

**THE PROSPECT OF AN INTERNATIONAL SEX OFFENDER
REGISTRY: WHY AN INTERNATIONAL SYSTEM MODELED
AFTER UNITED STATES SEX OFFENDER LAWS IS NOT AN
EFFECTIVE SOLUTION TO STOP CHILD SEXUAL ABUSE**

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ABSTRACT

A U.S. Congressman introduced legislation to create an International Sex Offender Registry based on the U.S. domestic Megan's Law. The introduction of an international sex offender registry should not independently originate from the United States or be based upon the flawed United States sex offender system. Instead, if the international community deems it necessary to have an international sex offender registry, it should be a global effort modeled after work in the European Union that embraces human rights to create a system that combines safety with privacy, rehabilitation and social reintegration.

INTRODUCTION

Jack Sporich spent nine years in a California prison for molesting five hundred boys during camping trips.¹ He was released from prison in 2004, placed on a public sex offender registry, and barred from living or working within one thousand feet of a school or child-care center in the United States.² However, when he moved to Cambodia in 2006, the United States did not alert the Cambodian authorities that he had relocated to Phnom Penh, the heart of a massive multimillion-dollar sex industry.³ In February 2009, Cambodian authorities arrested Sporich for luring Cambodian boys ages nine to twelve to his home with toys and

* J.D., University of Wisconsin Law School, 2011; B.A. History, Cornell University, 2004. I would like to thank my loving husband, Lamar for his unconditional support and encouragement. I would also like to thank my Note & Comment Editor, Darcy Copeland, for her guidance and feedback.

¹ Deena Guzder, *A Move to Register Sex Offenders Globally*, TIME (Sept. 7, 2009), <http://www.time.com/time/world/article/0,8599,1920911,00.html> (last visited Feb. 28, 2010).

² Sam Stanton, *Convicted California Sex Offender Faces New Charges in Cambodia*, SACRAMENTO BEE (May 13, 2009), <http://www.sacbee.com>; Guzder, *supra* note 1.

³ Guzder, *supra* note 1.

candy and then molesting them.⁴ He would entice the boys to follow him by dropping money in the streets while riding around on his motorbike.⁵

Child sex tourism is an extremely profitable industry sustained by an increasing demand by foreigners from wealthy nations.⁶ Each year, sex tourists like Jack Sporich travel from wealthier countries, like the United States, France, Germany, Japan, Australia, and the United Kingdom, into poorer, developing nations, like the Philippines, Thailand, Cambodia, and India, to prey on young boys and girls.⁷ Developing nations are destination countries because of inadequate laws, weak enforcement mechanisms, and a highly commercialized sex industry.⁸ Sex tourists and traffickers exploit approximately two million children each year.⁹

To address this problem, Representative Chris Smith of New Jersey introduced a bill in the U.S. House of Representatives in 2009 entitled “International Megan’s Law.”¹⁰ The bill aims to protect children from sexual exploitation by preventing or monitoring the international travel of convicted sex offenders.¹¹ It is named in honor of Megan Kanka, a seven-year-old girl who was raped and murdered by her neighbor.¹² The original, domestic Megan’s Law was enacted in 1996 and required state governments to notify communities when sex offenders moved into their neighborhoods.¹³

⁴ Stanton, *supra* note 2; Guzder, *supra* note 1.

⁵ Guzder, *supra* note 1.

⁶ Naomi L. Svensson, Comment, *Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws*, 28 LOY. L.A. INT’L & COMP. L. REV. 641, 643 (2006).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 644.

¹⁰ See *infra* note 126 for a discussion of International Megan’s Law. International Megan’s Law was initially introduced on March 19, 2009 as International Megan’s Law of 2009 (H.R. 1623). It was reintroduced on April 26, 2010 as International Megan’s Law of 2010 (H.R. 5138) when it passed the House of Representatives panel that oversees U.S. foreign policy and international bilateral agreements. On July 27, 2010, International Megan’s Law was passed in the House of Representatives by voice vote. See Press Release, Congressman Chris Smith, Smith’s International Megan’s Law Approved by the House (July 27, 2010), <http://chrissmith.house.gov/News/DocumentSingle.aspx?DocumentID=200854>. International Megan’s law did not pass the United States Senate in the 111th Congress and as of May 17, 2011 has yet to be reintroduced in the 112th Congress.

¹¹ Press Release, *supra* note 10.

¹² *Id.*; see also HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 48 (2007), available at <http://www.hrw.org/reports/2007/us0907/us0907webwcover.pdf>.

¹³ Megan’s Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (1996).

While the law's goal of curtailing the abuse of foreign children by domestic sex offenders is of great importance, its means are problematic. The bill proposes to create an international sex offender registry based on the flawed U.S. sex offender registry system. The U.S. sex offender registry system developed in response to several horrific crimes, like Megan's murder, which have occurred in the United States over the past fifteen years.¹⁴ These crimes have captured massive media attention and fueled widespread public fear that children are at high risk of assault by repeat sex offenders.¹⁵ U.S. politicians responded to these fears with a series of poorly-crafted sex offender registration, community notification, and residency restriction laws.¹⁶

Critics of the U.S. sex offender registry system argue that registration laws are too broad and too long, that community notification laws have resulted in public harassment of and violence against registrants, and that residency restrictions exile registrants from entire areas, isolating them from support networks necessary for rehabilitation.¹⁷ Further, studies have called into question whether sex offender registries really protect the public and prevent offender recidivism.¹⁸ The murder of William Elliot illustrates many problems with U.S. law. In 2006, a Canadian man shot and killed William Elliot because he was a sex offender.¹⁹ The perpetrator obtained William's information from a public sex offender registry.²⁰ William was on the sex offender registry because at age nineteen he was convicted of having consensual sex with his fifteen-year-old girlfriend.²¹

Instead of independently trying to create an international system based on controversial U.S. law, the United States should instead join other countries in a dialogue about the best way to solve this very serious problem. The ideal system would balance protecting children with offender privacy, rehabilitation, and social reintegration. The European Union (EU) has combined these elements in a 2009 framework decision to create a cross-border criminal information system with a sexual offender component and in a proposal to repeal the 2003 framework

¹⁴ HUMAN RIGHTS WATCH, *supra* note 12, at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ HUMAN RIGHTS WATCH, *supra* note 12, at 2, 3, 7.

¹⁸ See sources cited *infra* notes 83, 85 and 86.

¹⁹ HUMAN RIGHTS WATCH, *supra* note 12, at 91.

²⁰ *Id.*

²¹ *Id.*

decision that aims to update the uniform list of sexual offenses and punishments for crimes against children.²² While protecting children is the primary objective of these framework decisions, it doesn't prevent the inclusion of important privacy and offender rehabilitation provisions.²³

Part I of this comment explains the history, interworking, and problems with U.S. sex offender laws. It also discusses what other countries have done domestically to address sex offenses against children. Part II explores International Megan's Law and complications to its implementation. Part III discusses the EU's actions to protect children from sexual abuse, including its recent framework decision to create a cross-border criminal information system within Europe. This paper concludes that an international sex offender registry should not independently originate in the United States or be based upon the U.S. sex offender registry system. Instead, if the international community deems it necessary to have an international sex offender registry, then it should be a global effort modeled after work in the EU, which embraces human rights and creates a system that combines safety with privacy, rehabilitation, and social reintegration.

I. NATIONAL SEX OFFENDER REGISTRIES

Modern sex offender registries originated in the United States following the 1994 abduction of eleven-year-old Jacob Wetterling.²⁴ Currently, sex offender laws in the United States require offenders to register with law enforcement, give the public access to registry information over the Internet, and prohibit offenders from living in certain areas.²⁵ The U.S. sex offender registry system is far from ideal. Studies question whether sex offender registries really protect the public and prevent recidivism amongst offenders.²⁶ Critics argue that registration laws are too broad and the registration periods too long, that community notification laws have resulted in public harassment of and violence against registrants, and that residency restrictions exile registrants from entire areas, isolating them from support networks

²² See sources *infra* notes 178, 189.

²³ See sources *infra* notes 178, 179.

²⁴ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994); see sources *infra* note 31, at 89.

²⁵ HUMAN RIGHTS WATCH, *supra* note 12, at 2-3.

²⁶ *Id.* at 24; see source *infra* notes 85, 86.

needed for rehabilitation.²⁷ The other countries that currently have sex offender registries are Australia, Ireland, Canada, France, South Korea, Japan, and the United Kingdom.²⁸ These countries' sex offender registries differ from the U.S. by having shorter registration periods; not making the information publicly accessible; and none except South Korea has community notification laws.²⁹

A. UNITED STATES

Federally implemented sex offender registries began in the United States following the abduction of eleven-year-old Jacob Wetterling.³⁰ In 1989, Jacob was abducted at gunpoint when he left his home to rent a video from a neighborhood store.³¹ Jacob has never been found.³² Following Jacob's abduction, his mother, Patty Wetterling, lobbied Congress to pass a federal sex offender law that (1) would require convicted sex offenders and offenders whose victims were children to register with police, and (2) would allow police to publicize the presence of offenders in communities.³³ Her efforts helped secure the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("Jacob Wetterling Act" or "the Act") as part of the 1994 Violent Crime Control and Law Enforcement Act.³⁴

The Jacob Wetterling Act *encouraged*—but did not require—states to implement sex offender laws in accordance with the Act's guidelines. The Act's registration provisions required people convicted of a criminal offense against a minor or those convicted of a sexually violent offense to register with local law enforcement annually for ten years after being released from prison.³⁵ People determined by a sentencing court to be "sexually violent predators" were required to

²⁷ HUMAN RIGHTS WATCH, *supra* note 12, at 2, 3, 7.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994). In 1994 the United States Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (Wetterling Act) as part of the Violent Crimes Control and Law Enforcement Act of 1994.

³¹ Caroline Louise Lewis, *The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act: An Unconstitutional Deprivation of the Right to Privacy and Substantive Due Process*, 31 HARV. C.R.-C.L. L. REV. 89, 89 (1996).

³² *Id.* Since neither he nor his attacker has ever been found, there is nothing to confirm if he was sexually abused or if his attacker was a repeat sexual offender.

³³ *Id.*; see also HUMAN RIGHTS WATCH, *supra* note 12, at 2.

³⁴ Lewis, *supra* note 31, at 89.

³⁵ *Id.* at 94-95.

register for life unless an “expert board” determined that the person no longer suffered from a disorder that would make them likely to offend again.³⁶ States then transmitted each registering offender’s conviction data and fingerprints to the Federal Bureau of Investigation.³⁷

The purpose of the Jacob Wetterling Act was to deter convicted sex offenders and child molesters from reoffending and to protect the public from violent sex crimes.³⁸ The force behind the sex offender laws was the perceived high rate of recidivism among sex offenders and tragic stories like Jacob Wetterling’s.³⁹ As sex crimes received more attention in the media, communities expressed feelings of frustration and powerlessness after learning that sex offenders lived in their neighborhoods. To reduce this feeling of helplessness, local sex offender laws were tailored to give information to communities and law enforcement officials that they could use to prevent sex offenses in their neighborhoods.⁴⁰

Two years after the passage of the Jacob Wetterling Act, Congress amended it with Megan’s Law.⁴¹ Megan’s Law was passed in response to the brutal killing of seven-year-old Megan Kanka in 1994.⁴² Megan’s attacker was a neighbor that had been convicted of two prior sex offenses and spent six years in prison for child molestation.⁴³ According to the Center for Sex Offender Management, “Megan’s parents believe[d] that if they had known that a pedophile lived nearby, this heinous crime would never have happened.”⁴⁴

Megan’s Law marked the beginning of federally mandated community notification.⁴⁵ It required that “states . . . have procedures in

³⁶ *Id.* at 95.

