No. 01-729

In the Supreme Court of the United States

GLENN G. GODFREY AND BRUCE M. BOTELHO,
PETITIONERS

v.

JOHN DOE I, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether Alaska's sex offender registration and community notification law imposes punishment in violation of the Constitution's prohibition on Ex Post Facto legislation.

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INTEREST OF THE UNITED STATES

This case concerns the constitutionality, under the Ex Post Facto Clause, U.S. Const. Art. I § 10, of Alaska's sex offender registration and community notification law.[1] Alaska's law comports with the minimum national standards for state sex offender registration and notification laws established by the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (Wetterling Act), 42 U.S.C. 14071 (1994 & Supp. V 1999). The Wetterling Act conditions certain federal law enforcement funding on the States' adoption of registration systems for sex offenders who have been released into the community. 42 U.S.C. 14071(a)(1) and (b) (1994 & Supp. V 1999). The Wetterling Act further directs States to release from their registration records "relevant information that is necessary to protect the public concerning a specific person required to register under [the Act]." 42 U.S.C. 14071(e)(2) (Supp. V

[1] The Court has granted certiorari in *Connecticut Department of Public Safety* v. *Doe*, No. 01-1231, to address a challenge under the Due Process Clause to Connecticut's sex offender registration and notification law.

1999). A recent amendment to the Wetterling Act requires States to provide community notification of all registered sex offenders enrolled in or employed at an institution of higher education, without regard to individualized risk assessments. See Campus Sex Crimes Prevention Act, Pub. L. No. 106-386, § 1601(b) and (c), 114 Stat. 1537, 1538. Because the question presented implicates the constitutionality and effective operation of federal law, the United States has a strong interest in the resolution of this case.

STATEMENT

1. *Legal Framework*

a. Sex offenders exact a uniquely severe and unremitting toll on the Nation and its citizens for three basic reasons: "[t]hey are the least likely to be cured"; "[t]hey are the most likely to reoffend"; and "[t]hey prey on the most innocent members of our society." United States Dep't of Justice, Bureau of Justice Statistics (BJS), *National Conf. on Sex Offender Registries (National Conf.)* 93 (Apr. 1998). In 1995, more than 355,000 attempted or completed rapes and sexual assaults were reported nationwide. BJS, *Sex Offenses and Offenders (Sex Offenses)* v (Feb. 1997). More than two-thirds of the victims of rape and sexual assault are *under* the age of 18. BJS, *Sexual Assault of Young Children as Reported to Law Enforcement (Young Children)* 2 (July 2000); see also *Sex Offenses* 24 (80% of sexual assault perpetrators had victims under 18). And "nearly 4 in 10" victims of imprisoned violent sex offenders are age 12 or younger. *Sex Offenses* iii; see also *Young Children* 2. Children under 18 were the victims of 46% of all forcible rapes; children under 12 represented nearly half of the victims of all other sexual offenses. *Ibid.* One in ten boys and one in four girls will suffer sexual abuse during childhood. D. Pryor, *Unspeakable Acts: Why Men Sexually Abuse Children* 2 (N.Y.

Univ. Press 1996). Most disturbing is that 14% of all sexual assault victims are under the age of 6. *Young Children* 2.

Between 1980 and 1994, the average number of individuals imprisoned for sex offenses increased at a faster rate than any other category of violent crime. *Sex Offenses* 18. By 1994, nearly 100,000 inmates were serving time in state prisons for rape or sexual assault. *Id.* at 15. Another 134,000 convicted sex offenders had been released into the community under some form of supervision, such as probation or parole. *Ibid.* When released into the community, convicted sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon. See *id.* at 27; BJS, *Recidivism of Prisoners Released in 1994 (Recidivism)* 10, Table 11 (June 2002).[2]

Those who commit sex offenses against children present an even higher risk of recidivism, see BJS, *Child Victimizers: Violent Offenders and Their Victims (Child Victimizers)* 9-10 (Mar. 1996); 139 Cong. Rec. 31,250-31,251 (1993) (Rep. Sensenbrenner), and are significantly more likely to attack multiple victims before they are caught, *Child Victimizers* 9. Rapists repeat their offenses at rates up to 35%; offenders who molest young girls, at rates up to 29%; offenders who molest young boys, at rates up to 40%; and those rates do not decline appreciably over time.[3]

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[2] See also California Dep't of Justice, *Effectiveness of Statutory Requirements for the Registration of Sex Offenders* 7 (1988) (20% of sex offenders were rearrested for a subsequent sexual offense); Texas Crim. Justice Policy Council, *Convicted Sex Offenders in Texas: An Overview of Sentencing Dynamics and the Impact of Altering Sentencing Policy* 10 (Feb. 1995) (sex offenders were seven to nine times more likely than other convicted felons to have a prior felony sex conviction); D. Schram & C. Milloy, *Community Notification: A Study of Offender Characteristics and Recidivism (Community Notification)* 3 (Oct. 1995) (43% recidivism rate).

[3] L. Song & R. Lieb, *Adult Sex Offender Recidivism: A Review of Studies* 5-7 (Wash. State Inst. for Public Policy, Jan. 1994) (studies show comparable reoffense rates over 5, 10 and 22 year follow-up periods); J.

