the registrations requirements of RSA 651-B.

Summary of Argument

In *Smith v. Doe*, 538 U.S. 84 (2003), the United States Supreme Court upheld Alaska's sex offender registration statute, which is similar to the New Hampshire law at issue here, against an *ex post facto* challenge similar to that raised here. The court in *Smith v. Doe* made two important – but incorrect – preliminary findings that this court may be inclined to follow: that sex offenders pose a high risk of recidivism and that the effects of the registry are not punitive. In this brief CCJR provides the facts and evidence dispelling these widely held misconceptions.

First, CCJR presents evidence proving that those convicted of sex crimes re-offend at the lowest rate of all convicted felons. Second, CCJR has collected the all too frequent stories showing the cruelly punitive effect of the registry.

With an accurate understanding of these two concepts, this court will be in a better position to reverse the superior court's order and grant John Doe relief.

CCJR also presents in the Addendum to this brief references to a collection of studies and articles that provide substantial background information on sex offender registries, which information CCJR hopes will persuade the court to rule in favor of John Doe.

Argument

I. Overwhelming statistical evidence since *Smith v. Doe* demonstrates that the U.S. Supreme Court was misinformed about the risk of recidivism among former sexual offenders.

In *Smith v. Doe*, 538 U.S. 84, 103 (2003), the United States Supreme Court upheld a registration scheme in a similar *ex post facto* challenge, heavily relying on the “fact” that former sexual offenders re-offend at a high rate: “the risk of recidivism posed by sex offenders is ‘frightening and high.’” The *Smith* opinion quoted from a Department of Justice (DOJ) publication in a surprisingly misleading way. *Id.* Although the study concluded that released sex offenders are more likely to commit a sex offense than those released for committing other crimes, www.bjs.gov/index.cfm?ty=pbdetail&iid=1136, this statement is too narrow. The DOJ reported that those convicted of sexual assault have recidivism rates around 2.5 percent whereas the recidivism rate for “regular” criminals is over 70 percent. See www.bjs.gov/index.cfm?ty=tp&tid=17.

Other statistical evidence overwhelmingly supports these DOJ reports. Sex offenders re-offend at very low rates, including in New Hampshire. Former assistant safety commissioner John Stephen testified in 2002 in favor of HB 1426, a bill that would allow posting the registry online. He told the Senate Judiciary Committee that a public list was a good idea because the current sex offense recidivism rate was only 2 percent. He said of the 717 people who had ever been on the non-public registry, only 16 had been arrested for new sex crimes, which 16 included three for indecent exposure and one for criminal restraint. “Sixteen out 717,” said Stephen.

National statistics are consistent with what Mr. Stephen described above. CCJR has collected in the Addendum to this brief studies of sex offender recidivism rates.

To the extent the US Supreme Court was influenced by its erroneous belief that convicted sex offenders represent a significant ongoing risk to the community, its decision in *Smith v. Doe* finding Alaska's registry constitutional is called into doubt.

II. The Superior Court Erred in Not Ruling RSA 651-B to be an Unconstitutional *ex post facto* Law.

This court last decided an *ex post facto* challenge to New Hampshire's sex offender registration scheme almost twenty years ago in *State v. Costello*, 138 N.H. 587 (1994). Current RSA 651-B differs so much from the statute considered in *Costello* that the 1994 decision has little bearing on the current case.

Smith v. Doe, supra, established the standards for considering an *ex post facto* challenge:

We must ascertain whether the legislature meant the statute to establish "civil" proceedings. If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate [the State's] intention' to deem it "civil."

538 U.S. at 92 (quotations and citations omitted). RSA 651-B fails both tests. It was enacted with punitive intent and a mounting quantum of evidence shows its effects to be tragically punitive.

A. **Unlike the 1994 registration statute considered in *Costello*, there is clear evidence that RSA 651-B was enacted in 2008 with punitive intent.**

This court in *State v. Costello* reviewed the legislative history of former RSA 632-A:11 *et seq.*, including statements by legislators, and concluded that the intent was civil, not punitive. 138 N.H. at 590. The legislative record supporting RSA 651-B is different.

RSA 651-B was called HB 1640 when considered by the New Hampshire Legislature. Rep. Cynthia Dokmo chaired a study of the sex offender registry in 2007 and sponsored HB 1640 to make the state's roster as tough as the federal Adam Walsh Act. New Hampshire adopted its risk tiers based on the crime committed, not on clinical assessments, and Dokmo told the Senate Judiciary Committee April 15, 2008, that all the new people who would have to register for life deserved it. "I actually, personally think that's fair," Dokmo testified. "I think someone who commits a sexual crime needs to be punished ... and those who commit serious crimes belong on the list for life." Page 3 of Verbatim transcript of Senate Judiciary Committee hearing on HB 1640 in Room 103 of State House, April 15, 2008.

Those who unsuccessfully opposed the bill made statements that underscored the punitive intent they tried to defeat including Rep. Beth Rodd, who called HB 1640 a scarlet letter bill that sets the kids, mothers and family members of sex offenders up for humiliation. She told the Senate Judiciary Committee, "I think that hurts everybody in the family because people are pointing fingers at children. One woman who came in (before the House Criminal Justice Committee) said she had to get a restraining order

against some people in the community who were coming to her house.” Statements of those who opposed HB 1640, objecting to the punishment it would impose, are collected in the Addendum, at 13.