³⁷ *Id.*

³⁸ *Id.* at 92.

³⁹ *Id.* at 92–93. Opponents to the bill argue that most sex offenses against children are incestuous or take place in a child-care setting; offenders could be rehabilitated; and that community notification laws increase the likelihood that released, unrehabilitated sex offenders will reoffend.

⁴⁰ *Id.* at 92. Proponents of the Jacob Wetterling Act cited statistics showing high rates of recidivism among convicted sex offenders and the lack of success that the criminal justice system has had in rehabilitating them.

⁴¹ Megan’s Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (1996).

⁴² HUMAN RIGHTS WATCH, *supra* note 12, at 48.

⁴³ Britney M. Bowater, Comment, *Adam Walsh Child Protection and Safety Act of 2006: Is There a Better Way to Tailor the Sentences of Juvenile Sex Offenders?*, 57 CATH. U. L. REV. 817, 822–23 (2008).

⁴⁴ *Id.* at 823.

⁴⁵ *Id.* at 823; see also Carol L. Kunz, Comment, *Toward Dispassionate, Effective Control of Sexual Offenders*, 47 AM. U. L. REV. 453, 457 (1997). The federal government made it mandatory by tying compliance with federal funds.

place to inform the public about sex offenders who live in close proximity.”⁴⁶ The law specifically called for “public dissemination of information from states’ sex offender registries;” allowed “information collected under state registration programs [to] be disclosed for any purpose permitted under a state law;” and “required state and local law enforcement agencies to release relevant information necessary to protect the public about persons registered under a State registration program.”⁴⁷

Congress continued to expand the Jacob Wetterling Act for the next decade. Within a year of the passage of Megan’s Law, Congress enacted the Pam Lychner Sexual Offender Tracking and Identification Act of 1996.⁴⁸ This legislation required the Attorney General to establish the National Sex Offender Registry and required lifetime registration for recidivists and offenders who commit certain aggravated offenses.⁴⁹ In 1998, Congress heightened registration requirements for sexually violent offenders; required registration of federal and military offenders, nonresident workers, and students; and directed states to participate in the National Sex Offender Registry.⁵⁰ In 2000, Congress passed the Campus Sex Crimes Prevention Act, which required “offenders to report information regarding any enrollment or employment at an institution of higher education and to provide this information to a law enforcement agency whose jurisdiction includes the institution.”⁵¹

⁴⁶ Bowater, *supra* note 43, at 823; *see also* Jill S. Levenson & Leo P. Cotter, *The Effect of Megan’s Law on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49, 49–50 (2005).

⁴⁷ Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), *Legislative History*, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, <http://www.ojp.usdoj.gov/smart/legislation.htm> (last visited Sept. 7, 2010) [hereinafter USDOJ SMART].

⁴⁸ Bureau of Justice Assistance, *Background Information on the Act and Its Amendments*, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, <http://www.ojp.usdoj.gov/BJA/what/2a2jwactbackground.html> (last visited Sept. 7, 2010). Pam Lychner was a “Houston real estate agent preparing to show a vacant home to a prospective buyer. Awaiting her at the house was a twice-convicted felon who brutally assaulted her. Her husband arrived and saved her life. She then formed ‘Justice for All,’ a victims rights advocacy group that lobbies for tougher sentences for violent criminals.” *Id.*

⁴⁹ USDOJ SMART, *supra* note 47; Bureau of Justice Assistance, *Overview and History of the Jacob Wetterling Act*, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, <http://www.ojp.usdoj.gov/BJA/what/2a1jwacthistory.html> (last visited Sept. 7, 2010) [hereinafter USDOJ Overview and History of the Jacob Wetterling Act].

⁵⁰ USDOJ SMART, *supra* note 47; USDOJ Overview and History of the Jacob Wetterling Act, *supra* note 49.

⁵¹ USDOJ Overview and History of the Jacob Wetterling Act, *supra* note 49.

In the midst of all of this federal legislation, states passed their own sex offender laws.⁵² To make the state sex offender registries more uniform, Congress enacted the Adam Walsh Safety and Protection Act of 2006 (“Adam Walsh Act”).⁵³ The Adam Walsh Act maintains the basic structure of the Jacob Wetterling Act, but expands it by making anyone in the United States convicted of a qualifying offense register⁵⁴ and by making information on a wider range of sex offenses and offenders available to the public and to law enforcement officials.⁵⁵ It also makes state sex offender registries more uniform by increasing the categories of people required to register and lengthening the registration periods.⁵⁶

The “offen[s]les against a minor” are essentially the same as under the Jacob Wetterling Act.⁵⁷ However, there are exceptions to registration. A conviction of a consensual sex offense does not require registration if the minor victim is at least thirteen years old and the offender is no more than four years older.⁵⁸ Another exception does not require a juvenile to register unless the offender is fourteen years old or older at the time of the misconduct and the misconduct is of a severe nature.⁵⁹ However, there are no registration exceptions for convictions that have been overturned, sealed, pardoned, or expunged.⁶⁰

The offenders that are required to register must provide their names, social security numbers, the name and address of their employers,

⁵² HUMAN RIGHTS WATCH, *supra* note 12, at 2. All 50 states adopted their own different versions of Megan’s Law, establishing public access to registry information, primarily by mandating the creation of online registries.

⁵³ Adam Walsh Act Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006); *see also* HUMAN RIGHTS WATCH, *supra* note 12, at 38.

⁵⁴ CHARLES DOYLE, CONG. RESEARCH. SERV., RL33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS 4 (2007). The five qualifying offenses are: crimes identified as one of the “specific offenses against a minor;” crimes in which some sexual act or sexual conduct is an element; designated federal sex offenses; specified military offenses; and attempts or conspiracy to commit any offense in the other four classes of qualifying offenses. *Id.*

⁵⁵ *Id.* at 1.

⁵⁶ *Id.* at 1–4; *see also* HUMAN RIGHTS WATCH, *supra* note 12, at 38. Human Rights Watch argues that it doesn’t make sex offender registries more uniform because states can still make more restrictions.

⁵⁷ DOYLE, *supra* note 54, at 4. The offenses are kidnapping of a minor, except by a parent or guardian; false imprisonment of a minor, except by a parent or guardian; solicitation of a minor to engage in sexual conduct; use of a minor in a sexual performance; solicitation to practice prostitution; video voyeurism; possession, production, or distribution of child pornography; criminal sexual conduct toward a minor, or the use of the Internet to facilitate or attempt such conduct; and any conduct that by its nature is a sexual offense against a minor. *Id.*

⁵⁸ *Id.* at 7.

⁵⁹ *Id.*

⁶⁰ *Id.*

the name and address of places where they attend school, and the license plate number and description of vehicles they own or operate.⁶¹ The registrant's file must include a physical description and a current photograph; a set of fingerprints, palm prints, and a DNA sample; the text of the law under which he was convicted; and a criminal record that includes the dates of any arrests, convictions, or outstanding warrants as well as parole, probation, supervisory release, and registration status.⁶²

To determine the length of time the offender must appear on the register, the Adam Walsh Act set up a three-tier system based on the offender's original conviction. The length of time ranges from fifteen years for Tier I to lifetime registration for Tier III. The majority of sex offenses against a minor fall into Tier II and Tier III.⁶³

The Adam Walsh Act also authorized a national database of sex offenders to incorporate the information from every state registry.⁶⁴ The national database is accessible to the public via the Internet⁶⁵ and requires states to post all the offenders' registration information except the name of the registrant's victim, arrests that have not resulted in conviction, and the offender's social security number.⁶⁶ All states must have complied with these guidelines by 2009 or faced losing Byrne program law enforcement assistance funds.⁶⁷

B. SHORTCOMINGS OF THE U.S. SYSTEM

The U.S. sex offender registry system is not ideal. Human Rights Watch argues that U.S. "registration laws are overbroad in scope and

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 8–9; see also Autumn Long, Comment, *Sex Offender Laws of the United Kingdom and the United States: Flawed Systems and Needed Reform*, 18 *TRANSNAT'L L. & CONTEMP. PROBS.* 145, 149 (2009).

⁶⁴ HUMAN RIGHTS WATCH, *supra* note 12, at 37.

⁶⁵ U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring Apprehending, Registering, and Tracking (SMART), DRU SJODIN NATIONAL SEX OFFENDER PUBLIC WEBSITE, <http://www.nsopr.gov> (last visited Sept. 8, 2010).

⁶⁶ DOYLE, *supra* note 54, at 9.

⁶⁷ *Id.* at 11; see also Bureau of Justice Assistance, *BJA Programs*, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, <http://www.ojp.usdoj.gov/BJA/grant/byrne.html> (last visited Sept. 8, 2010). The Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program provides federal funds to state and local governments. The grants may be used to provide personnel, equipment, training, technical assistance and information systems for more widespread apprehension, prosecution, adjudication, detention and rehabilitation offenders. Grants also may be used to provide assistance to victims of these offenses. *Id.*

overlong in duration.”⁶⁸ Currently, there are over six hundred thousand people on the national sex offender registry, but data suggests that many of these people are no longer a threat to society. Studies show that “most sex offenses against children are incestuous or take place in a child-care setting.”⁶⁹ Such evidence, opponents of the U.S. system argue, makes it unnecessary for the general public to have information on every convicted sex offender.⁷⁰ The duration that offenders must stay on the registry is also a problem. Seventeen states require life-long registration for all sex offenders, regardless of the crime.⁷¹ The laws also require people who pose no safety risk to remain on the registry for large portions of their lives.⁷² Another related problem is that sex offender registries only inform people of a conviction, not the nature of the specific crime.⁷³ For example, sex offender registries do not specify that Jameel N. was convicted at seventeen for having sex with his fourteen-year-old girlfriend, that he has been offense-free for over a decade, finished his therapy, and that his judge and probation officer have stated that they do not believe he will reoffend.⁷⁴

⁶⁸ HUMAN RIGHTS WATCH, *supra* note 12, at 3, 5, 39–40. “Overbroad” signifies the large number of crimes included on the registries. For example, five states require registration for adult prostitution-related offenses; 13 states require registration for public urination; and at least 29 states require registration for consensual sex between teenagers. The registries are “overlong in duration” because 17 states require registration for life and others are steadily increasing the duration. The length of time a former offender must register and be included in online registries is based on the nature of the crime, not on whether the former offender continues to pose a safety threat. *Id.*

⁶⁹ Lewis, *supra* note 31, at 92; see also *Roll of Shame: Public Lists of Known Sex Offenders Draw Few Inquiries*, ST. LOUIS POST-DISPATCH, Nov. 27, 1994, at 7B (citing a 1994 Oregon study finding that just 7% of sex offenders victimized strangers).