Because most studies of sex offenses rely on law enforcement reports, they significantly understate the problem—nearly 70% of sex crimes and 90% of child molestation offenses go unreported. BJS, *Criminal Victimization in the U.S., 1999 Statistical Tables*, Table 93 (Jan. 2001); H.R. Rep. No. 392, 103d Cong., 1st Sess. 4 (1993). Offenders themselves report committing twice or more the number of sex offenses listed in their official records.[4] Child molesters who prey on non-family members have an average of as many as 19.8 victims for those molesting a girl and 150 victims for those molesting a boy.[5]

b. In response to that public safety crisis, the Federal Government, all fifty States and the District of Columbia have adopted sex offender registration and notification laws

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Becker, "Offender: Characteristics and Treatment," 4 *The Future of Children* 184 (1994); R. Karl Hanson, et al., *Long-Term Recidivism of Child Molesters*, 61 J. of Consulting and Clinical Psychology 646, 648 (1993) (23% of the recidivists were reconvicted more than 10 years after they were released); *id.* at 650 ("child molesters appear to be at significant risk for reoffending throughout their life"); *Child Victimizers* 6 (state inmates imprisoned for violent crimes against children were an average 5 years older than those with adult victims; 11% of all child victimizers were age 50 or above when arrested); *Sex Offenses* 21 (7% of rapists and 12% of sexual assault perpetrators are 50 or older); R. Prentky, et al., *Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis*, 21 Law & Hum. Behav. 635, 642-643 (1997) (over 25 years, recidivism rate was 52% for child molesters and 39% for rapists); *Rowe* v. *Burton*, 884 F. Supp. 1372, 1375 (D. Alaska 1994).

[4] See T. Reed, *Reading Gaol Revisited: Admission of Uncharged Misconduct Evidence in Sex Offender Cases*, 21 Am. J. Crim. L. 127, 150-151 (1993); Note, *Are the Children of Illinois Protected from Sex Offenders?*, 28 J. Marshall L. Rev. 883, 908-909 (1995) (showing even higher ratios of actual sex crimes committed to those appearing on the offenders' official records).

[5] M. Chaffin, *Research in Action: Assessment and Treatment of Child Sexual Abusers*, 9 Journal of Interpersonal Violence 224, 225 (June 1994); see also 139 Cong. Rec. 10,998 (1993) (Rep. Ramstad) ("The typical child sex offender molests 117 children.").

to help members of the public protect themselves and their children from falling prey to sex offenders and to facilitate law enforcement investigations. See App. A, *infra*. In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act), 42 U.S.C. 14071 (1994 & Supp. V 1999). Evidence before Congress showed that "child sex offenders are generally serial offenders," "the[ir] 'behavior is highly repetitive, to the point of compulsion,'" and "74% of imprisoned child sex offenders had one or more prior convictions for a sexual offense against a child." H.R. Rep. No. 392, *supra*, at 4.[6] Congress determined that community notification was essential to allow members of the public to protect themselves from future crimes by convicted sex offenders.[7]

The Wetterling Act, as amended, sets minimum national standards for state sex offender registration and community notification programs.[8] The Act requires States to register

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[6] See also 142 Cong. Rec. 10,312 (1996) (Rep. Schumer) ("[W]hen these folks come out of prison, the odds are extremely high that they will commit the same or a similar crime again."); 139 Cong. Rec. 30,580 (1993) (Sen. Biden) ("these offenders are a group especially prone to recidivism"); 140 Cong. Rec. 22,520 (1994) (Rep. Dunn) ("The rate of recidivism for these crimes is astronomical because these people are compulsive.").

[7] See, *e.g.*, 142 Cong. Rec. 10,311 (1996) (Rep. Zimmer) ("If Megan Kanka's parents had been aware of the history of the man who lived across the street from them, * * * little Megan would be alive today."); *id.* at 10,314 (Rep. Jackson-Lee) ("This requires strong prevention and education which will keep our children from becoming victims of violent crime."); *id.* at 10,315 (Rep. Dunn) ("Empowering families, women, and children with the knowledge that a potential threat is looming in their community enables them to take the necessary precautions to ensure that there are not second, third, or fourth victims.").

[8] The Wetterling Act was amended twice in 1996 by Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345, which added a mandatory community notification provision, and the Pam Lychner Sexual Offender Tracking and Identification Act, Pub. L. No. 104-236, 110 Stat. 3093, which required lifetime registration for certain offenders and directed the FBI to create a

all persons convicted of a criminal sex or (non-parental) kidnapping offense against a minor, and all persons convicted of a sexually violent offense upon their release, parole, or probation into the community. 42 U.S.C. 14071(a)(1) and (3), (b) (1994 & Supp. V 1999). Offenders must be required to provide current addresses, fingerprints, and a photograph. Most offenders must verify their addresses annually; a "sexually violent predator"—a person convicted of a sexually violent offense who suffers from a mental abnormality or disorder that makes the person likely to engage in predatory sexually violent offenses, 42 U.S.C. 14071(a)(3)(C)—must verify his address quarterly. 42 U.S.C. 14071(b)(3) (1994 & Supp. V 1999). Offenders generally must remain registered for a minimum of ten years; any offender who has been convicted of one aggravated sexual offense, more than one covered sexual offense, or is a sexually violent predator must register for life. 42 U.S.C. 14071(b)(6) (1994 & Supp. V 1999). States must include offenders who were convicted in another State but who have relocated to, work, or attend school in the registering State. 42 U.S.C. 14071(b)(7) and (c) (1994 & Supp. V 1999). Finally, States must "release relevant information that is necessary to protect the public concerning a specific person required to register." 42 U.S.C. 14071(e)(2) (Supp. V 1999). Categorical disclosure of all sex offenders enrolled in or employed at institutions of higher education is required. Campus Sex Crimes Prevention Act, Pub. L. No. 106-386, § 1601(b) and (c), 114 Stat. 1537, 1538 (to be codified at 20 U.S.C. 1092(f)(1), and 42 U.S.C. 14071(j)).[9]

Pursuant to Congress's direction, 42 U.S.C. 14071(a) (1994 & Supp. V 1999), the Attorney General has issued regulations implementing the Wetterling Act. See 64 Fed. Reg.