B. Regardless of legislative intent, a growing body of statistical and anecdotal evidence shows public sex offender registries have a punitive effect which far exceeds that considered by this court in prior decisions.

This court concluded in *State v. Costello* that, “We perceive any punitive effect of the registration requirement to be *de minimus*.” 138 N.H. at 591.¹ The passage of twenty years under the reign of a nation-wide web of public sex offender registries shows how that statement was unfortunately wrong. A growing body of statistical and anecdotal evidence shows that public sex offender registries have a punitive effect that goes far beyond what this court considered in *Costello* and, under the standard of *Smith v. Doe*, this punitive effect renders RSA 651-B unconstitutional.

Nine years ago Lawrence Trant stabbed a sex offender registrant in Concord, left him for dead, and tried to burn two apartment buildings with seven sex offenders among the tenants. “I hope I’ve done a service to the community,” Trant told the *Boston Globe* from prison. “These guys are sexual terrorists.” “Man defends attacks on sex offenders: Crusader gets jail term,” By Brian MacQuarrie, *The Boston Globe*, December 5, 2004.

¹ The US Supreme Court made a similarly naive statement in *Smith v. Doe*: “The publicity may cause adverse consequences for the convicted defendant, running from mild personal embarrassment to social ostracism. In contrast to the colonial shaming punishments, however, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme.” 538 U.S. at 99.

Stephen Marshall of Nova Scotia killed two registrants in Maine in 2006. Like Trant, he found them online. One of those victims, William Elliot, was on the registry because he slept with his under-age girlfriend when he was in high school. “Murders Put Focus on Sex-Offender Registry Policies,” Libby Lewis, National Public Radio, April 21, 2006, www.npr.org/templates/story/story.php?storyId=5355980.

At least 18 other sex offenders have been murdered precisely because the assailants found them on the registry and, according to published news articles, more than 400 other people convicted or accused of sex offenses have been slain in the past decade, some possibly targeted as registrants, and more than 700 convicted sex offenders have committed suicide as well according to news accounts. “Truths, Authority and Factoids: Sex Offender Laws: Collateral Consequences- Killings and Murders,” truths-authority-factoids.blogspot.com/2013/01/sex-offender-laws-collateral.html.

Other evidence of vigilantism against those on the registry are collected in the addendum along with summaries of other research this court may find helpful. In particular, the full argument against registries can be found in a single article published this year by Elizabeth Reiner Platt, “Gangsters to Greyhounds: The Past, Present, and Future of Sex Offender Registration.” It documents the clear historical intent and result of registries – punishment. Ms. Platt quotes Georgia House Speaker Jerry Keen in a moment of great candor during debate on the state's public registry: “If it becomes too onerous and too inconvenient, [sex offenders] just may want to live somewhere else And I don’t care where, as long as it’s not in Georgia.” See “Gangsters to Greyhounds:

The Past, Present, and Future of Sex Offender Registration.” 37 *NYU Review of Law and Social Change* 727 (2013), socialchangenyu.files.wordpress.com/2013/12/platt.pdf.

Conclusion

CCJR urges this court to find RSA 651-B to be unconstitutional.

Oral Argument

Counsel for CCJR does *not* request oral argument.

Respectfully submitted,
Citizens for Criminal Justice Reform
By its attorney



Michael J. Sheehan, Esq. #6590
3 North Spring Street #101
Concord, NH 03301
(603) 225-5240

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Certificate of Service

State of New Hampshire
Merrimack, ss.

I certify that today, December 23, 2013, I hand delivered two copies of this Brief to William Chapman, Esq., Gilles Bissonnette, Esq., and to Karen Schlitzer, Esq.



Michael J. Sheehan

Addendum

Following is a collection of articles and studies on issues related to this brief and to the matter before the court.

Opponents to HB Articulate the Law's Punitive Intent.

Rep. Steve Vaillancourt read aloud the written testimony of an unnamed constituent whose family was harassed right after Channel 9 and the Union Leader obtained and published the names and addresses of sex offenders. The registrant and his wife were both afraid of losing their jobs.

“My wife’s anxiety and worry over my unpredictable job losses is keeping our financial stability in a shambles,” the offender had written. “Her wariness of people at her place of employment of finding out this listing is surely detracting her chances of getting any promotions and she fears being harassed by her co-workers since the list has been public.”

Rep. Maxwell Sargent strongly opposed HB 1426 because the Internet roster would be ineffective at protecting the public.

There is no evidence, and I have searched many places,” Sargent told the senators, “that the Meghan’s List has ever done any good as far as providing better protection for the public. However, it may give a false sense of security to the public because if there is no registered sex offender in my neighborhood, my kids are safe. As you may know, most pedophiles offend against family members or people they know well. Released, convicted sex offenders that have been released, have either served their entire sentence or they are on strict probation and parole. I am against the registration list completely, but if we are going to use the list, it should only be used for those who have been determined at a very high risk for re-offending. There are several standardized recognized psychological tests now to determine that, and it has been used a little bit in New Hampshire. If we decide to use that and it is determined that they are at a high risk of offending, then maybe we should change the law to mandate continued treatment for those folks even after they have served their sentence, but let’s aim at the people who need it.”

Claire Ebel, executive director of the Civil Liberties Union in 2002, warned senators of the collateral damage to families of public registrants in HB 1426 became law. Here is part of her testimony.