⁷⁰ Lewis, *supra* note 31, at 92–93. The idea is that since only a select group of people tend to commit sexual abuse against children it is not necessary to have information on every sex offender. *Id.*

⁷¹ Long, *supra* note 63, at 153; HUMAN RIGHTS WATCH, *supra* note 12, at 42.

⁷² HUMAN RIGHTS WATCH, *supra* note 12, at 3, 5, 6. The argument is that people who have not committed violent or coercive offenses in many states are required to register as sex offenders and be subject to community notification and residency restrictions. For example, in many states, the following are required to register as sex offenders: teenagers who have consensual sex with each other, adults who sell sex to other adults, people who urinate in public, and kids who expose themselves as a prank. *Id.* at 5.

⁷³ *Id.* at 6. “Most registries indicate only the statutory name of the crime. For example, ‘indecent liberties with a child.’” According to Human Rights Watch, “vague language does not provide useful information about the offending conduct and makes the public understandably assume the worst.” *Id.*

⁷⁴ *Id.*

The U.S. community notification laws have resulted in public harassment of and violence against registrants.⁷⁵ Jameel N. recounts that he has been called a baby rapist by his neighbors; had feces left on his driveway; and had a stone with a note wrapped around it telling him to “watch [his] back” thrown through his window, almost hitting a guest.⁷⁶ At least four registrants have been targeted and killed (two in 2006 and two in 2005) by strangers who found their names and addresses through online registries.⁷⁷ Other registrants have been driven to suicide, including a teenager who was required to register after he had exposed himself to girls on their way to gym class.⁷⁸

The U.S. residency restrictions also exile registrants from entire areas, isolating them from their families and from the support networks needed for reintegration into society.⁷⁹ According to psychotherapists, this type of ostracism impairs rehabilitation and could make sex offenders more likely to reoffend.⁸⁰ Psychotherapists found that ostracism exacerbates the feelings of isolation and depression, which may have led sex offenders to offend initially.⁸¹

Studies also question whether sex offender registries really protect the public and prevent offender recidivism. According to a U.S. Department of Justice (USDOJ) study, most sex offenders do not reoffend following their release from prison,⁸² and sex offender laws do not necessarily lead to the conviction of the likely perpetrator of a sex crime.⁸³ Unfortunately, many sex offender laws were passed based upon

⁷⁵ *Id.* at 3, 7.

⁷⁶ *Id.* at 6.

⁷⁷ *Id.* at 7.

⁷⁸ *Id.*

⁷⁹ *Id.* at 2–3. Residency restrictions prohibit former offenders from living within a designated distance (anywhere from 500 to 2,500 feet) from places where children gather. *Id.* The result former sex offenders in Miami, Florida have been living under bridges, because this is an area that is not restricted. *Id.* at 7.

⁸⁰ Lewis, *supra* note 31, at 93; *see also* Kevin Cullen, *Sexual Offenders: No Easy Answers*, BOSTON GLOBE, Dec. 5, 1994, at 15.

⁸¹ Lewis, *supra* note 31, at 93; Cullen, *supra* note 80, at 15.

⁸² Long, *supra* note 63, at 161. A comprehensive study over 15 years concluded that 75 percent of sex offenders do not re-offend. *See also* PATRICK A. LANGAN, ERICA L. SCHMITT & MATTHEW R. DUROSE, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS: RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, at 2 (2003) *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf> (sex offenders were less likely than non-sex offenders to be rearrested for any offenses).

⁸³ HUMAN RIGHTS WATCH, *supra* note 12 at 24. Only 14 percent of sexual violence occurs between a victim and a stranger. Family members or acquaintances commit the vast majority of sex crimes.

public support for the measures rather than on factual data.⁸⁴ A study by the Washington State Institute for Public Policy supports the USDOJ by finding that community notification had little effect on sex offense recidivism.⁸⁵ A study conducted in Massachusetts also found evidence that sex offenders can be rehabilitated.⁸⁶

Finally, there is evidence that the United States' current registration, community notification, and residency restriction laws are counterproductive.⁸⁷ A National Society for the Prevention of Cruelty to Children (NSPCC) report highlighted that the United States' increasingly stringent sex offender laws have led many offenders to "go underground" and avoid registration.⁸⁸ For example, Iowa officials told Human Rights Watch that they are losing track of their registrants who have been made transient by the state's residency restriction law or who have dropped out of sight rather than comply with the law.⁸⁹ An Iowa Sheriff commented, "[W]e are less safe as a community now than we were before the residency restrictions."⁹⁰

⁸⁴ Long, *supra* note 63, at 152–53. A 2005 Vermont study committee "refused to change the state's registration laws and acknowledged that it based its decision on the huge public support for the measure rather than factual data that the laws were helping." *Id.*

⁸⁵ DONNA SCHRAM & CHERYL MILLOY, WASH. STATE INST. FOR PUB. POLICY, COMMUNITY NOTIFICATION: A STUDY OF SEX OFFENDER CHARACTERISTICS AND RECIDIVISM 3 (1995) available at www.wsipp.wa.gov/rptfiles/chrrec.pdf; HUMAN RIGHTS WATCH, *supra* note 12, at 59–60. Researchers found no statistically significant difference in recidivism rates over a four-and-a-half-year period between those sexually violent offenders who are and were not subject to community notification in Washington. Researchers also found that 63 percent of new offenses were committed in community notification jurisdictions, suggesting that notification neither deters nor motivates offenders to go outside those jurisdictions. *Id.*

⁸⁶ Lewis, *supra* note 31, at 93 n.28. A three-year follow-up study showed a 7% recidivism rate for incest offenders who participated in a group treatment program during incarceration; a four-year follow-up study of 58 treated child molesters and 68 untreated child molesters showing a 13.2% recidivism rate among treated offenders and a 34.5% rate among untreated offenders; a study showing that after one year of treatment, 3 out of 98 incest offenders reoffended; a family treatment program reporting a zero recidivism rate out of 600 treated families; and a treatment program reporting a 3% recidivism rate among 190 incest offenders. *Id.* But to be fair see Lita Furby et al., *Sex Offender Recidivism: A Review*, 105 PSYCHOL. BULL. 3, 25 (1989) (stating that there is no conclusive evidence that treating sex offenders lowers their rate of recidivism).

⁸⁷ HUMAN RIGHTS WATCH, *supra* note 12, at 9.

⁸⁸ KATE FITCH, NAT'L SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, MEGAN'S LAW: DOES IT PROTECT CHILDREN? (2), at 41 (2006), available at http://www.nspcc.org.uk/Inform/publications/Downloads/meganslaw2_wdf48102.pdf. The NSPCC was founded in 1884. Its goal is to "protect children from cruelty, support vulnerable families, campaign for changes to the law and raise awareness about abuse." *About the NSPCC—What We Do*, NSPCC, http://www.nspcc.org.uk/whatwedo/aboutthenspcc/aboutthenspcc_wda36522.html (last visited May 23, 2011).

⁸⁹ HUMAN RIGHTS WATCH, *supra* note 12, at 9–10.

⁹⁰ *Id.*

C. REFORMS TO THE U.S. SYSTEM

Human Rights Watch (HRW) has proposed a variety of reforms to address these shortcomings in the U.S. system. HRW would like to narrow the scope of registration to serious offenders who, after being reviewed by a panel, are thought to pose a serious, continued risk to society. As for registry information, HRW would like to restrict access to the registry to law enforcement and only grant public notification on a limited basis. To better inform the public on how to protect victims, HRW suggests dividing responsibility between police and local agencies. Finally, to help rehabilitate offenders, HRW recommends using law enforcement to alleviate community hostility resulting from public notification and banning all comprehensive residency restrictions in favor of customized residency restrictions.⁹¹ Overall, many child safety and rape prevention advocates would like to see less money spent on registration and community notification programs and more money spent on “prevention, education, and awareness programs for children and adults, counseling for victims of sexual violence, and programs that facilitate treatment and the transition back to society for convicted sex offenders.”⁹²

D. OTHER COUNTRIES

Besides the United States, the following nations have adopted sex offender registration laws: Australia, Ireland, Canada, France, South Korea, Japan, and the United Kingdom.⁹³ All of these countries generally require a shorter registration period for offenders than the United States and do not have any residency restriction laws.⁹⁴ In addition, with the exception of South Korea, none of these countries have community notification laws. Instead, they require the information to remain with the police.⁹⁵ In fact, officials in Australia, Ireland, and the United Kingdom⁹⁶ considered and rejected the adoption of universal community notification

⁹¹ *Id.* at 17–19; *see also* Long, *supra* note 63, at 163–64.

⁹² HUMAN RIGHTS WATCH, *supra* note 12, at 10.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *See Child Abusers Can Run But Never Hide*, THE COURIER-MAIL (Australia), July 9, 2008, at 10. In the United Kingdom, the media campaigned for a version of Megan’s Law, entitled Sarah’s Law in 2000 after the murder of eight-year-old Sarah Payne by a convicted sex offender. The British legislature rejected the Sarah’s Law request, but compelled police to tell families about pedophiles who may pose a specific threat to their children. *Id.*

laws.⁹⁷ After reviewing U.S. policy, these countries concluded that community notification did not decrease the risk of repeat assaults by sex offenders.⁹⁸ Specifically, the British Parliament refused to adopt the U.S. laws due to “a lack of statistical evidence that notification affects recidivism, the reluctance of pedophiles to register for fear of harassment, an increased likelihood that offenders will kill their victims to avoid conviction, a possibility of violence against offenders and suicide of registrants, and the possibility of driving sex offenders underground.”⁹⁹

The United Kingdom first adopted sex offender legislation in March 1997, entitled the Sex Offender Act of 1997.¹⁰⁰ The 1997 Act required offenders to register their name and address with police. The duration of registration was based on sentence length, and notification was limited to schools, if officials determined it necessary, because European courts maintained that notification could not be just for public knowledge.¹⁰¹ In 2003, the United Kingdom updated their registration laws in response to the 2000 murder of Sarah Payne by a pedophile.¹⁰² The public wanted registration and notification laws similar to those in the United States, but the British Parliament refused.¹⁰³ As a compromise, the 2003 law strengthened registration requirements and allowed the public to know how many offenders are in the area, not the registrants’ name and addresses.¹⁰⁴

Like the United States and the United Kingdom, Canada created a sex offender registry in response to a heinous crime against a child. The Sex Offender Information Registration Act (SOIRA) was enacted in

⁹⁷ HUMAN RIGHTS WATCH, *supra* note 12, at 10.

⁹⁸ *Id.*

⁹⁹ Long, *supra* note 63, at 158. In response to Parliament’s refusal to adopt U.S. law, news organizations began publishing the names and locations of sex offenders. The result was exactly what the British government feared—public protests and violence. In fact, the harassment led to a pedophile committing suicide. *Id.*

¹⁰⁰ *Id.* at 158.

¹⁰¹ *Id.* at 157–58.