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national sex offender database, see generally 42 U.S.C. 14072 (Supp. V 1999).

[9] These provisions will take effect on October 28, 2002. See Pub. L. No. 106-386, § 1601(c)(2), 114 Stat. 1537; 20 U.S.C. 1092 note.

572 (1999). Those guidelines generally leave substantial discretion to the States in formulating and implementing their registration and notification programs. States are free "to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories." *Id.* at 582. States may "make information accessible to members of the public on request" and may "make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders." *Ibid.* But "[i]nformation must be released to members of the public as necessary to protect the public from registered offenders." *Id.* at 581. "[T]he Act does not preclude states from applying such standards retroactively to offenders," and, in fact, requires that States register all individuals whose convictions post-date the State's establishment of a conforming registration system, even if they committed the underlying offense prior to that time. *Id.* at 575, 581. A State's failure to comply with the Wetterling Act renders it ineligible to receive certain law enforcement grant funds. 42 U.S.C. 14071(g)(2)(A) (Supp. V 1999).

c. Alaska passed its sex offender registration and notification law when Alaska was "the rape capital of the nation," had the highest rate of child sexual abuse in the nation, at six times the national average, and had the second highest rate of sexual assault in the nation, the latter having nearly doubled in two years. Minutes, *Hearing on HB 69 Before the House Judiciary Comm. (House Jud. Hearing)*, 18th Alaska Legis., 1st Sess. 4 (Feb. 10, 1993); Minutes, *Hearing on HB 69 Before the House State Affairs Standing Comm. (House State Hearing)*, 18th Alaska Legis., 1st Sess. 9 (Feb. 2, 1993); Minutes, *Hearing on HB 69 Before the Senate Judiciary Comm. (Sen. Jud. Hearing)*, 18th Alaska

Legis., 1st Sess. 9 (Apr. 14, 1993). Evidence before the legislature reported a recidivism rate of "twenty to forty percent with treatment." *House State Hearing* 9-10; see also *House Jud. Hearing* 13 ("for every known perpetration, another 150 were not reported"). Strict and comprehensive registration and notification requirements were deemed especially necessary for Alaska because "[m]any people came to Alaska to get away from their pasts." *House Jud. Hearing* 9.

Based on that evidence, Alaska's legislature found that "sex offenders pose a high risk of reoffending after release from custody," and that "protecting the public from sex offenders is a primary governmental interest." 1994 Alaska Sess. Law ch. 41, § 1. The legislature found, in particular, that "release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety." *Ibid.* To that end, Alaskan law requires any "sex offender or child kidnapper who is physically present in the state" to register. *Alaska Stat.* § 12.63.010(a) (Michie 2000).[10] A covered offender must register his name, aliases, identifying features, address, place of employment, date of birth, conviction information, driver's license number, motor vehicle information, and post-conviction treatment history, and must provide a photograph and fingerprints. *Id.* §§ 12.63.010(b)(1)(A)-(H) and (b)(2). The offender must register for 15 years if he was convicted of a single, non-aggravated sex offense and must provide "written verification" of the information annually. *Id.* §§ 12.63.010(d)(1), 12.63.020(a)(2). If he was convicted of an

[10] Alaska's kidnapping law has an affirmative defense for relatives who take a child with the intent to obtain custody. Alaska Stat. § 11.41.300 (Michie 2000); see also *id.* §§ 11.41.320, 11.41.340 (parental kidnapping punished as custodial interference). Alaska's registration law thus applies to familial kidnappers only if they intend to inflict physical injury or sexual assault, or to collect ransom.

aggravated sex offense or of two or more sex offenses, the offender must register for life and provide "written verification" quarterly. *Id.* §§ 12.63.010(d)(2), 12.63.020(a)(1).

The registry information is "confidential and not subject to public disclosure," with the exception of

> the sex offender's or child kidnapper's name, aliases, address, photograph, physical description, * * * place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a statement as to whether the offender or kidnapper is in compliance with requirements of AS 12.63 or cannot be located.

Alaska Stat. § 18.65.087(b) (Michie 2000). Alaska publishes its registry on the Internet. Pet. App. 7a; see www.dps.state.ak.us/nSorcr/asp. The law applies retroactively to sex offense convictions entered before passage of the law. 1994 Alaska Sess. Laws ch. 41, § 12(a).

2. *Factual and Procedural Background*

a. Respondents are John Doe I and John Doe II, two convicted sex offenders, and the wife of John Doe I. John Doe I and II were each convicted of the aggravated sex offense of first degree sexual abuse of a minor daughter. Pet. App. 69a; Alaska C.A. Br. 4. Although they were convicted before passage of Alaska's registration and notification law, they were required to comply with it. Respondents filed suit challenging the constitutionality of Alaska's law as a violation of, *inter alia*, the Ex Post Facto Clause. The district court granted summary judgment for petitioners (Pet. App. 69a-117a), finding that the law was enacted for a regulatory, rather than punitive, purpose (*id.* at 85a, 94a), and that there was no clear proof that the law, which simply "make[s] more readily available that which is already public information" (*id.* at 97a), is punitive in effect (*id.* at 85a-91a, 94a-99a).