Commissioner Stephen’s statistics were really fascinating. I did the math because

I do still like to do long division. The re-offense rate for the individuals who are categorized as dangerous sexual offenders and are included on Meghan's List is 2 percent. That is significantly lower than the recidivism rate for any other category of offender now at the New Hampshire State Prison. That is an extraordinarily low rate. I think what you need to look at when you are talking about a recidivism rate of 2 percent, 16 people, is that you have 701 other names on that list, individuals who are being subject to abuse, who have lost their jobs, who have lost their homes, who have been threatened, who have been the victims of vandalism, whose families are being threatened, whose children are being harassed and intimidated and threatened in their schools, who have not re-offended. It seems to me that is a crucial question for this Committee to review and to consider before legislation which expands the access so broadly is even considered.

Michael Iacopino spoke against HB 1640 in 2008:

"HB 1640 is nothing more than New Hampshire's attempt to join the rest of the lemmings in following the Adam Walsh Act that has been essentially dictated to the states by the federal government and I would respectfully urge you not to follow the federal government's folly here. The Adam Walsh Act and the bill before you are based upon premises that are faulty. It is not based upon the evidence. There are no studies that demonstrate that anybody is any safer as a result of public registration or public notification of sex offenders."

How the public registry actually works.

Convicted sex offender Richard Willwerth asked CCJR for help in 2011 because he had been charged with failure to re-register. CCJR's chairman met with him and saw him twice more after attempts at suicide. According to the *Portsmouth Herald*, a passing driver saw the troubled man stop his blue Honda on the I-95 bridge in Portsmouth at 2:50 a.m. April 5, 2011. He climbed the guard rail and plunged to his death in the frigid Piscataqua River. Here is what Willwerth told CCJR in an email that January.

I am one of those men who had never been arrested in 43 years, but was caught in an internet sting on AOL. I take full responsibility for taking the bait and served my time. I got through my suspended sentence, my probation, and my court appointed therapy. I also made it through 6 years of registering twice a year. Sadly I had lost my job with a highly regarded Limo company in Manchester and have never recovered to make even half of what I had made previously. I have lost my self-esteem, self confidence, and self respect, and soon potentially my freedom. Due to my escalated anxiety over my life situation, I somehow lost sight of the fact that I had to register in December of 2010. I had sent in my registration letter to

Concord early in December of 2010 but sadly lost focus on the most important component; registration.

I found out when I had walked into Manchester PD on 1/7/2011 to report an employment change. They took me into custody and charged me with felony failure to report. I was in no way attempting to avoid registration, in fact I had called in on Dec. 31st to notify Manchester PD that I was spending new years in Belfast, Maine with my girlfriend. Since then I have gone into an emotional tailspin. Suicidal thoughts are with me daily and my girlfriend has since broken off with me.

Email Willwerth sent Chris Dornin of Citizens for Criminal Justice Reform on Jan 5, 2011. The account of his suicide is from "Bridge Jumper Dies" by Elizabeth Dinan, *The Portsmouth Herald*, April 26, 2011.

New Hampshire vigilantes.

Nine years ago Lawrence Trant stabbed a registrant in Concord, left him for dead, and tried to burn two apartment buildings with seven sex offenders among the tenants. "I hope I've done a service to the community," Trant told the Boston Globe from prison. "These guys are sexual terrorists."

"Man defends attacks on sex offenders: Crusader gets jail term," By Brian MacQuarrie, *The Boston Globe*, December 5, 2004.

A Manchester mob burned a scarecrow on the porch of registrant Gloria Huot, who was away. Her roommate watched the riot from inside the apartment with her two young sons and an infant. The *Union Leader* soon posted these and similar remarks about Huot: "wow this is why these fah-kers need to die." Bobbys97R.

"Neighbors declare war on sex offender in Manchester," Ray Duckler, *Concord Monitor*, August 16, 2007.

<http://www.concordmonitor.com/article/neighbors-declare-war-on-sex-offender-in-manchester>; "Angry neighbors descend upon registered sex offender," *Union Leader*, August 14, 2007; <http://sexoffenderissues.blogspot.com/2007/08/nh-angry-neighbors-descend-upon.html#.UrThRyjPXao>.

Stephen Marshall of Nova Scotia killed two registrants in Maine in 2006. Like Trant, he found them online. Victim William Elliot had slept with his under-age girlfriend when he was in high school.

“Murders Put Focus on Sex-Offender Registry Policies,” Libby Lewis, National Public Radio, April 21, 2006.

<http://www.npr.org/templates/story/story.php?storyId=5355980>

Besides the Maine victims, at least 18 sex offenders have been murdered precisely because the assailants found them on the registry. According to published news articles, more than 400 other people convicted or accused of sex offenses have been slain in the past decade, and some of them may have been similarly targeted as registrants. More than 700 convicted sex offenders have committed suicide as well according to news accounts.

“Truths, Authority and Factoids: Sex Offender Laws: Collateral Consequences-Killings and Murders,” a blog that includes link to supporting news articles, <http://truths-authority-factoids.blogspot.com/2013/01/sex-offender-laws-collateral.html>.

Organized New Hampshire vigilantes.