¹⁰² *Id.* at 158–59.

¹⁰³ *Id.* at 158. As discussed earlier, the British Parliament opposed the U.S. model due to “a lack of statistical evidence that notification affects recidivism, the reluctance of pedophiles to register for fear of harassment, an increased likelihood that offenders will kill their victims to avoid conviction, a possibility of violence against offenders and suicide of registrants, and the possibility of driving sex offenders underground.” *Id.*

¹⁰⁴ *Id.* at 158–59.

2004 following the murder of eleven-year-old Christopher Stephenson.¹⁰⁵ After much debate, SOIRA created a National Sex Offender Registry that required sex offenders ordered by the court and convicted of designated sex offenses¹⁰⁶ to report annually to police. Under SOIRA, sex offenders are required to be registered for ten years, twenty years, or for life: depending on the maximum length of the sentence for the crime.¹⁰⁷ The purpose of SOIRA is to help police investigate sexual assault crimes.¹⁰⁸ The public does not have access to Canada's registry.¹⁰⁹

In 2004, Australia implemented the Australian National Child Offender Register (ANCOR).¹¹⁰ ANCOR created a national register to track child sex offenders. The purpose was to create an "efficient nationwide offender case-management tool for police."¹¹¹ It requires anyone convicted of a sexual offense or other serious offense against a child to notify police of their address, places they frequent, and car registration.¹¹² The information collected is only for designated police access and is not available to the public or any other outside body.¹¹³ ANCOR also requires each Australian territory to pass legislation based on a common model.¹¹⁴

Ireland passed the Sex Offenders Act in June 2001.¹¹⁵ The legislation required courts to issue a certificate to the Irish National

¹⁰⁵ Christopher was murdered by a convicted pedophile. *Sex Offender Information Registration Act (SOIRA) History*, CANADIAN POLICE KNOWLEDGE NETWORK, <http://www.cpkn.ca/demo/content/nsor/index.html> (last visited Sept. 16, 2010).

¹⁰⁶ ROYAL CANADIAN MOUNTED POLICE, NATIONAL SEX OFFENDER REGISTRY: HELPING POLICE SERVICES INVESTIGATE CRIMES OF A SEXUAL NATURE, *available at* <http://www.rcmp-grc.gc.ca/tops-opst/bs-sc/nsor-rnds/pdf/nsor-rnds-eng.pdf>. The sexual offenses are not just offenses against children. The offenses include sexual interference; invitation to sexual touching; sexual exploitation; incest; bestiality; child pornography (making, possession, or distribution); parent or guardian procuring sexual activity; exposure; sexual assault; sexual assault with a weapon, threats to a third party or causing bodily harm; aggravated sexual assault; select offenses where it can be proven that the offense was committed with the intent to commit an offense of a sexual nature; and attempt or conspiracy to commit any of the above offenses. *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Media Release, Senator the Hon. Christopher Ellison, National Register Launched To Track Child Sex Offenders (Sept. 1, 2004), *available at* http://www.crimtrac.gov.au/documents/pr_ellison_20040901.pdf.

¹¹¹ *Id.*

¹¹² *Id.*; see also Jacob Frumkin, Comment, *Perennial Punishment? Why the Sex Offender Registration and Notification Act Needs Reconsideration*, 17 J.L. & POL'Y 313, 355 (2008).

¹¹³ Ellison, *supra* note 110.

¹¹⁴ *Id.*

¹¹⁵ *Sex Offender Registry*, CITIZENS INFORMATION,

Police Force (“the Garda”), the convicted offender, and the governor of the facility where the offender is to be detained, stating the sentence received and the fact that the person is subject to a reporting requirement.¹¹⁶ Ireland makes clear that this is not a registry that is available to the public, but instead a list of certificates held by the Garda.¹¹⁷ During sentencing, the Irish courts craft specific requirements for individual sex offenders by deciding if and what type of post-release supervision an offender needs. The court can also make offender-specific conditions, including prohibiting the offender from attending schools and requiring the sex offender to receive psychological counseling.¹¹⁸ None of the information obtained by the offender is available to the public.¹¹⁹ The only time the public may find out about a sex offender’s past is when they are applying to a job that allows them to have unsupervised access to or contact with children or a mentally impaired person.¹²⁰

A recent report by the NSPCC arguably proves that these countries’ sex offender systems are just as effective as the United States’ system.¹²¹ The NSPCC’s report evaluated the effectiveness of Megan’s Law in the United States.¹²² The report concluded that there was insufficient proof that the community notification practice of Megan’s Law made children any safer.¹²³ It based this conclusion on finding no empirical evidence supporting that community notification had a positive impact on offender recidivism rates or resulted in fewer assaults by strangers on children.¹²⁴ As a result of the conclusion, the NSPCC recommended no changes to the United Kingdom’s current system of disclosure and urged policy makers to make decisions on sex offender management policies based on objective evidence, not on popular responses to high-profile sex crimes.¹²⁵

<http://www.citizensinformation.ie/categories/justice/criminal-law/criminal-trial/sex-offenders-register> (last visited Mar. 28, 2011).

¹¹⁶ *Monitoring Sex Offenders in Ireland*, CITIZENS INFORMATION, http://www.citizensinformation.ie/categories/justice/law_enforcement/monitoring-sex-offenders-in-ireland (last visited Mar. 28, 2011).

¹¹⁷ *Sex Offender Registry*, *supra* note 115.

¹¹⁸ *Monitoring Sex Offenders in Ireland*, *supra* note 116.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ FITCH, *supra* note 88, at 50–52.

¹²² *Id.* at 50–51.

¹²³ *Id.* at 53.

¹²⁴ *Id.* at 50.

¹²⁵ *Id.* at 52–53.

II. INTERNATIONAL MEGAN'S LAW

A. INTRODUCTION

In 2010 the U.S. House of Representatives passed “International Megan’s Law,” a bill which aimed to create an international sex offender registry modeled after U.S. sex offender laws. The legislation, introduced by U.S. Congressman Christopher Smith, aimed to “protect children from sexual exploitation by preventing or monitoring the international travel of sex traffickers and other sex offenders who pose a risk of committing a sex offense against a minor while traveling.”¹²⁶ To fulfill this purpose, the bill created a notification system for foreign officials to alert American authorities when sex offenders apply to enter the United States from other countries and requires the United States to notify other countries when American sex offenders want to travel abroad.¹²⁷

Specifically, International Megan’s Law would: (1) establish a system that provides notice to foreign government officials when a known American sex offender who poses a risk of re-offending intends to travel to their country; (2) encourage and assist foreign governments to establish a sex offender travel notification system and to inform U.S. authorities when a sex offender intends to travel or has departed to the United States; (3) establish and maintain in U.S. diplomatic and consular missions non-public sex offender registries of American citizens living abroad; (4) provide the U.S. Secretary of State with the discretion to revoke the passport of an individual who has been convicted overseas of a sex offense against a minor; (5) monitor whether a country is investigating and prosecuting its nationals under the minimum standards for the elimination of human trafficking under Section 108 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101); (6) mandate a report from the U.S. Secretary of State about the status of international notifications between governments; and (7) provide assistance to foreign countries to establish a system to identify sex offenders.¹²⁸

¹²⁶ International Megan’s Law of 2010, H.R. 5138, 111th Cong. § 2 (2010).

¹²⁷ *Id.*

¹²⁸ Press Release, Congressman Christopher Smith, Smith Introduces International Megan’s Law (Mar. 19, 2009), <http://chrissmith.house.gov/News/DocumentSingle.aspx?DocumentID=115306> [hereinafter Press Release, International Megan’s Law]; *see also* H.R. 5138 § 2(b)(1)–(5).

B. THE INTERWORKING OF INTERNATIONAL MEGAN'S LAW

The bill would establish a system within the United States “to notify the appropriate officials of other countries when a sex offender who is identified as a high interest registered offender intends to travel to their country.”¹²⁹ The United States does not currently have a system to classify high interest offenders. The bill defines a high interest offender as a “United States citizen or lawful permanent resident who is convicted of a sex offense as defined in this Act” and who according to the International Sex Offender Travel Center “presents a high risk of committing a sex offense against a minor in a country to which the sex offender intends to travel.”¹³⁰ International Megan’s Law defined sex offenses as criminal offenses against a minor that involve solicitation to engage in sexual conduct; use in a sexual performance; solicitation to practice prostitution; video voyeurism; possession, production, or distribution of child pornography; criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct; sex trafficking; transporting a minor in interstate or foreign commerce; and any other conduct that by its nature is a sex offense against a minor.¹³¹ An offender is not high-risk if he or she was convicted abroad without sufficient due process safeguards or if the convicting offense involved consensual sexual conduct with a victim at least thirteen years of age and the offender was not more than four years older.¹³²

The new “high interest” sex offenders who are U.S. citizens have a duty to report to the appropriate jurisdiction his or her intention to travel within thirty days before departure from or arrival in the United States.¹³³ The sex offender is required to report the following information: name; address of residence and home and cellular numbers; all e-mail addresses; date of birth; social security number; citizenship; passport number and place of issuance; alien registration number; nature of the sex offense conviction; jurisdiction of conviction; travel itinerary; the date of travel ticket purchase; whether the sex offender is traveling alone or as part of a group; and contact information prior to departure

¹²⁹ *Section-By-Section Analysis H.R. 5138 International Megan’s Law of 2010*, CONGRESSMAN CHRIS SMITH, 2, http://chrissmith.house.gov/UploadedFiles/IML_-_4-22-10_Summary_of_Provisions.pdf; see also H.R. 5138 § 2(b)(1).

¹³⁰ H.R. 5138 § 3(4), (8).

¹³¹ *Id.* § 3(9)(A).

¹³² *Id.* § 3(9)(B)(i).

¹³³ *Id.* § 4(a)(1).

and during travel.¹³⁴ The sex offender is also required to pay a fee of twenty-five dollars to process the notice of intent to travel. Should a U.S. high-risk offender fail to report his or her travel to or from a foreign country, the offender can be fined or imprisoned, or both, for up to ten years.¹³⁵

In addition to registration of U.S. sex offenders for use abroad, International Megan's Law requires registration of foreign sex offenders who are American citizens or legal aliens living abroad.¹³⁶ The legislation requires a U.S. diplomatic or consular mission in each foreign country to "establish and maintain a countrywide sex offender registry for sex offenders" from the United States who temporarily or permanently reside in such country.¹³⁷ The sex offender must provide an extensive amount of information¹³⁸ about himself or herself and the U.S. diplomatic or consular mission must collect and maintain even more information.¹³⁹ The consulate is also responsible for transmitting all information obtained to the U.S. National Sex Offender Registry.¹⁴⁰

¹³⁴ *Id.* § 4(b).

¹³⁵ *Id.* § 4(c), (d)(1).

¹³⁶ *Id.* § 5(b)(1). Specifically, the foreign registration requires a sex offender to register if the offender is a U.S. citizen or an alien legally admitted for permanent residence in the United States who resides in a foreign country for more than 30 consecutive days or who resides in a foreign country for more than 30 days within a 6-month period. *Id.*

¹³⁷ *Id.* § 5(a)(1).