b. The court of appeals reversed. Pet. App. 1a-32a. The court recognized that Alaska's law was passed for the non-punitive, regulatory purpose of "protecting the public through the collection and release of information." *Id.* at 11a. But it nevertheless found the "clearest proof" (*id.* at 13a (quoting *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997)) that the statute had a punitive effect and thus violated the Ex Post Facto Clause, *id.* at 12a-31a. After reviewing a variety of factors, the court found the law to be punitive principally because the registration provisions were found to be "extremely burdensome," and because public notification on the Internet "exposes all registrants to world-wide obloquy and ostracism." *Id.* at 28a-29a. The court further found that Alaska's law was "excessive in relation to its non-punitive [public safety] purpose" because the law does not permit case-by-case exceptions for offenders who are assertedly rehabilitated, and thus the provisions requiring "disclosure of a past offense are not related to the risk posed." *Id.* at 29a. Concluding that "the Act is far more sweeping than necessary to serve the purpose of promoting public safety," *id.* at 30a, the court held that "the Ex Post Facto Clause limits its application to those sex offenders whose crimes were committed after its enactment," *id.* at 30a-31a.

SUMMARY OF ARGUMENT

Sex offenders pose unique threats to public safety and unique challenges to law enforcement because of (i) their high recidivism rates, (ii) the profound and enduring injuries their crimes can inflict, particularly on children, and (iii) the societal fears and stigma that hinder reporting of such crimes, which in turn results in the multiplication of offenses. In the shared judgment of Congress and all 50 States, registration and community notification programs represent one reasonable means of protecting members of the public from falling victim to future sex crimes. Despite that collective legislative judgment, the court of appeals ruled

that Alaska's law amounted to criminal punishment of sex offenders, in violation of the Ex Post Facto Clause. That decision has no grounding in precedent or logic, and should be reversed.

Alaska passed its law for the purpose of promoting public safety. The statutory text says so, and the legislative history confirms it. Protecting the public from future crimes is a legitimate and compelling interest that may support regulatory, non-punitive measures. Because Alaska's law was animated by that valid civil, regulatory purpose, only the clearest proof of an unmistakably punitive effect will render the law a form of punishment, subject to the Ex Post Facto Clause. There is no such proof, because the law's operation accurately reflects its civil regulatory character.

Alaska's registration and notification provisions are a reasonable means of promoting public safety because they reduce the vulnerability of potential victims and deny prospective offenders the anonymity and secrecy on which they so heavily depend. The law provides citizens with information concerning the existence and offense patterns of offenders living, working, or studying near them. With such information in hand, individuals can protect themselves and their children by increasing their alertness and modifying their conduct in a manner that minimizes their risk of falling victim to a crime. The law accomplishes that goal in a manner that is minimally intrusive. Registration requirements are a common mechanism of civil regulation, and bear no resemblance to recognized forms of punishment. Alaska's law simply makes accessible to those citizens who choose to inquire information already in the public domain. Sex offenders have no ex post facto right to keep their criminal backgrounds a secret.

That Alaska made the legislative judgment to make information available about all registered offenders does not change the law's civil character. As an initial matter,

respondents would no doubt argue that, if the government did endeavor to label individual offenders with threat levels, that would also be punitive. In any event, given the recidivist tendencies of sex offenders as a class, singling out those individual offenders who might pose a diminished risk of reoffending is an inordinately difficult and error-prone task, in an area where the costs of a mistaken judgment can be devastating. Alaska thus reasonably chose to allow members of the public to make those risk determinations themselves. Alaska likewise acted reasonably in posting its registry on the Internet, where the information is available to those persons—and only those persons—who actively seek it out. While some States have chosen different forms of registration or different types of notification mechanisms, that simply reflects the fact that difficult problems require varied solutions.

ARGUMENT

ALASKA'S SEX OFFENDER REGISTRATION AND NOTIFICATION LAW REASONABLY ADVANCES ITS INTENDED CIVIL, REGULATORY PURPOSES OF PROTECTING PUBLIC SAFETY AND ASSISTING LAW ENFORCEMENT, CONSISTENT WITH THE EX POST FACTO CLAUSE

The Constitution prohibits both the State and Federal Governments from passing any "ex post facto Law." U.S. Const. Art. I, §§ 9-10. The Ex Post Facto Clause, however, does not forbid the adoption of civil, regulatory measures with retroactive operation; the prohibition applies only to the passage of "certain types of *criminal* laws." *Carmell* v. *Texas*, 529 U.S. 513, 522 (2000) (emphasis added); see also *Collins* v. *Youngblood*, 497 U.S. 37, 51 (1990). As relevant here, the Ex Post Facto Clause proscribes any law that "*changes the punishment* [for a criminal act], and inflicts a *greater punishment*, than the law annexed to the crime,

when committed." *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386, 390 (1798) (Chase, J.); see also *Hopt* v. *Utah*, 110 U.S. 574, 589 (1884).

Because there is no dispute that Alaska's law applies to respondents based on criminal offenses that they committed before the enactment of Alaska's law, the central question in this case is whether Alaska's registration and notification program amounts to criminal punishment, rather than a civil, regulatory measure. *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997). If the legislature intended to create a civil, regulatory scheme, the Court will "reject the legislature's manifest intent" only upon "'the clearest proof' that 'the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention'" to establish a non-punitive regulation. *Id.* at 361 (quoting *United States* v. *Ward*, 448 U.S. 242, 248-249 (1980)). The evidence of punitive purpose or effect must be "unmistakable," *Flemming* v. *Nestor*, 363 U.S. 603, 619 (1960), and "conclusive," *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 169 (1963). Because Alaska intended its registration and notification law to advance the civil, regulatory purpose of promoting public safety, because it reasonably advances that goal, and because no other factors justify characterizing it as a "penal statute," *Hendricks*, 521 U.S. at 370, the Ex Post Facto Clause is not applicable here.