A Hooksett neighbor of registrant Joel Dutton accused him of molesting his young niece in his backyard in 2009, and parents started a website against him with postings like this: “This is an incestuous family of whack-jobs and psychopaths, and it makes me feel good to know they are going down.” Parents soon asked the selectmen to ban registrants from living near schools and parks. Failing to obtain that change, they got the police chief to post a cop near the Duttons’ school bus stop. The local state senator, David Boutin, soon introduced HB 1628 to encourage police to actively notify neighbors when a sex offender makes parole. Boutin told the Senate Judiciary Committee that a convicted child sex offender had heinously struck again. “Quick adoption of this bill,” Boutin testified, “and dissemination of notification guidelines to local law enforcement will go a long way towards preventing another sexual assault, with regrettable consequences for the victim, family and community, who all share in the burden of the pain.” The bill died when lawmakers learned the prosecutor had dropped the case against Dutton for lack of evidence and that his actual victim years earlier had been an adult.

From personal interviews by Chris Dornin with Joel Dutton, his family, and former Hooksett police chief Chief Stephen Agrafiotis. The quote by Sen. Boutin is from his written testimony on HB 1628 before the Senate Judiciary Committee April, 20,2010 in Room 103 of the State House. *See also* minutes of Hooksett Selectmen’s meeting Sept. 23, 2009 at hooksett.org/Pages/HooksettNH_TownCouncilMin/2009/14_092309tcmO.pdf.

Jennifer Frank, a detective at Plymouth State University, may have outed the

children of registrants during a 2010 Facebook safety assembly at Cawley Middle School in Hooksett. According to several registrants with kids in the school, she displayed their parents' Internet mug shots in front of the whole school. Charles Littlefield, the Hooksett superintendent, told Citizens for Criminal Justice Reform those children were traumatized. Steve Harris, the Cawley principal, informed us he was "blindsided." Frank may have done the same thing at Fall Mountain High School. Steve Fortier, a Fall Mountain parent, told the Senate Judiciary Committee that student victims of sex offenders saw their parents' mug shots in front of everyone at Frank's program. "This re-traumatization," Fortier testified, "including the stigma associated with being a teen sexual abuse victim, was, in my opinion, not worth whatever gains were made through the assembly."

Interviews by Chris Dornin with Hooksett School Superintendent Charles Littlefield, Cawley Principal Steve Harris, Fall Mountain parent Steve Fortier, Detective Jennifer Frank, three children of sex offenders and three registrants in Hooksett and the Fall Mountain school district. Quote by Steve Fortier is from his written testimony before the Senate Judiciary Committee, April 20, 2010.

Sex offender recidivism rates are low in New Hampshire.

John Stephen, former assistant safety commissioner, testified in 2002 in favor of HB 1426 to start posting the registry on line. He told the Senate Judiciary Committee a public list was a good idea because the current sex offense recidivism rate was only 2 percent. He said the 717 people who had ever been on the non-public registry to date had been arrested for 16 new sex crimes: six for aggravated felonious sexual assault, four for felonious sexual assault, two for sexual assault, three for indecent exposure, and one for criminal restraint. "Sixteen out 717," said Stephen. "You know, I think that tells you that this (non-public registry) law is working." He assumed publishing the registry would lower the rate even more.

Transcript of Testimony on HB 1426 before the Senate Judiciary Committee on HB 1426, March 28, 2002, at 11.

Registrants face unique pressures.

The City of Dover drove half of its sex offenders out of town in the first year of a residency restriction aimed only at registrants. The code was struck down in *Jennings v. Dover* in 2009, but several towns still enforce copycat ordinances. A registrant from out

of town could unwittingly buy or lease the wrong home there. Precisely that happened to the winner in the Jennings case. Richard Jennings signed a Dover lease with his fiancé too near a park. They had been driven from Portsmouth because neighbors complained to the landlord. Jennings re-registered at his mother's address, stayed with his fiancé in Dover, got busted for failing to register properly, and served another four months in jail.

Opinion in *Jennings v. Dover*, July 30, 2009. Some material cited is from the Richard Jennings arrest file at the Dover Police Department. Interviews with Richard Jennings, his fiancé, his mother, and Dover Police.

Victim advocates: the registry endangers us.

Sex offenders won a class action suit, *Williams v. Ohio*, against the Ohio registry in 2012. The *amicus curiae* for the sex offender plaintiffs included the Texas and Cleveland rape crisis coalitions. They argued that the public registry destabilizes sex offenders and increases the risk of recidivism. Margie Slagle, lawyer for the women, said that registry laws perpetuate dangerous myths and create a false sense of security.

“Research demonstrates that victimization can be reduced when sex offenders successfully reenter the community,” Slagle wrote. “These changes (to adopt the Adam Walsh standards) put law enforcement agencies, already in budgetary crises, in the position of spending precious dollars on monitoring low risk individuals with a limited impact on public safety. Thus, any argument that Ohio's AWA is simply a remedial law designed to protect children and the public from sexual abuse and sex crimes is seriously flawed. Ohio's AWA is not based on empirical evidence or proven research, but on fear and misinformation.”

Amicus brief Oct. 20, 2010 by Atty. Margie Slagle for Cleveland Rape Crisis Center and Texas Association against Sexual Assault.

The registry has no proven benefit.

Anthony Sowell raped and murdered 11 women in Cleveland while he was on the public registry, according to the Cleveland *Plain Dealer*. The police visited his home half a dozen times on suspicion of foul play without finding the truth. They thought the stench from his corpses came from a sausage factory.