¹³⁸ *Id.* § 5(d)(1). A sex offender must provide his or her name; passport or passport card, and visa type and number; alien registration number; social security number; address of each residence; purpose for the sex offender's residence in the country; name and address of any place where the sex offender is an employee or will be or has applied to be an employee; name and address of any place where the sex offender is a student; all e-mail addresses; most recent address in the United States and State of legal residence; the jurisdiction in which the sex offender was convicted and the jurisdiction or jurisdictions in which the sex offender was most recently legally required to register; the license plate number and a description of any vehicle owned or operated by the sex offender; the date or approximate date when the sex offender plans to leave the country; and other information required by the U.S. Secretary of State. *Id.*

¹³⁹ *Id.* § 5(d)(2). In addition to the information provided by the sex offender, the jurisdiction of conviction must provide the following information to the Attorney General: the sex offense history of the sex offender, including the text of the provision of law defining the sex offense, the dates of all arrests and convictions related to sex offenses, and the status of parole, probation, or supervised release; the most recent available photograph of the sex offender; and the time period for which the sex offender is required to register pursuant to the law of the jurisdiction. The U.S. diplomatic or consular mission must collect and maintain the information provided by the offender and given to the Attorney General as well as physical description of the sex offender and any other information required by the U.S. Secretary of State. *Id.*

¹⁴⁰ *Id.* § 5(d)(3). The National Sex Offender Registry is a public website—coordinated by the Department of Justice—that enables every U.S. citizen to search the latest information from all 50 states, the District of Columbia, and Puerto Rico for the identity and location of known sex

Even though the bill requires transmission to a U.S. searchable, public database, it also proposes to limit access to the international sex registry to “eligible entities.”¹⁴¹ Eligible entities include entities in the country of the diplomatic mission that provide direct services to minors, that are law enforcement, or that are investigative entities affiliated with law enforcement.¹⁴² These eligible entities can request offender information from the designated U.S. official at the diplomatic mission.¹⁴³ If the official grants the request, the entity must submit a written request stating that the information will only be used by the person designated to receive it, for the purpose it was requested, and that steps will be taken to ensure confidentiality.¹⁴⁴

To carry out the provisions in the act, the legislation creates the International Sex Offender Travel Center (“Center”). The Center receives, assesses, and responds to inquiries from a sex offender as to whether he or she needs to report international travel; conducts assessments of sex offender travel; maintains a review panel to respond to appeals from sex offenders that are required to register travel; transmits notices of international travel by high interest offenders to the destination countries; and identifies sex offenders who have not reported travel.¹⁴⁵ The Center must also make “every reasonable effort to issue a warning” to the high interest sex offender if it determines that a transmission of travel information could pose a risk to the life or well-being of the high-risk sex offender.¹⁴⁶

Finally and most concerning is that the legislation would encourage the President of the United States to help other countries create sex offender registries. Specifically, it encourages the United States to provide assistance to foreign countries either directly or through non-governmental organizations (NGOs) or multilateral organizations for

offenders. *National Sex Offender Public Website*, FEDERAL BUREAU OF INVESTIGATION, <http://www.fbi.gov/hq/cid/cac/registry.htm> (last visited Mar. 28, 2011).

¹⁴¹ H.R. 5138 § 5(h)(2)(A)–(B).

¹⁴² *Id.*

¹⁴³ *Id.* § 5(h)(2)(C). Note that the sole discretion as to whether and to what extent to provide the information about a particular offender to an entity rests with the designated official and the head of the diplomatic mission.

¹⁴⁴ *Id.* The purposes are employment, volunteer screening and law enforcement. *Id.* § 5(h)(2)(C)(ii).

¹⁴⁵ *Id.* § 6(d)(3)–(5), (6), (9).

¹⁴⁶ *Id.* § 6(e)(3). Note that Section 9 provides immunity for Federal Government, jurisdictions, political subdivisions of jurisdiction and their agencies, officer, employees and agents against liability for good faith conduct under the Act. *Id.* § 9.

programs that establish systems to identify sex offenders and provide and receive notification of child sex offender international travel.¹⁴⁷

C. PROPONENTS AND OPPONENTS OF INTERNATIONAL MEGAN'S LAW

Proponents of International Megan's Law think it is a step in the right direction to protecting children. Karen Strauss of the Polaris Project states that "if we know someone is committing serious crimes at home or overseas, we want to accurately identify them."¹⁴⁸ Amanda Bissex, UNICEF's Thailand Chief of Child Protection, agrees and thinks that International Megan's Law would benefit vulnerable children.¹⁴⁹ Opponents are concerned about the law's restrictions on travel inhibiting a prior offender's "right to leave."¹⁵⁰ Others see it as a continued violation of sex offender's human rights.¹⁵¹ Specifically, the American Civil Liberties Union ("ACLU") opposes International Megan's Law because it believes it is wrong to impose new restrictions on people who already have served their sentences.¹⁵²

D. CONCERNS WITH INTERNATIONAL MEGAN'S LAW

This comment argues that the overarching concern about International Megan's Law is that it is an attempt by the United States to unilaterally fix a global problem. Child sex tourism and child sexual assault are problems of great magnitude that need to be addressed not by one country but by many countries and preferably under the guidance of a global body.

The first concern about International Megan's law is that it is based on a flawed U.S. sex offender system. The press release for International Megan's Law confirms that the legislation plans to "[build] upon the original state and federal Megan's Law concept of notification and [bring] the program worldwide."¹⁵³ However, as discussed earlier,

¹⁴⁷ *Id.* § 13(a).

¹⁴⁸ Guzder, *supra* note 1.

¹⁴⁹ *Id.*

¹⁵⁰ HR-5722: "International Megan's Law", NO SEX OFFENDERS NEED APPLY (May 11, 2008, 3:16 PM), <http://nsona.blogspot.com/2008/05/hr-5722-international-megans-law.html>.

¹⁵¹ THE ANGRY OFFENDER, <http://angryoffender.com/hr5722.php> (last visited Oct. 29, 2009).

¹⁵² Rob Hotakainen, *Sex Offender Law Could Go Global with California Lawmaker's Bill*, MCCLATCHY (Feb. 12, 2010), <http://www.mcclatchydc.com/2010/02/12/84447/sex-offender-law-could-go-global.html>.

¹⁵³ Press Release, International Megan's Law, *supra* note 128. Following the passage of International Megan's Law, the author of the legislation, Representative Christopher Smith, supported this notion by stating, "[International Megan's Law] would encourage a whole global movement to enact Megan's Laws domestically and then share that information internationally."

there is no empirical evidence to support the notion that Megan's Law makes children any safer.¹⁵⁴ There is also the concern that the other controversial aspects of the U.S. sex offender system could follow International Megan's Law. As discussed earlier, critics argue that the United States' registration laws are too broad and too long, and that the residency restrictions do more harm than good by isolating registrants from support networks necessary for rehabilitation.¹⁵⁵ There is even evidence that the U.S. sex offender laws are counterproductive. A NSPCC report highlighted that the United States' increasingly stringent registration, notification, and residency rules have driven offenders underground and away from the "system designed to keep them, and their community, safe."¹⁵⁶

Second, the issue of maintaining offenders' privacy has been raised by the international community and is a major problem with International Megan's Law. Even though International Megan's Law limits access to U.S. offenders lists maintained by U.S. diplomatic missions, it does not go far enough to maintain privacy. The bill still requires the information to be disseminated to the U.S. National Sex Offender Registry, a public website. It also allows access to a broad range of entities, including employers, an idea that the EU rejected.¹⁵⁷ Other problems include the possibility of confidentiality breaches, similar to what happened in the United Kingdom, as discussed earlier, and the intrusively large amount of the information required from offenders.¹⁵⁸ The amount of information the United States requires from offenders is greater and contains more private information than the European model.¹⁵⁹ Finally, the bill provides too much discretion without direction to the diplomatic mission. The diplomatic mission has sole discretion as to who receives what information.¹⁶⁰ This is problematic because International Megan's law does not provide criteria or guidelines to help diplomatic mission staff process requests. Without guidance, the

Sulaiman Abdur-Rahman, *House OKs Rep. Smith's 'International Megan's Law' to Protect All Kids from Perverts*, THE TRENTONIAN, July 28, 2010, available at <http://www.trentonian.com/articles/2010/07/28/news/doc4c4fa96cc91a5432893315.txt>.

¹⁵⁴ FITCH, *supra* note 88, at 50–51.

¹⁵⁵ HUMAN RIGHTS WATCH, *supra* note 12, at 3.

¹⁵⁶ FITCH, *supra* note 88, at 41 (citing *Whose Rights Should Prevail*, COMMUNITY CARE MAGAZINE, July 6–12, 2006, at 26–27).

¹⁵⁷ *Id.* at 47. The European Union proposals will be discussed *infra* Part III.

¹⁵⁸ International Megan's Law of 2010, H.R. 5138, 111th Cong. § 5(d)(1) (2010).

¹⁵⁹ *See id.*; *see also* source cited *infra* note 178.

¹⁶⁰ H.R. 5138 § 5(h)(2)(D).

implementation of limited access has the potential to vary greatly from jurisdiction to jurisdiction and result in some missions providing an unnecessarily large quantity of information on offenders to a broad range of entities.

Despite the attempt to limit the information, the U.S. sex offender system is based on community notification—a method exclusive to the United States and South Korea. The other six countries that have sex offender registries require that the information remain with the police, and three of those—the United Kingdom, Australia, and Ireland—expressly rejected the adoption of universal community notification laws.¹⁶¹ Indeed, one of the main reasons Europe does not have a Europe-wide Sex Offender Register is because many countries opposed the idea of centralizing information about their citizens on a database.¹⁶² In fact, initiatives to improve information exchange between EU member states can fail if there is insufficient assurance that data will be protected in order to guarantee privacy rights.¹⁶³ Japan's Justice Minister also voiced privacy concerns in 2005 when he argued that post-conviction registration “could be a serious infringement on [the] privacy [of sex offenders] and pose a huge obstacle to a former offender's return to society.”¹⁶⁴

A third concern raised by this paper, and echoed by the U.S. Department of Justice, is the need to unify and “gain[] cooperation from other countries that have different laws and cultural norms.”¹⁶⁵ One country's definition of sex offenses and punishment for sex offenders may differ completely with another country's definition. For example, as discussed in Part III, one of the main obstacles to sharing criminal records in the EU is national sovereignty.¹⁶⁶ In the EU there may be up to

¹⁶¹ HUMAN RIGHTS WATCH, *supra* note 12, at 10.

¹⁶² KATE FITCH, KATHLEEN SPENCER CHAPMAN & ZOE HILTON, NAT'L SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, PROTECTING CHILDREN FROM SEXUAL ABUSE IN EUROPE: SAFER RECRUITMENT OF WORKERS IN A BORDER-FREE EUROPE 17 (2007), *available at* www.nspcc.org.uk/Inform/publications/Downloads/protectingchildrenfromsexualabuseineuropefullreport_wdf54737.pdf.

¹⁶³ *Id.* at 23 n.38.