A. Alaska Intended Its Registration And Notification Law To Promote Public Safety

Alaska's registration and notification law collects information available from public records or within the public domain and makes it more readily accessible.[11] The court of

[11] A person's physical appearance, name, aliases, date of birth, criminal conviction information, and place of employment generally are all matters of public record or otherwise accessible to the public, as the district court found here. Pet. App. 97a; *Rowe* v. *Burton*, 884 F. Supp. 1372, 1384 (D. Alaska 1994). See also *Patterson* v. *State*, 985 P.2d 1007, 1016 (Alaska Ct. App. 1999) (the information released under the Alaska law "is in large part

appeals agreed that, in light of the documented risk of recidivism, the collection and public accessibility of non-private information about sex offenders advances the "non-punitive purpose" of protecting the public from *future* crimes and facilitating law enforcement investigations of *future* crimes. Pet. App. 11a; see also *Patterson* v. *State*, 985 P.2d 1007, 1011-1012 (Alaska Ct. App. 1999). The Alaska legislature expressly identified "protecting the public from sex offenders" as its "primary governmental interest," 1994 Alaska Sess. Law ch. 41, § 1, and separately determined that the "release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety," *ibid.* In a variety of settings—including laws providing for the civil commitment of dangerous sex offenders—the Court has recognized that "[t]he legitimate and compelling state interest in protecting the community from crime," *Schall* v. *Martin*, 467 U.S. 253, 264 (1984), can support regulatory, non-punitive measures.[12]

There is no basis for concluding that the statute has a punitive purpose because the registration provisions are housed in a title of the Alaska Code that pertains to "Criminal Procedure." See Pet. App. 43a. Codes of criminal procedure frequently include civil provisions. See Pet. App. 81a

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already in the public domain"); see generally *United States Dep't of Defense* v. *FLRA*, 510 U.S. 487, 500 (1994) ("[H]ome addresses often are publicly available through sources such as telephone directories and voter registration lists.").

[12] See *Seling* v. *Young*, 531 U.S. 250, 262 (2001) ("[T]he State ha[s] an interest in protecting the public from dangerous [sex offenders]."); *Hendricks*, 521 U.S. at 363 ("The State may take measures to restrict the freedom of the dangerously mentally ill. This is a legitimate nonpunitive governmental objective and has been historically so regarded."); *United States* v. *Salerno*, 481 U.S. 739, 747 (1987) ("There is no doubt that preventing danger to the community is a legitimate regulatory goal."); *Fleming*, 363 U.S. at 616 ("the State's power to protect the health and safety of its citizens" is a "regulatory power, and not a purpose to add to the punishment of ex-felons").

(laws relating to medical examiners and post-conviction relief appear in the criminal procedure title); 18 U.S.C. 981 (federal "civil forfeiture" law codified in "crimes and criminal procedure" title). In any event, Alaska's notification provisions are codified in the Health, Safety, and Housing Code. Nor does Alaska's requirement that notice of the registration duty be included in a sentencing judgment and plea agreement suggest a punitive intent. See Pet. App. 84a. Alerting offenders to the civil consequences of their criminal conduct—whether those are registration obligations or immigration repercussions—may be "the appropriate and fair thing to do," but it does not demonstrate "that the legislature intended the registration provisions to be punitive." *Ibid.*[13]

Alaska's determination that its registration and notification law will promote public safety accords with Congress's judgment in enacting the Wetterling Act, see pp. 4-5, *supra*, and the judgments underlying analogous laws enacted by every State in the Nation, see App. A, *infra*. That "uniform legislative judgment" strongly confirms that Alaska's law "serves a legitimate regulatory purpose." *Schall*, 467 U.S. at 268.

B. The Effects Of Alaska's Law Evidence Its Regulatory Purpose

This Court has never invalidated a state or federal law under the Ex Post Facto Clause on the ground that, despite its declared regulatory purpose, its actual effects reveal a punitive character—and there is no basis for doing so here. The Court traditionally has considered seven factors to determine whether a governmentally imposed restriction is so punitive in effect "as to transform what was clearly

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[13] Cf. *Lambert* v. *California*, 355 U.S. 225, 229 (1957) (due process requires actual notice of felons' duty to register, under city ordinance, within five days of arriving in the city).

intended as a civil remedy into a criminal penalty." *Hudson* v. *United States*, 522 U.S. 93, 99 (1997) (internal quotation marks and brackets omitted). Those factors are:

> (1) [w]hether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of *scienter*; (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned.

Kennedy, 372 U.S. at 168-169 (Fifth and Sixth Amendments); see also *Hudson*, 522 U.S. at 99-100 (Double Jeopardy Clause); *Hendricks*, 521 U.S. at 361-369 (Double Jeopardy and Ex Post Facto Clauses); *Ward*, 448 U.S. at 249 (Self-Incrimination Clause). However, the Court has made clear that those factors are "neither exhaustive nor dispositive" of the constitutional inquiry, *Ward*, 448 U.S. at 249, but are "useful guideposts," *Hudson*, 522 U.S. at 99, for the ultimate determination of whether a governmental scheme, viewed as a whole, unmistakably imposes punishment.