“Cleveland Kidnaping, Anthony Sowell Case Linked by Indifferent Police,” Michael Daly, *Daily Beast*, May 8, 2013, www.thedailybeast.com/articles/2013/05/08/cleveland-kidnapping-anthony-sowell-case-linked-by-indifferent-police.html.

A 2000 Iowa Corrections study tracked 233 sex offenders released in 1995 and 1996 under a new sex offender registry law. That group had a 3 percent sex crime recidivism rate after 4.3 years in the community. A similar control group of 201 sex offenders released before the registry law took effect had a 3.5 percent sex recidivism rate in the same length of time. The group supervised under the registry had a somewhat lower average recidivism risk score to begin with, and it had a higher proportion of people on probation as opposed to parole. The difference in recidivism rates was statistically insignificant.

“The Iowa Sex Offender registry and Recidivism,” Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning and Statistical Analysis Center, December 2000, at 19,
http://www.humanrights.iowa.gov/cjpp/images/pdf/01_pub/SexOffenderReport.pdf

A 2012 study by University of Washington researcher Alissa Akerman found that the addresses for people on sex offender public registries are woefully inaccurate. Sixty percent of the listed Florida registrants were dead, incarcerated again, deported or actually living out of state. The same ratios were 52 percent for New York, 48 percent for Illinois, 36 percent for Georgia and 25 percent for Texas.

“Sex-offender registries list individuals not living in community,” Molly McElroy, University of Washington official website, April 12, 2012,
www.washington.edu/news/2012/04/02/sex-offender-registries-list-individuals-not-living-in-community-uw-study/.

An article by researcher Deborah Periman of the University of Alaska at Anchorage entitled “Revisiting Alaska's Sex Offender Registration and Public Notification Statute,” published in May 2009 said few offenders commit new sex crimes; that treatment is effective for them; that several valid risk assessment tools can predict which people are likely to reoffend; that the registry destabilizes sex offenders in multiple ways that make them more likely to reoffend and less likely to seek or stay in community treatment programs; and that public registries do nothing to reduce the incidence of first-time or repeat sex offending.

“Revisiting Alaska's Sex Offender Registration and Public Notification Statute,” Deborah Periman, *Alaska Justice Forum*, Spring/Summer 2008,
justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c_asora.html.

Myth: Sex offenders are mean strangers.

An Ohio prison intake report on sex offenders imprisoned in 1992 revealed that 2.2

percent of child molesters were strangers to their victims, and 89 percent of perpetrators had never been convicted before. A 2006 report for the Ohio Sentencing Commission said 93 percent of molestation victims were well known to their perpetrators, over half the offenders victimized close relatives, and 93 percent of molesters had never been arrested for a previous sex crime.

Ohio Department of Corrections, 1992 Intake Sample Population, Ohio Department of Rehabilitation and Correction Bureau of Research, table 11 at 8, table 12, at 9, www.drc.ohio.gov/web/Reports/sexoffnd.pdf

A December 2009 study by David Finkelhor of UNH and colleagues for the US Justice Department analyzed national sex crime data from 2004. That year the estimated population of underage sex offenders was 89,000, and they had committed 35.8 percent of all sex crimes reported to police. One in eight juvenile sex offenders was under age 12.

David Finkelhor, Richard Ormrod, & Mark Chaffin, "Juveniles Who Commit Sex Offenses Against Minors" published in *Juvenile Justice Bulletin*, Office of Justice Programs, December 2009, at 2.

Myth: The public registry protects the public.

Researcher Brian Oliver reviewed a dozen studies on the effectiveness of the sex offender registry as of 2012. None showed that this presumed tool for enhancing public safety had any effect on sex offense recidivism or prevention. He explained why. Sex offenders have low sexual recidivism rates, contrary to popular belief, and well over ninety percent of sex offenses are committed by people who are not registered sex offenders. Below are Oliver's summaries.

Zevitz (2006) compared the recidivism rates of 47 Level III sex offenders subjected to Wisconsin's highest level of notification with 166 Level III offenders subjected to limited notification across a 4.5-year follow-up period. He found no differences in sex offense rearrest rates between the groups.

Sandler, Freeman & Socia (2008) conducted a time series analysis examining differences in sexual offense arrest rates before and after the enactment of New York State's Sex Offender Registration Act. The results provided no support for the effectiveness of registration and community notification laws in reducing sexual offending by: (a) rapists, (b) child molesters, c) sexual recidivists, or (d) first-time sex offenders.

Tewksbury & Jennings (2010) examined the conviction records of 759 sex

offenders from Iowa released between 1992 and 1996 (who were not required to register) with 823 sex offenders from Iowa released between 1997 and 2002 (who were required to register). The two groups did not differ on reconviction rates for new offenses.

Letourneau, Levenson, Bandyopadhyay, Sinha & Armstrong (2010) compared 3,231 male sex offenders from South Carolina who were required to register with 2,733 offenders who were not required to register. They found no difference in recidivism rates between the groups.

Madden, Miller, Walker & Marshall (2011) compared 755 sex offenders released from prison in Arkansas between 1987 and 1989 (who were not required to register) with 2,165 registered sex offenders released between 1997 and 1999 (who were required to register). There was no difference between the two groups on sexual recidivism rates.