¹⁶⁴ Frumkin, *supra* note 112, at 352–53; *Sex-Offender Tracking Plan Blasted*, JAPAN TIMES ONLINE (Jan. 8, 2005), <http://search.japantimes.co.jp/cgi-bin/nn20050108a2.html>.

¹⁶⁵ *Bill Seeks to Extend Reach of Megan's Law*, UNITED PRESS INT'L (Feb. 15, 2010, 8:12 PM), http://www.upi.com/Top_News/US/2010/02/15/Bill-seeks-to-extend-reach-of-Megans-Law/UPI-51851266282720/.

¹⁶⁶ FITCH ET AL., *supra* note 162, at 28. Typical concerns were addressed in a recent House of Commons report in the United Kingdom which stated: “Justice and Home Affairs . . . issues are

twenty-seven legal definitions of the same crime, and states may differ about the level of seriousness and the type of consequences assigned to a crime.¹⁶⁷ There are also discrepancies across Europe involving the age of consent for sexual activity¹⁶⁸ and which jobs require vetting prior to working with children.¹⁶⁹

Another concern voiced by critics of the U.S. sex offender system is harm to offenders. One of the weaknesses of the U.S. sex offender system is vigilantism against offenders.¹⁷⁰ As mentioned in the introduction, a U.S. sex offender was killed when a Canadian man located him on a sex offender database.¹⁷¹ International Megan's Law tries to address harm to offenders by stating that every reasonable effort should be made to issue a warning to the high-risk sex offender if the Center determines that the transmission of travel information could pose a risk to the life or well being of the high-risk sex offender.¹⁷² But that does not mean that the information will not be transmitted or that an offender must be informed; it just states "every reasonable effort" should be made.¹⁷³ For example, will a foreign sex offender visiting the Czech Republic be exposed to castration because that is how the Czech Republic punishes its male sex offenders?¹⁷⁴

A final problem is mistake. The ACLU points out that with a database as large as what is being proposed by International Megan's Law there are always questions of accuracy.¹⁷⁵ Given the ostracizing nature of registration laws, the lasting repercussions on a person's life if anyone were mistakenly included would be devastating.¹⁷⁶

very closely tied up with national sovereignty, and each state's ability to determine its own laws and manages its own justice system." *Id.*

¹⁶⁷ *Id.* at 29.

¹⁶⁸ *Id.* at 28–29. In Spain it is legal to engage in sexual activity from the age of 13, but in Malta the legal consent age is 18. Note that International Megan's Law has text stating it should be the "Sense of Congress" that the minimum age of consent be 16. International Megan's Law of 2010, H.R. 5138, 111th Cong. § 5(d)(1) (2010).

¹⁶⁹ FITCH ET AL., *supra* note 162, at 28–29. In Sweden, healthcare workers do not have to be vetted prior to working with children; in Poland there is some vetting in the education sector, but none for people working in children's homes.

¹⁷⁰ HUMAN RIGHTS WATCH, *supra* note 12, at 7.

¹⁷¹ *Id.* at 91.

¹⁷² H.R. 5138 § 6(e)(3).

¹⁷³ *Id.*

¹⁷⁴ Leo Cendrowicz, *The Unkindest Cut: A Czech Solution for Sex Offenders*, TIME.COM (Feb. 11, 2009), <http://www.time.com/time/world/article/0,8599,1878462,00.html>.

¹⁷⁵ Hotakainen, *supra* note 152.

¹⁷⁶ *Id.*

III. EUROPEAN EFFORTS TO PROTECT CHILDREN FROM SEX OFFENDERS

There is currently no European Sex Offender Registry. While some European countries have their own sex offender registries,¹⁷⁷ recent efforts to create a central registry in Europe have failed mostly due to privacy and national sovereignty concerns. Absent a Europe-wide sex offender registry, the EU has implemented other initiatives to protect children. In February 2009, the EU adopted a framework decision to improve the exchange of information extracted from criminal records, including sex offenders between members of the EU.¹⁷⁸ The EU is also working on a new framework decision on combating the sexual abuse of children, the sexual exploitation of children, and child pornography.¹⁷⁹

A. BACKGROUND

The push for a Europe-wide sex offender registry and the recently adopted 2009 framework decision have their roots in the apprehension of recidivist sex offender Michel Fourniret.¹⁸⁰ Fourniret confessed to murdering nine people, mostly young women and girls, in Belgium in 2004.¹⁸¹ Prior to these murders, Fourniret was convicted in

¹⁷⁷ Ireland, France, and United Kingdom have sex offender registries. HUMAN RIGHTS WATCH, *supra* note 12, at 10.

¹⁷⁸ Criminal Judicial Cooperation: Exchange of Information Extracted from Criminal Records Between Member States, Framework Decision, EUR. PARL. DOC. CNS/2005/0267 (Feb. 26, 2009), available at <http://www.europarl.europa.eu/oeil/file.jsp?id=5301462> [hereinafter 2009 Framework Decision on Exchange of Information]; Council Framework Decision 2009/315/JHA, On the Organization and Content of the Exchange of Information Extracted from the Criminal Record Between Member States, 2009 O.J. (L 93) 24 (EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:093:0023:0032:EN:PDF>.

¹⁷⁹ Proposal for a Council Framework Decision on Combating the Sexual Abuse, Sexual Exploitation of Children and Child Pornography, Repealing Framework Decision 2004/68/JHA, EUR. PARL. DOC. (MEMO/09/130) (Mar. 25, 2009), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/130> [hereinafter Proposal to Repeal 2003 Framework Decision].

¹⁸⁰ *EU Rules Out Central Criminal Register*, DEUTSCHE WELLE (July 19, 2004), <http://www.dw-world.de/dw/article/0,,1262357,00.html>. The fear of sexual predators created by Fourniret was enhanced by Marc Dutroux. A Belgium jury sentenced Marc Dutroux to life in 2004 for the abuse and murder of several young girls. He had previously been convicted of other sexual assaults against children, theft, violent muggings, drug dealing and trading in stolen cars. His case highlighted embarrassing inefficiencies within the Belgium police system. *Id.*; see also James B. Jacobs & Dimitra Blitsa, *Sharing Criminal Records: The United States, the European Union and Interpol Compared*, 30 LOY. L.A. INT'L & COMP. L. REV. 125, 196 (2008).

¹⁸¹ *EU Rules Out Central Criminal Register*, *supra* note 180. Fourniret is now serving a life sentence. *Life Sentence for French Killer*, BBC NEWS (May 29, 2008, 4:27 AM), <http://news.bbc.co.uk/2/hi/europe/7423703.stm>.

the late 1980s by a French court of rape and indecent assault of minors.¹⁸² He served only a few months of this sentence and then, upon release, moved to Belgium. In Belgium he obtained employment as a school supervisor with children because no one in Belgium knew of his criminal record in France.¹⁸³ Experts believe that Fourniret's actions could have been prevented if French investigators had passed on more information about Fourniret to Belgium authorities.¹⁸⁴

B. ATTEMPTS TO CREATE A EUROPE-WIDE SEX OFFENDER REGISTRY

Fourniret's case produced two proposals to better identify and stop sex offenders from harming children. The first was for a common register of convicted murderers or sex offenders and, the second was to improve the exchange of criminal records information.¹⁸⁵ The 2004 central register proposal would have allowed public and private agencies and organizations that work with or provide services to children the ability to check their employees and volunteers against the database.¹⁸⁶ The European Union Justice and Interior Ministers discussed the proposal in July 2004. The outcome was an agreement by the EU to step up information exchanges on national criminal records.¹⁸⁷ The proposal for central register failed because many countries felt that the dissemination of individual criminal history information was a matter of national sovereignty.¹⁸⁸

A year later, a similar proposal creating a "European index of offenders" was discussed and rejected by the European Commission.¹⁸⁹ The index would have consisted of information indentifying individuals

¹⁸² *How Fourniret Slipped Through the Net*, BBC NEWS (July 8, 2004, 3:16 PM), <http://news.bbc.co.uk/2/low/europe/3875987.stm>.

¹⁸³ *EU Rules Out Central Criminal Register*, *supra* note 180.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*; 2009 Framework Decision on Exchange of Information, *supra* note 178.

¹⁸⁶ Jacobs & Blitsa, *supra* note 180, at 196; *see also* *EU Rules Out Central Criminal Register*, *supra* note 180. At the time of this proposal criminal records did not cross European borders. Law enforcement officers were not required to pass on information about released criminals to neighboring countries unless it was requested. There is also no law requiring prosecutors to acquire information from other countries if a suspect used to reside there. *Id.*

¹⁸⁷ *EU Rules Out Central Criminal Register*, *supra* note 180.

¹⁸⁸ Jacobs & Blitsa, *supra* note 180, at 194–95. For example, Germany said it would be an infringement on national sovereignty if a central registry were implemented. Because in Germany, employers may not request job applicants' or employees' criminal records from the national criminal register, but applicants and employees have the right to request, for employment purposes, a criminal record extract or certificate of good conduct. *Id.*

¹⁸⁹ FITCH ET AL., *supra* note 162, at 17.

with criminal convictions and the EU state where they had been convicted.¹⁹⁰ Authorities would then apply to the central authority in the offender's country of origin for more details about the offense.¹⁹¹ The proposal aimed to address concerns about the speed and ease of obtaining information from other member states' national databases.¹⁹² The proposal was rejected because member states did not like the idea of centralizing information about their citizens on a database.¹⁹³

Even though these proposals have failed there is still favorable sentiment towards a central register. After the disappearance of Madeleine McCann,¹⁹⁴ a 2007 poll found that 97 percent of European Parliament members favored the creation of a Europe-wide sex offender register.¹⁹⁵ Also around this time, former British Home Secretary Jacqui Smith made a proposal to force sex offenders across Europe to inform police when they traveled abroad.¹⁹⁶

However, a recent resolution adopted by the Parliamentary Assembly of the Council of Europe may have cooled the desire for a European-wide sex offender register.¹⁹⁷ The resolution recommended against the introduction of a Europe-wide sex offender register and instead called on member states to take effective national measures to prevent sexual offenses.¹⁹⁸ The European-wide register was not

¹⁹⁰ *Id.* at 17.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*; see also *id.* at 23 n.38. Initiatives to improve information exchange between EU Member States can fail if there is insufficient assurance that data will be protected in order to guarantee privacy rights. The EU has addressed and continues to address the issue of data protection in connection with data exchange initiatives. According to NSPCC this continues to be a difficult area to reach consensus. For example, in October 2005, negotiations on data protection stalled because States could not agree on whether rules should cover both police and judicial cooperation and whether customs authorities should be included. *Id.*

¹⁹⁴ Jacobs & Blitsa, *supra* note 180, at 198. Madeleine McCann went missing from her holiday apartment in Portugal on May 3, 2007. When this poll was taken there was no evidence linking her kidnapping to a recidivist sex offender. *Id.*

¹⁹⁵ *MEPs 'Want EU Sex Offender List'*, BBC NEWS (Aug. 22, 2007, 11:37 PM), http://news.bbc.co.uk/2/hi/uk_news/6958807.stm; Jacobs & Blitsa, *supra* note 180, at 198.