In the present context, the sixth and seventh *Kennedy* factors are the most relevant: whether Alaska's law rationally advances a non-punitive purpose, and whether the law's requirements are excessive in pursuit of that goal. That is because the Ex Post Facto Clause is designed to prevent the passage of laws animated by "ambition, or personal resentment, and vindictive malice" that target particular individuals for punishment. *Calder*, 3 U.S. (3 Dall.) at 389; see also *Miller* v. *Florida*, 482 U.S. 423, 429 (1987) (Ex Post Facto Clause is "aimed at preventing legislative abuses" like "arbitrary or vindictive legislation"). Where legislation broadly advances a legitimate, identifiable regulatory purpose and

its terms are reasonably tailored to achieve that purpose, such legislative abuses are exceedingly unlikely.

In several prior cases, this Court has relied heavily on those two factors in rejecting ex post facto challenges to regulatory measures, despite claims that the laws worked hardships on individuals. See, *e.g.*, *Flemming*, 363 U.S. at 621 (termination of social security benefits for deported aliens does not impermissibly impose punishment where there were plausible, alternative non-punitive purposes for the governmental action); *DeVeau* v. *Braisted*, 363 U.S. 144, 160 (1960) (plurality opinion) (exclusion of felons from union fund-raising activities does not impose punishment because the "unpleasant consequences * * * come[] about as a relevant incident to a regulation of a present situation"); cf. *Rex Trailer Co.* v. *United States*, 350 U.S. 148, 154 (1956) (applying similar test in Double Jeopardy Clause context to uphold liquidated damages remedy for fraud).[14] The Court has used that same test to distinguish punitive and regulatory purposes in the analogous context of pre-trial restrictions on the liberty of individuals deemed to pose a risk to public safety.

> [T]he punitive/regulatory distinction turns on whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].

United States v. *Salerno*, 481 U.S. 739, 747 (1987) (internal quotation marks omitted). Accord *Schall*, 467 U.S. at 269; *Bell* v. *Wolfish*, 441 U.S. 520, 538 (1979); see *United States* v. *Ursery*, 518 U.S. 267, 290 (1996) (applying *Ward* test to double jeopardy challenge to civil forfeiture law, and finding

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[14] In contrast, the absence of a relation to a regulatory purpose has marked legislation as punitive. See *Cummings* v. *Missouri*, 71 U.S. (4 Wall.) 277, 319-320 (1866) (oath law violates the Ex Post Facto Clause because it has "no possible relation" to a valid regulatory goal).

it "[m]ost significant" that civil forfeiture "serve[s] important nonpunitive goals").

As explained below, consideration of the Court's two central criteria demonstrate that Alaska's law does not punish past conduct; it simply provides citizens with the information necessary to engage in self-protection from the future crimes of persons adjudicated to be sex offenders. Consideration of the remaining five *Kennedy* factors underscores the law's non-punitive character.

1. Alaska's Law Reasonably Promotes Public Safety

Alaska's registration and notification law reasonably advances its stated purpose of protecting the public by providing citizens with the information needed to protect themselves against future crimes and by facilitating police investigations of future crimes.

First, sex offenses are crimes of opportunity, and the threat sex offenders pose to exploit those opportunities is high because most are not in prison, they have an abnormally high rate of recidivism, and many are impervious to treatment. See *Hendricks*, 521 U.S. at 365 (noting Kansas's conclusion that "treatment for sexually violent predators is all but nonexistent"); *Sex Offenses* 18 (60% of sex offenders are not incarcerated); *National Conf.* vii, 5-6, 45. Alaska's law directly reduces the opportunities for victimization. The law allows citizens, through the collation and sharing of non-private information contained in public records or in the public domain, to protect themselves and their children from falling prey to future criminal acts, by increasing their alertness and modifying their behavior.[15]

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[15] The Florida website, for example, allowed members of the public to identify an offender who was attending Boy Scout meetings and another who lived in a home that provided daycare. *National Conf.* 70. In Illinois, registry information allowed the public to identify as offenders two Boy Scout leaders, four individuals involved in community youth groups, and others who owned youth camps. *Id.* at 76. In California, registry

Second, registration laws "are common and their range is wide," and they have long been understood as non-punitive "law enforcement technique[s]," by which government can maintain information on and monitor individuals whose activities or behavior pose particular challenges to the public's well-being. *Lambert* v. *California*, 355 U.S. 225, 229 (1957).[16] The registration information allows law enforcement agencies to improve their advice to the public about crime prevention and accelerate their investigation of crimes that occur, thereby limiting the toll that recidivists can inflict. Law enforcement's disclosure of names, photographs, charged offenses, and other identifying information pertaining to persons believed to pose a public safety threat is a common and time-tested method of promoting public safety. The FBI's Ten Most Wanted Fugitives, Ten Most Wanted Terrorists, Most Wanted Dead Beat Parents (child-support delinquents), and Missing Children/Child Kidnapping Alerts serve those same ends.[17]

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information has allowed members of the public to identify as sex offenders (among others) a high-risk sex offender who was active in Little League; a bus driver who transported children with disabilities (and was subsequently investigated for molesting two of the children); a custodian in an apartment complex who had keys to 250 units; a number of public school and church volunteers; an applicant for a Santa Claus position at a shopping mall; and a child molester loitering at school bus stops. See Report to the Calif. Legis., *California Sex Offender Information: Megan's Law (Calif. Megan's Law)* 20-22 (July 2001); *Calif. Megan's Law* 13-16 (July 2000); *Calif. Megan's Law* 15-19 (May 1998); Report to the Calif. Legis., *California Sex Offender Information* 12-16 (July 2000); Report to the Calif. Legis., *California Sex Offender Identification Line* 10-16 (July 1997); Report to the Calif. Legis., *California Child Molester Identification Line* 10-17 (July 1996).