Tewksbury, Jenning & Zgoba (2012) compared 247 sex offenders released from New Jersey prisons between 1990 and 1994 (who were not required to register) with 248 sex offenders released from New Jersey prisons between 1996 and 2000 (who were required to register). They found that whether or not an offender had to register was not related to sexual recidivism risk.

Fact: Treatment helps sex offenders.

A study in 2000 by the Vermont Corrections Department tracked 190 sex offenders released a decade earlier. The arrest rate over 10 years for new sex offenses was 3.8 percent for people who had completed the sex offender treatment program.

Vermont Department of Corrections Facts & Figures FY 2000, at 120.

A Colorado recidivism study in 2003 led by Kerry Lowden tracked 3338 sex offenders released from prison between 1993 and 2002. After three years in the community, 5.3 percent had been arrested for a new sex crime. Each month an inmate took part in the intensive therapeutic community for sex offenders behind the walls reduced by 1 percent the risk of committing a later sex crime. The report said these treatment programs “profoundly improve public safety as measured by officially recorded recidivism.”

“Evaluation of Colorado’s Prison Therapeutic Community for Sex Offenders,” July 2003, by Kerry Lowden, Nicole Hetz, Linda Harrison, Kim English & others, Office of Research & Statistics, Division of Criminal Justice, Denver, CO., at 22.

Lorraine R. Reitzel and Joyce L. Carbonell published a meta-analysis in 2006 of nine studies of recidivism among juvenile sex offenders with a combined sample of 2,986 kids. The sex crime recidivism rate was 12.5 percent for young offenders tracked for an average of 59 months. The rate was 7.37 percent for kids who had taken a sex offender treatment program and 18.9 percent for those who had not.

“Evaluation of Colorado’s Prison Therapeutic Community for Sex Offenders,” July 2003, by Kerry Lowden, Nicole Hetz, Linda Harrison, Kim English & others, Office of Research & Statistics, Division of Criminal Justice, Denver, CO.

A 2009 report by Robin Goldman of the Minnesota Department of Corrections compared two samples of 1,020 sex offenders released between 1999 and 2003. One group had taken an intensive sex offender treatment program and the other had not. The treated group had a 27 percent lower sex crime recidivism rate. The report concluded, “These findings are consistent with the growing body of research supporting the effectiveness of cognitive-behavioral treatment for sex offenders.”

“The Impact of Prison-Based Treatment on Sex Offender Recidivism, Evidence From Minnesota,” by Grant Duwe & Robin Goldman,
<http://sax.sagepub.com/content/21/3/279.abstract>.

Fact: Sex offenders as a group have low sex crime recidivism.

The U.S. Justice Department evoked the myths about high sex offender recidivism in a June 2002 *amicus* brief in an Alaska sex offender registry appeal that went to the U.S. Supreme court, *Godfrey and Botelho v. John Doe*. Solicitor general Theodore B. Olson wrote that sex offenders “exact an uniquely severe and unremitting toll on the Nation and its citizens for three basic reasons: they are the least likely to be cured, they are the most likely to reoffend, and they prey on the most innocent members of our society. www.justice.gov/osg/briefs/2001/3mer/1ami/2001-0729.mer.ami.html.

There is much research to the contrary.

A U.S. Justice Department report in 2003 tracked 9,691 sex offenders released from prisons in New York, California, Ohio and 12 other large states in 1994. Their recidivism rate for new sex crime arrests and convictions after three years on parole was 5.3 percent. 7.3 percent of child molesters with two or more prior arrests for that crime were charged anew for molesting. That compares with a 2.4 percent sexual recidivism rate for child molesters with only one prior arrest for that crime.

Patrick Langan, Ph.D., Erica I. Schmitt and Matthew R. Durose, "Recidivism of Sex Offenders Released from Prison in 1994," Statisticians, Bureau of Justice Statistics, November 2000, NCJ 198281, <http://www.bjs.gov/content/pub/pdf/rsorp94.pdf>

A report to the Ohio Sentencing Commission in 1989 said 8 percent of sex offenders were convicted of a new sex crime within a decade. The 10-year Ohio recidivism rate for incest was 7.4 percent.

"Ten-Year Recidivism Follow-Up Of 1989 Sex Offender Releases," Reginald Wilkinson, director, Ohio Department of Correction and Rehabilitation, April, 2001, http://www.drc.state.oh.us/web/reports/ten_year_recidivism.pdf

A 1998 Canadian Government study by Karl Hanson and Monique Bussiere, entitled "Predicting Relapse: A meta-Analysis of Sexual Offender Recidivism Studies," examined 61 research efforts between 1943 and 1995 with a combined sample of 28,972 sex offenders. The overall recidivism rate for new sex offenses was 13.4 percent during the average follow-up period of four to five years. Of the 9,603 child molesters in the combined cohort, the rate was 12.7 percent. Some of these studies dated back to the period when only stereotype serial sex offenders went to prison, thus weighting the results toward greater recidivism.

"Predicting relapse: A meta-analysis of sexual offender recidivism studies," by Karl R. Hanson, Monique T Bussiere, *Journal of Consulting and Clinical Psychology*, Vol 662(2), April 1998, pp 348-362.

Roger Hood and three British colleagues followed 162 released sex offenders for four years and tracked 62 others for six years. Their report in 2002, entitled "Sex offenders emerging from long-term imprisonment; A Study of Their Long-term Reconviction Rates and of Parole Board Members' Judgements of Their Risk," found 1.2 percent were re-imprisoned for a new sex crime after two years. The report concluded, "These facts need to be more widely recognized and disseminated if there is to be rational debate on this emotive subject."