¹⁹⁶ Vincent Moss, *Smith Demands Euro Perv Watch*, SUNDAY MIRROR, Sept. 20, 2007, at 26. In Britain, convicted sex offenders have to tell police a week before they go abroad for three days or more. But apart from Britain and the Republic of Ireland, no other EU nation has rules to allow police to monitor sex offenders entering their country.

¹⁹⁷ Eur. Parl. Ass., *Reinforcing Measures Against Sex Offenders*, Resolution 1733 (2010), available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1733.htm> [hereinafter Resolution 1733]. The resolution was adopted by the Standing Committee, acting on behalf of the Assembly, on May 21, 2010. *Id.*

¹⁹⁸ *Id.*

recommended due to varying laws amongst the member states.¹⁹⁹ The biggest problems include member states having different criminal law systems, legal ages of sexual consent, and levels of personal data protection.²⁰⁰ The Assembly does however recommend member states taking measures to prevent sexual offenses.²⁰¹ In particular the Assembly calls on member states to assess their current safeguards against sexual offenses and make sure they have a comprehensive system to manage sex offenders.²⁰² Most importantly, the Assembly recommends that a member state's national system should include a sex offender register that complies with the European Convention on Human Rights.²⁰³ Cited

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* Specifically, the Assembly calls on member states to: 16.1. evaluate their respective legal frameworks to assess whether they provide appropriate safeguards against sexual offenses and, if necessary, amend their legislation in order to create a comprehensive system to manage sex offenders; 16.2. introduce, as part of their national system, in accordance with the provisions of the European Convention on Human Rights and, in particular, in compliance with the principle of proportionality, a sex offenders register which contains accurate and regularly updated information on persons convicted of such offense in order to produce a central file allowing an exchange of information between entitled authorities, as strictly defined by law; 16.3. form a comprehensive package of legal measures aimed at controlling and monitoring movement of sex offenders, particularly travel abroad; 16.4. introduce a system of vetting and barring for employment purposes to ensure that those who pose a risk cannot work with children or vulnerable persons; 16.5. ensure that any legislation introduced fully respects individual rights, in particular the right to private life, and therefore restricts access to the sex offenders register only to duly entitled officials and excludes access by the general public to the register; 16.6. strictly regulate any disclosure of information to any member of the public where it is considered necessary to protect one child in particular or several children, and ensure adequate technical or other safeguards to protect against unauthorized access or misuse of this information; 16.7. introduce a coordinated and efficient child abduction alert system; 16.8. sign and ratify the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse without delay, and implement it fully; 16.9. establish awareness-raising campaigns concerning detection of sexual abuse and ways to address this problem. *Id.*

²⁰² *Id.*

²⁰³ *Id.* The Assembly emphasizes that measures to prevent sexual offenses must be based on laws that fully respect human rights and fundamental freedoms, in particular Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private life. *Id.*

examples of a compliant register are the British and French systems,²⁰⁴ and a cited example of an incompliant register is the U.S. system.²⁰⁵

While the Assembly did not recommend a Europe-wide register, it still favors an integrated approach at the international level.²⁰⁶ To effectively monitor sex offenders the Assembly recommends increased cooperation between member states.²⁰⁷ The Assembly is most concerned about sex offenders who travel between member states to avoid detection and then end up able to obtain employment working with children or other vulnerable people.²⁰⁸ To help facilitate the exchange of information, the Assembly recommends member states utilize Interpol, which, according to the Assembly, has the capacity to store in its database information on sex offenders.²⁰⁹ However, when sharing information the Assembly warns member states to make sure they are in compliance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).²¹⁰ The relevant provisions secure for every individual respect for his or her rights and fundamental freedoms, and in particular his or her right to privacy with regard to automatic processing of personal data relating to

²⁰⁴ *Id.* The Assembly cites the United Kingdom and France for their model registries, because their sex offender registries have been deemed to be compliant with Convention rights by the European Court of Human Rights. A recent United Kingdom Supreme Court ruling may put the Assembly's recommendation in question. See Dominic Casciani, *Sex Offenders Win Legal Challenge Over Register*, BBC NEWS (April 21, 2010 12:06 AM), http://news.bbc.co.uk/2/hi/uk_news/8634239.stm (explaining that the United Kingdom Supreme Court ruled not giving sex offenders the opportunity to have their name removed from the register at some future date breached their rights under the European Convention on Human Rights).

²⁰⁵ Eur. Parl. Ass., *Reinforcing Measures Against Sex Offenders*, Doc. No. 12243 (2010), available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12243.htm>. The Assembly thought the full disclosure requirements that make the United States' sex offender register public would violate Article 8 of the European Convention on Human Rights. The Assembly also noted that the leading children's charities in the United Kingdom expressed strong reluctance to make the register public because it gives parents a false sense of security and may drive offenders underground. *Id.*

²⁰⁶ Resolution 1733, *supra* note 197.

²⁰⁷ *Id.*

²⁰⁸ *Id.* Specifically, the Assembly urges member states to: 17.1. increase the quality, quantity and regularity of the information they share with other member states on sex offenders in order to effectively oversee the movements of offenders; 17.2. improve the information exchange with other member states on persons convicted of sex offenses so that individuals who are not suitable for work with children or other vulnerable people are not able to gain employment abroad; 17.3. increase the quantity and regularity of the information on sex offenders which they feed into the Interpol database. *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

him or her.²¹¹ The Council of Europe's resolution is laudable for attempting to solve a serious problem of child sexual abuse, for recognizing the problems associated with a Europe-wide sex offender register and for making sure that any reforms comply with human rights requirements. The resolution's success in getting member states to share information is yet to be realized and, in reality, may be difficult to obtain given the obstacles encountered by the Council of the European Union in its information exchange initiative discussed below.

C. FRAMEWORK DECISION ON THE EXCHANGE OF INFORMATION EXTRACTED FROM CRIMINAL RECORDS

The second proposal in the wake of the Fourniret case was an initiative from Belgium that aimed to lead to a "mutual recognition and enforcement of prohibitions arising from convictions for sexual offenses committed against children" across the EU.²¹² The proposal was structured so that if an individual had received a temporary or permanent prohibition from working with children in one EU country due to a sexual offense conviction, then all other member states would be obliged to recognize and enact the ban. The goal was to improve the exchange of criminal records information, which would enable information about a disqualification to be passed to other member states.²¹³

While some member states, like the United Kingdom, welcomed this initiative,²¹⁴ the Belgian proposal encountered major political and practical obstacles. The theme of the main obstacle was national

²¹¹ *Id.*

²¹² *Initiative of the Kingdom of Belgium with a View to the Adoption by the Council of a Framework Decision on the Recognition and Enforcement in the European Union of Prohibitions Arising from Convictions for Sexual Offenses Committed Against Children*, 14207/04 COPEN 133 (Nov. 4, 2004); FITCH ET AL., *supra* note 162, at 26–27.

²¹³ FITCH ET AL., *supra* note 162, at 26–27; *see also* Council Framework Decision 2004/68/JHA, 2003 O.J. (L 13) 44 (EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:013:0044:0048:EN:PDF> [hereinafter 2003 Framework Decision]. The Belgian initiative was made possible by a December 2003 Framework Decision "on combating the sexual exploitation of children and child pornography." The 2003 Framework Decision introduced minimum standards for the criminalization and punishment of sexual offenses against children. Article 5(3) specifically requires Member States to ensure that individuals convicted of certain offenses are prevented from working with children. *Id.*

²¹⁴ FITCH ET AL., *supra* note 162, at 26–27. The UK in a 2007 cross-governmental action plan on sexual violence and abuse stated a commitment to "working with EU counterparts to develop mutual recognition of prohibitions from working with children." *Id.*

sovereignty.²¹⁵ For example, throughout Europe there is a wide range of disqualification methods used, and in some countries there are no automatic disqualifications following serious convictions.²¹⁶ In addition, there are up to twenty-seven legal definitions of the same crime across the EU and states may differ about the level of seriousness and the types of consequences assigned to a crime.²¹⁷ This makes it complicated for national authorities to share conviction information because convictions may not be equivalent. There are also discrepancies across the EU on the age of consent for sexual activity²¹⁸ and which jobs require vetting prior to working with children.²¹⁹ Moreover, it is hard for states to figure out which disqualification rules apply because the nature and extent of employment restrictions vary between countries.²²⁰

Given the many obstacles encountered by the original Belgium framework decision, many compromises were made to lead to the passage of the 2009 framework decision.²²¹ The framework decision established basic rules for the transmission of information to member states of a convicted person's nationality and on disqualifications arising from criminal conviction, including the conviction of a sexual offense. By improving the exchange of information, the framework decision aims to ensure that a person convicted of a sexual offense against a child can no longer conceal that conviction or disqualifications.²²² The framework decision also regulates the storage of information,²²³ but makes clear that it does *not* aim to harmonize national systems of criminal records or

²¹⁵ *Id.* at 28. Typical concerns were addressed in a recent House of Commons report in the United Kingdom which stated: "Justice and Home Affairs. . . issues are very closely tied up with national sovereignty, and each state's ability to determine its own laws and manages its own justice system." *Id.*

²¹⁶ *Id.* at 28–29. Ireland does not apply employment disqualifications on the grounds of legal and constitutional issues related to protecting an individual's right to work. *Id.*

²¹⁷ *Id.* at 29.

²¹⁸ *Id.* at 28–29. In Spain it is legal to engage in sexual activity from the age of thirteen, but in Malta the legal consent age is eighteen. *Id.*

²¹⁹ *Id.* In Sweden healthcare workers do not have to be vetted prior to working with children; in Poland there is some vetting in the education sector there is no vetting for people working in children's homes. *Id.*

²²⁰ *Id.* In Belgium certain sex offenders can be disqualified from working with children under the age of five, but in the United Kingdom they would be banned from working with all children. *Id.*

²²¹ 2009 Framework Decision on Exchange of Information, *supra* note 178; *see also* Council Framework Decision 2009/315/JHA, On the Organization and Content of the Exchange of Information Extracted from the Criminal Record Between Member States, 2009 O.J. (L 93) (EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:093:0023:0032:EN:PDF>.

²²² Council Framework Decision 2009/315/JHA, *supra* note 221.