[16] See, *e.g.*, *Gillette* v. *United States*, 401 U.S. 437 (1971) (draft registration); *United States* v. *Harriss*, 347 U.S. 612 (1954) (registration of lobbyists).

[17] Practice shows that sex offender registration and notification laws strengthen law enforcement. See *Community Notification* 18 ("The offenders who were subjects of community notification appear to have been

2. Categorical Disclosure of All Registered Offenders on the Internet Is Reasonable

The court of appeals concluded that Alaska's statute was excessive in relation to its public safety goal because it does not distinguish between types of offenders and because it publishes the registry on the Internet, rather than specifying particular members of the community to whom disclosure should be made. Pet. App. 23a-27a. In so holding, the court of appeals misapprehended the nature of the sex offender problem and misunderstood its role in reviewing a quintessentially legislative judgment.

(a) Categorical treatment: Alaska's determination not to limit public notification to particular categories of offenders is reasonable and in no way indicative of a punitive scheme. First, because 90% to 95% of criminal convictions are the product of plea bargains,[18] a registrant's conviction record frequently understates the severity and number of his offenses. Even if the record accurately reflected past offenses, sex offenders are notorious for escalating their offenses over time. Minor sex offenses are more often harbingers of worse things to come than reliable evidence of a low risk to public safety.[19]

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arrested for new crimes much more quickly than comparable offenders who were released without notification."); *Calif. Megan's Law* 16-17 (May 1998) (community notification caused a 14-year old girl to resist sex offender's efforts to lure her to his car and allowed police to apprehend him quickly after her report); *National Conf.* 102 (offenders are rearrested twice as quickly when there is community notification).

[18] See *Judicial Business of the U.S. Courts, 2001: Annual Report*, Table D-4, available at www.uscourts.gov/judbus2001/contents.html.

[19] In one study, out of 110 offenders reconvicted of a sex offense, 43% were reconvicted of a more serious sex offense. L. Song & R. Lieb, *Washington State Sex Offenders: Overview of Recidivism Studies* 11 (Wash. State Inst. for Public Policy, Feb. 1995); *House Jud. Hearing* 23 (Feb. 26, 1993); see also 4 *The Future of Children* 177; *Unspeakable Acts* 191-197; *Kansas* v. *Crane*, 122 S. Ct. 867, 872 (2002) (Scalia, J., dissenting) (describing the "increasing intensity" of sex offender's crimes).

The Ex Post Facto Clause does not preclude government from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences. That regulatory approach is valid, even if the judgment "is not in all cases absolutely certain" and "sometimes it works harshly." *Hawker* v. *New York*, 170 U.S. 189, 197 (1898) (categorical exclusion of felons from the practice of medicine is not an ex post facto law); see also *DeVeau*, 363 U.S. at 160 (plurality opinion) (categorical exclusion of felons from union fund-raising activities does not violate Ex Post Facto Clause); cf. *Hudson*, 522 U.S. at 104 (debarment from participating in banking industry based on violations is not a criminal punishment for purposes of the Double Jeopardy Clause). The "vital matter," for purposes of the Ex Post Facto Clause, is that the government is not punishing for the past crime. *Hawker*, 170 U.S. at 196. The past conduct simply serves as the "prescribed evidence," *ibid.*, and "the foundation for the judgment as to what the future conduct is likely to be," *American Comm. Ass'n* v. *Douds*, 339 U.S. 382, 413-414 (1950).[20] "[T]hat does not alter the conclusion that [the law] is intended to prevent future action rather than to punish past action." *Id.* at 414.

Second, it is true that there is "nothing inherently unattainable about a prediction of future criminal conduct," *Schall*, 467 U.S. at 278, by sex offenders as a class, given

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[20] See also *Hendricks*, 521 U.S. at 358 ("[P]revious instances of violent behavior are an important indicator of future violent tendencies."); U.S. Sentencing Comm'n, *Report to Congress: Sex Offenses Against Children* 34 (June 1996) ("The most consistent finding is that criminal history, especially a history of sexual offenses, is the most important and accurate predictor of the risk of future sexual offending."); A. Bedarf, *Examining Sex Offender Community Notification Laws*, 83 Cal. L. Rev. 885, 897 (1995) (sex offenders "have a greater tendency to 'specialize' in sex offenses," and the "best predictor" of the subset of criminals who will commit rape "is those offenders who have already been convicted of rape").

their persistently high rates of recidivism. But it does not follow—as the Ninth Circuit incorrectly assumed (Pet. App. 27a)—that the government can identify with equal reliability precisely which individual sex offenders will not repeat their crimes. Such predictions are considered by many experts to be "tentative at best," and are considered "unreliable," by others. *State* v. *Putnoki*, 510 A.2d 1329 (Conn. 1986). Given the inherent difficulties and fallibility in such predictions, it is reasonable and well within Alaska's legislative discretion to err on the side of providing the public with the truthful, non-private information necessary for self-protection, rather than risk potentially dangerous exclusions.[21]

Third, Alaska's approach focuses on enabling individuals to protect themselves. As a general matter, Alaska does not directly notify individuals of particular threats, nor does it label particular offenders by risk level. Rather, Alaska allows members of the public to choose for themselves whether to investigate the presence of sex offenders in their community and, if so, to determine what precautions are appropriate. It is both reasonable and non-punitive for Alaska to conclude that the public interest is better served by a scheme that opens up public records and information to the public and allows an informed citizenry to make its own judgments, than by a scheme that has the government apply its own filter to limit what otherwise publicly available information individuals should have. Nearly half of all the States and territories share that judgment. See App. A, *infra*.