A Study of Their Long-Term Reconviction Rates and of Parole Board Members' Judgements of Their risk, by Roger Hood, Stephen Shute, Martina Feilzer and Aidan Wilcox, *Brit. J. Criminology*, (2002) 42, at 371-394.

Karl Hanson and Morton-Bourgon published a similar meta-analysis in 2005 of 73 recidivism studies with a combined cohort of 19,267 sex offenders. After an average of nearly six years in the community they had a new sex crimes recidivism rate of 14.3

percent.

“The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies,” by Karl Hanson and Kelly E. Morton-Bourgon, *Public Safety and Emergency Preparedness Canada, Journal of Consulting and Clinical Psychology*, 2005, Vol 73, No 6, at 1154-1163.

A 2007 study by the Missouri Department of Corrections tracked 3,166 sex offenders released between 1990 and 2002. Twelve percent had been re-arrested for a new sex crime in those 12 years, and 10 percent had been re-convicted. The report also looked at sex offenders released in 2002. In the first three years on parole their sex crime recidivism rate was 3 percent. The report concluded, “Due to the dramatic decrease in sexual recidivism since the early 1990s, recent sexual re-offense rates have been very low, thus significantly limiting the extent to which sexual reoffending can be further reduced.”

Sex Offender Recidivism in Missouri and Community Correction Options,
Prepared by: Institute of Public Policy Truman School of Public Affairs University
of Missouri — Columbia,
<http://ilvoices.com/uploads/2/8/6/6/2866695/mo-recidivism-1.pdf>.

A 2007 report by the Tennessee Department of Safety found that 4.7 percent of 504 sex offenders released from prison in 2001 were arrested for a new sex offense after three years. The sex crime recidivism rate was zero for offenders whose original crime was incest.

Recidivism Study, Tennessee Bureau of Investigation, Crime Statistics Unit, by
Mark Gwyn, director, Aug. 17, 2007, at 18-21,
www.tbi.tn.gov/tn_crime_stats/publications/SexOffenderRecidivism2007.pdf

A 2007 report by Jared Bauer of the West Virginia Division of Corrections tracked 325 sex offenders for three years after release from prison in 2001, 2002 and 2003. The recidivism rate for any return to prison, not just for sex crimes, was 9.5 percent. Only six parolees returned for new sex related crimes, including three for failing to properly register as a sex offender. The sex crime recidivism rate was slightly less than 2 percent. Only 1 percent had an actual sex crime victim.

Bauer, Jared C., “Recidivism: 2001-2003,” The West Virginia Division of
Corrections Office of Research and Planning,
www.wvdoc.com/wvdoc/Portals/0/documents/recidivism2001-2003.pdf

Utah criminologist Larry Bench tracked 389 Utah sex offenders for up to 25 years after release. His 2008 report disclosed that 7.2 percent had been arrested for a new sex crime.

Bench, Lawrence L., and Terry D. Allen, "Assessing Sex Offender Recidivism Using Multiple Measures: A Longitudinal Analysis," *The Prison Journal*, December 2013, vol. 93, no. 4, 411-428.

An Indiana Corrections report in the spring of 2009 found that sex offenders released in 2005 had compiled a 1.05 percent sex crime re-conviction rate in three years. The study said this rate was "extremely low" and showed "a great deal of promise."

Garner, Aaron, "Recidivism Rates Compared 2005-2007," Indiana Department of Correction, www.in.gov/indcorrection/news/05_07RecidivismRpt.pdf.

Stan Orchowsky and Janice Iwama authored a 2009 study for the U.S. Justice Research and Statistics Association which showed similar low sex crime re-arrest rates after three years for sex offenders released from prison in 2001. The rates by state were as follows: Alaska 3.4 percent, Arizona 2.3 percent, Delaware 3.8 percent, Illinois 2.4 percent, Iowa 3.9 percent, New Mexico 1.8 percent, South Carolina 4.0 percent, and Utah 9.0 percent. The comparison three-year national rate was 5.3 percent noted previously for inmates released in 1994.

Orchowsky, Stan and Janice Iwama, "Improving State Criminal History Records: Recidivism of Sex Offenders Released in 2001," *Justice Research and Statistics Association*, www.jrsa.org/projects/WnS_Final_Evaluation_Report.pdf

A report in July 2011 led by Mark Rubin of the University of Southern Maine's Muskie School of Public Service tracked 900 sex offenders released from prison or probation in Maine between 2004 and 2008. Within three years after release, 3.8 percent had been convicted of a new sex crime.

"Sexual Assault Trends and Sex Offender Recidivism in Maine, 2010," www.mecasa.org/joomla/images/pdfs/sex_offender_management/so_recidivism_maine_2010.pdf

A report in March 2012 by the State of Connecticut tracked 746 sex offenders for five years after release from prison in 2005. Only 3.6 percent had been charged with a new sex crime, 2.7 percent were convicted, and 1.7 percent had returned to prison for that new crime. In comparison, 80 percent of all 14,400 inmates released in 2005 had been

arrested for a new crime by 2010 and nearly half had returned to prison for those convictions. The author of the report, Ivan Kuzyk, noted these low re-offense rates for sex offenders appear to contradict the conventional wisdom that sex offenders have very high sexual re-offense rates.