²²³ *Id.*

require the convicting member state to change its internal system of criminal records.²²⁴

Specifically, the framework decision requires the convicting member state to: (1) ensure that all convictions made within its territory are accompanied by information on the nationality or nationalities of the convicted person; (2) inform the central authorities²²⁵ of the other member states of any convictions handed down within its territory against nationals of other member states; and (3) immediately transmit information on subsequent alteration or deletion of information contained in the criminal record of the convicted person.²²⁶ The central authority of the convicted member state is required to (1) store all information transmitted on the convictions of their nationals, *for the purpose of retransmission*; and (2) alter or delete information received if the information has been altered or deleted by the convicting member state.²²⁷

The scope of the data to be transmitted includes: the full name, date and place of birth, and nationality of the convicted person; the nature of the conviction; the offense giving rise to the conviction; and the contents of the conviction. Optional information may also be included such as the convicted person's parents' names, the place of the offense and any disqualifications arising from the conviction.²²⁸ All of the information stored is *for the purpose of retransmission*. Transmission is currently by mail, and will soon be electronic once the European Criminal Records Information System is functioning.²²⁹

²²⁴ *Id.*

²²⁵ *Id.* The Framework Decision requires each Member State to designate a central authority to receive and disperse information. *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Council Framework Decision 2009/315/JHA, *supra* note 178; Parliamentary Questions, Answer Given by Mr. Barrot on Behalf of the Commission, EUR. PARL. DOC. (E-3682/2009) (July 7, 2009), available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-3682&language=EN>; see also Council Framework Decision 2009/316/JHA, On the Establishment of the European Criminal Records Information System (ECRIS) in Application of Article 11 of Framework Decision 2009/315/JHA, 2009 O.J. (L 93) 35 (EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:093:0033:0048:EN:PDF>. In parallel decision 2009/316/JHA, on April 6, 2009, the EU established a European Records Information System (ECRIS). The system allows for information to be transmitted electronically in a standardized format. Once the format has been defined, Member States will have three years to adapt to the new system. Both Decisions aim at building and developing a computerized conviction-information exchange system, where information on criminal records can be exchanged for criminal proceedings and other purposes. *Id.*

The use of the personal data collected is strictly regulated under the framework decision because the EU feels that any “use that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible.”²³⁰ Under the framework decision, personal data may only be used for the purposes of criminal proceedings for which it was requested.²³¹ Personal data provided for any purposes other than that of criminal proceedings may only be used by the requesting member state in accordance with its national law, only for the purposes for which it was requested and within the limits specified by the requested member state in the form set out in the annex.²³² Thus, if a member state does not allow information other than for criminal proceedings it is not required to share that information.

According to the NSPCC, this framework decision will help better protect children in a number of ways.²³³ The requirement that all conviction information must be transmitted to the member state of the person’s nationality will help guarantee that all relevant information regarding an individual can be accessed and will include any information on any disqualifications, including bans from working with children.²³⁴ A member state’s obligation to store information on their nationals will help avoid situations like what happened in the United Kingdom.²³⁵ In January 2007, British officials noticed that a number of British nationals that had been convicted of crimes abroad, including twenty-nine for child sex offense, had not had their information added to the United Kingdom’s Police National Computer.²³⁶ Finally, the creation of a standardized European format for transferring information will help ensure that information can be understood and used.²³⁷

While the framework decision has been recognized for helping to better protect children, it has received criticism for not going far

²³⁰ 2009 Framework Decision on Exchange of Information, *supra* note 178; *see also* Council Framework Decision 2009/315/JHA, *supra* note 178. The Framework also narrows the use of personal data to comply with existing EU rules on the protection of personal data. *Id.*

²³¹ Council Framework Decision 2009/315/JHA, *supra* note 178.

²³² *Id.* The same is true for third countries.

²³³ NAT’L SOC’Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, COUNCIL FRAMEWORK DECISION ON THE ORGANIZATION AND CONTENT OF THE EXCHANGE OF INFORMATION EXTRACTED FROM CRIMINAL RECORDS BETWEEN MEMBER STATES (2008), *available at* http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Europe/Briefings/CriminalRecordsExchange_wdf59755.pdf.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

enough. The NSCPCC would like to see legislation that ensures all people working with children, whether on a professional or volunteer basis, are screened for sex offenses.²³⁸ The current framework decision allows the use of criminal records information for pre-employment checking, but it does not mandate it. Instead, it leaves the decision to provide that information up to the national law of the member state. While the NSPCC agrees that full data protection is necessary, it believes it is essential that the information is available for pre-employment checks.²³⁹ Another area that needs clarification is the disqualifications. The framework decision calls for member states to share any disqualifications arising from a person's conviction, but some disqualifications are not entered into criminal records.²⁴⁰ For example, some convictions are not added to a person's criminal record if an administrative and not a judicial authority handed them out. The NSPCC would like to see all disqualifications on a person's criminal record.²⁴¹

D. OTHER EFFORTS TO PROTECT CHILDREN FROM SEXUAL EXPLOITATION IN THE EU

Apart from sex offender registries and the sharing of criminal data, the European Parliament is working on an updated framework decision on combating the sexual exploitation of children and child pornography.²⁴² The updated framework decision originated from a 2003 framework decision adopted by the EU "on combating the sexual exploitation of children and child pornography."²⁴³ The 2003 framework decision introduced minimum standards for the criminalization and punishment of sexual offenses against children.²⁴⁴ It also required member states to ensure that individuals convicted of certain offenses are prevented from working with children.²⁴⁵

²³⁸ *Id.* The current EU provisions refer only to persons working on a professional basis with children. The NSPCC would like to people working on a volunteer basis to also be checked. *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Proposal to Repeal 2003 Framework Decision, *supra* note 179; EUR. PARL. DOC. INI/2008/2144 (2009), available at www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=INI/2008/2144.

²⁴³ 2003 Framework Decision, *supra* note 213.

²⁴⁴ FITCH ET AL., *supra* note 162, at 25.

²⁴⁵ 2003 Framework Decision, *supra* note 213. The offenses are sexual exploitation of children, offenses concerning child pornography and instigation, aiding, abetting and attempted sexual exploitation of children or child pornography. *Id.*

Due to the shortcomings of the 2003 framework decision,²⁴⁶ on March 25, 2009, the European Commission put forward a proposal to repeal the 2003 decision.²⁴⁷ The new proposal would step up prosecution of criminals, better protect child victims, and help prevent future offenses.²⁴⁸ It steps up the prosecution of sex offenders by adding forms of child sexual abuse and exploitation not currently covered, criminalizing sexual abuse and exploitation facilitated by the Internet, and introducing new provisions to assist law enforcement in investigating offenses. It also amends EU jurisdiction rules to ensure that child sex abusers or exploiters from the EU face prosecution even if they commit their crimes in a non-EU country.²⁴⁹ It protects victims by ensuring that abused children have easy access to legal remedies and do not suffer for participating in criminal proceedings.²⁵⁰ Finally, to prevent future offenses, offenders would be able to access special rehabilitation programs and be prohibited from working with children.²⁵¹

The new framework decision builds upon the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation,²⁵² which the EU has urged its member states to adopt.²⁵³ The convention was the first international treaty to criminalize sexual abuse. It ensures that certain types of conduct against children are classified as criminal offenses,²⁵⁴ criminalizes new technologies that are used to sexually harm or abuse children,²⁵⁵ and establishes that individuals can be

²⁴⁶ FITCH ET AL., *supra* note 162, at 26. According to NSPCC the 2003 decision was a long way from creating a set of minimum standards or requirements to help guarantee a common basis across the EU. Also it wasn't clear how many Member States actually implemented the decision. *Id.*

²⁴⁷ Proposal to Repeal 2003 Framework Decision, *supra* note 179.

²⁴⁸ *Id.*

²⁴⁹ *Id.* This would be similar to the U.S. PROTECT Act where criminal liability exists if the accused traveled with the intent to engage in sexual conduct with a minor. *See also* Kalen Fredette, *International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation*, 32 B.C. INT'L & COMP. L. REV. 1, 27 (2009).

²⁵⁰ Proposal to Repeal 2003 Framework Decision, *supra* note 179.

²⁵¹ *Id.*

²⁵² Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, Oct. 25, 2007, C.E.T.S. 201.

²⁵³ EUR. PARL. DOC. INI/2008/2144 (2009). To date, 20 EU countries have signed the treaty.

²⁵⁴ Press Release, Council of Europe, 23 Council of Europe Member States Sign Convention on the Protection of Children Against Sexual Exploitation and Abuse (Oct. 25, 2007). The offenses include engaging in sexual activities with a child below the legal age (18) and child prostitution and pornography. *Id.*

²⁵⁵ *Id.* The new technologies criminalized include the Internet. *Id.*

prosecuted for some offenses even when they are committed abroad.²⁵⁶ The preventive measures outlined include screening people who work with children and monitoring offenders and potential offenders.²⁵⁷ However, the provisions that discuss monitoring offenders explicitly state that the Convention does not “impose the establishment of a database.”²⁵⁸ Instead, the Convention requests that the data collected by States be able to be exchanged with other States.²⁵⁹

CONCLUSION

International Megan’s Law aims to create an international sex offender registry modeled after flawed U.S. sex offender laws. The legislation is a unilateral attempt to solve a very serious international problem. The U.S. system is defective because the registration laws are too broad and too long, the community notification laws are invasive and ineffective, and the residency restrictions exile registrants from entire areas, isolating them from support networks necessary for rehabilitation.²⁶⁰

There are also problems with International Megan’s Law on an international scale. As witnessed in discussions over a Europe-wide sex offender register, countries have differing cultural norms, privacy laws, and definitions of and punishment for sex offenders.²⁶¹ These differences make it seem unlikely that the international community would accept International Megan’s Law, especially when only seven other countries outside the United States have sex offender registries, and three of these countries have expressly rejected community notification.²⁶²

The EU offers a more comprehensive, well thought-out solution to stop child sex abuse. The 2009 framework decision introduced a mechanism that allows EU member states to exchange information on convictions and disqualifications of sexual offenders, and the Proposal to Repeal 2003 Framework Decision is working to update the uniform list

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ COUNCIL OF EUROPE, CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE EXPLANATORY REPORT (2007), available at <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm>.

²⁵⁹ Data includes the identity and DNA of the offender. *Id.*

²⁶⁰ HUMAN RIGHTS WATCH, *supra* note 12, at 2–3, 7; FITCH, *supra* note 88, at 50–51.

²⁶¹ See Jacobs & Blitsa, *supra* note 180, at 196; see also *EU Rules Out Central Criminal Register*, *supra* note 180; FITCH ET AL., *supra* note 189, at 17, 28–29.

²⁶² HUMAN RIGHTS WATCH, *supra* note 12, at 10.

of crimes and punishments for sexual offenses against children.²⁶³ While both of these framework decisions protect children, they also make certain to protect privacy rights and offer offender rehabilitation.²⁶⁴ The 2009 framework decision makes it explicitly clear that the data exchange is not a searchable database and that both decisions devote significant consideration to the importance of offender rehabilitation.²⁶⁵

As the international community continues to look for a solution to stop child sex abuse it should do so in a more responsible manner than International Megan's Law. The privacy and safety concerns generated by U.S. sex offender laws and the proven ineffectiveness of community notification make it unlikely that a proposal based on U.S. sex offender laws would be successful. A better option would be to develop a system resembling the EU framework decisions, which favor data exchange over a searchable database and incorporate privacy, rehabilitation, and social reintegration.

²⁶³ 2009 Framework Decision on Exchange of Information, *supra* note 178; Proposal to Repeal 2003 Framework Decision, *supra* note 179.

²⁶⁴ 2009 Framework Decision on Exchange of Information, *supra* note 178; Proposal to Repeal 2003 Framework Decision, *supra* note 179.

²⁶⁵ 2009 Framework Decision on Exchange of Information, *supra* note 178. The 2009 Framework Decision explicitly states that any "use [of the data] that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible." *Id.*