Kuzyk, Ivan, "Recidivism among sex offenders in Connecticut," State of Connecticut, Office of Policy and Management, Criminal Justice Policy & Planning Division, February 15, 2012,
http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/sex_offender_recidivism_2012_final.pdf

Registry laws are based on questionable science.

Proponents of tougher sanctions against sex offenders often cite a Canadian study published in 2004, "Lifetime Sex Offender Recidivism: A 25 year Follow-Up Study," led by Canadian researcher Ron Langevin. It is worth close examination. The authors looked at 320 Canadian sex offenders referred to a single clinic for psychiatric evaluations between 1966 and 1974, when treatment programs for this group were rare and experimental. The report used an unusual definition of a recidivist as someone who had committed two or more sex crimes in their lifetime, even crimes they did before researchers began to follow them. The accepted definition in criminology is someone who commits a new sex crime after release from prison.

Langevin, Ron, et. al., "Lifetime Sex Offender Recidivism: A 25-Year Follow-Up Study," *Canadian Journal of Criminology and Criminal Justice*, vol. 46, no. 5, October 2004, pp 531-552.

Langevin reported a 61.1 percent sex crime recidivism rate, including 51.1 percent for incest. The researchers also tabulated confessions the offenders made during counseling and new arrests that failed to bring convictions. Adding those presumed crimes to actual convictions increased the overall sexual recidivism rate to 88.3 percent, including 84.2 percent for incest. Measured this way, molesters of young children outside their own family had an even higher rate, 94.1 over 25 years. To our knowledge, that is the highest reported rate in any of the hundreds of existing recidivism studies. It underlies much of the widespread belief that all sex offenders are incurable and unrepentant.

New Hampshire Attorney General Kelley Ayotte, the author of the Predator Act, told the Senate Judiciary Committee vetting her bill about 17 repeat sex offenders who had gotten off too lightly. Then she said the sex offense recidivism rate for pedophiles "is

between 90 and 94 percent. Offenders who sexually abuse children have a lifelong problem that is not amendable to treatment.” Her claim was false even based on the supporting Langevin research she presented. In the rest of her remarks Ms. Ayotte consistently blurred the terms “pedophile” and “sex offender.” Many lawmakers still believe the recidivism rate is 94 percent for the whole registry class.

Verbatim transcript of Senate Judiciary Committee hearing on HB 1692 on April 4, 2006, p. 17.

Ms. Ayotte was citing some advocacy science. Critics of Langevin say his cohort was the worst of the worst offenders. Canadian researcher Karl Hanson has called it a nonrandom sample chosen for evaluations in connection with major prosecutions, civil commitment proceedings or insanity defense cases. This group also came under scrutiny when sex offender treatment programs were rare and experimental. The ensuing revolution in child protection and sex abuse prosecution over half a century has swollen prison populations of sex offenders by fifty- and a hundred-fold. The group in prison now is far less prone to recidivism than members of the Langevin study. Only monsters went to prison for sex offenses 40 and 50 years ago. The phrase “domestic violence” had not been coined yet.

“Long-Term Follow-Up Studies Are Difficult: Comment on Langevin et al.,” Karl Hanson, *Canadian Journal of Criminology and Criminal Justice*, January 2006, <http://www.ccja-acjp.ca/en/cjc/cjc48s1.html>

Canadian researcher Cheryl Webster and colleagues have called the Langevin study so flawed it lacked any scientific integrity. In a rebuttal entitled “Results by Design: The Artefactual Construction of High Recidivism Rates for Sex Offenders,” Webster said more than half the individuals in the sample were already recidivists by Langevin’s definition at the time of their evaluations, thus ensuring at least a 50 percent recidivism rate. Webster noted the Langevin sample was much larger at first. His team removed any people from the study whose criminal records had been lost or purged from the justice system after 15 years for lack of new crimes or charges. In effect, the study deleted most of the non-recidivists and skewed the recidivism rate. In a reply to critics, Langevin cautioned against making claims about all sex offenders based on this sample. He defended his definition of recidivism as one of many legitimate ways to measure it.

Webster, Cheryl, Rosemary Gartner and Anthony Doob, “Results by Design: The Artefactual Construction of High Recidivism Rates for Sex Offenders,” *Canadian*

Journal of Criminology and Criminal Justice, vol. 48, no. 1, January 2006, at 79-93.

Those promoting tough sex offender laws and harsh court decisions often rely as well on a 1997 study led by Robert Prentky. His group looked at 136 rapists and 115 child molesters released from the Bridgewater sex offender civil commitment center in Massachusetts between 1959 and 1986. The sexual recidivism rates based on new sexual charges were 32 percent for molesters and 25 percent for rapists. But the length of time the men were free in the community varied widely. If all had been at large the full 25 years covered in the study, the authors estimated the sexual recidivism rates would have been 52 percent for molesters and 39 percent for rapists.

“Recidivism Rates Among Child Molesters and Rapists: Methodological Analysis,” Robert Prentky et. al., *Law and Human Behavior*, Vol. 21, No. 6, Dec. 1997.

This cohort dates from the same period as the Langevin findings and included a narrow sample of men already adjudicated to be an acute risk to reoffend. The Prentky researchers concluded, “The obvious, marked heterogeneity of sexual offenders precludes automatic generalization of the rates reported here to other samples.”