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[21] Accordingly, the Ninth Circuit's objection (Pet. App. 27a) that John Doe I has been found by one court not to pose a high risk of reoffending misses the mark. The state court, at best, determined that Doe I was at "low risk"—not no risk—of reoffending. Given the ample data documenting the recidivism rates of perpetrators of incest, it is reasonable for Alaska to leave it up to its citizens to assess the risk they are willing to take. See, *e.g.*, 4 *The Future of Children* 180 (for "incestuous molesters," "freedom from recidivism should never be assumed"; "[r]ecidivism may not occur until many years later").

Congress did likewise, in requiring categorical disclosure of sex offenders enrolled in or employed at institutions of higher education. See Campus Sex Crimes Prevention Act, Pub. L. No. 106-386, § 1601(b) and (c), 114 Stat. 1537, 1538 (to be codified at 20 U.S.C. 1092(f)(1), and 42 U.S.C. 14071(j)).

Fourth, the Ninth Circuit's reasoning traps Alaska in a Catch-22. If Alaska did have elaborate hearings to undertake the very difficult and elusive task of evaluating prospective risk, and then categorized and labeled offenders accordingly, respondents would no doubt argue that those labels are themselves a form of punishment, and that the procedures evidence an intent to impose punishment, just as the sex offenders argued (unsuccessfully) in *Hendricks*, 521 U.S. at 364, and *Allen* v. *Illinois*, 478 U.S. 364, 371 (1986).

(b) Internet disclosure: Alaska's decision to publish its registry on the Internet likewise does not transform the regulatory program into punishment. First, facilitating and simplifying public access to publicly available information does not bear any resemblance to historic forms of punishment—no physical detention or restriction is involved and no property is taken. Given that private individuals and the press can and do publish the registration information, it does not become punitive for the government to do the same.

Second, Internet posting allows citizens to decide for themselves how much, if any, information they want. Only those who choose to avail themselves of the Internet posting will obtain information—the scope of community notification is thus self-regulating. No one is visited with unwanted police encounters or flyers. At the same time, because sex offenders frequently move and travel in search of victims, limiting notification to those in "close proximity" to the offender (Pet. App. 26a) can leave neighboring populations or those relocating to new areas vulnerable.[22] The rea-

[22] See *Community Notification* 16 (38% of re-offenses occurred in other counties or States); *Federal Recordkeeping and Sex Offenders:*

sonableness of Alaska's judgment is underscored by the shared judgment of 39 other States and territories, which also post sex-offender information on government websites. See App. A, *infra*.

Fundamental to the court of appeals' conclusion that Alaska's scheme is excessive was its insistence on a formulaic response by States to a complex and intractable problem, the very nature of which demands legislative discretion and flexibility. That is precisely why the Wetterling Act and the Attorney General's guidelines leave States free "to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories," and allow States "to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes." 64 Fed. Reg. at 582.

3. Other Factors Confirm Alaska's Regulatory Purpose

Each of the remaining *Kennedy* factors underscores the regulatory character of Alaska's scheme. None of them provides any indication, let alone the "clearest proof," of punitive effect. *Hendricks*, 521 U.S. at 361.

(a) Affirmative disability or restraint: Alaska's registration and notification process is not an affirmative disability or restraint in any sense of those words. "[W]hether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the 'sting of punishment.'" *Montana Dep't of Revenue* v. *Kurth Ranch*, 511 U.S. 767, 777 n.14 (1994). Here, the character of the Alaska law bears no resemblance to "the 'infamous pun-

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Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary, 104th Cong., 2d Sess. 13 (1996) ("[T]hese offenders tend to be particularly transient individuals.").

ishment' of imprisonment," *Hudson*, 522 U.S. at 104 (internal citation omitted), or to any other characteristically criminal sanction.

The registration process itself is not unduly burdensome. After the initial registration and photographing, offenders need only fill out a brief form—one side of one page—either annually or quarterly. Indeed, the district court found that the registration process was no more onerous than obtaining a driver's license. Pet. App. 87a. By statute, most quarterly or annual verifications can be done in writing. See Alaska Stat. §§ 12.63.010(d)(1) and (2) (Michie 2000) (requiring only "written" verification); Alaska Admin. Code title 13, § 09.025(d). There is no affirmative disability, let alone inherent punishment, in quarterly reporting to the government, which the Wetterling Act itself requires, 42 U.S.C. 14071(b)(3) (1994 & Supp. V 1999). Self-employed taxpayers, treasurers of political committees, futures commission merchants, importers, and securities brokers and dealers must do the same. 2 U.S.C. 434(a)(2)(A)(iii); 7 U.S.C. 6f(a)(2)(C); 15 U.S.C. 78o-5(b)(2)(A), 78q(h)(1); 17 U.S.C. 1003(c); 26 U.S.C. 527, 6654(c).

The court of appeals plainly erred in rejecting (compare Pet. 4-6, with Pet. App. 14a) petitioners' repeated efforts to clarify the statutory permissibility of written verification by mail, and then seizing upon the supposed requirement of in-person registration to support its invalidation of the law. Ex Post Facto challenges are, by their very nature, facial challenges, *Hudson*, 522 U.S. at 100, 104; *Seling*, 531 U.S. at 263, and courts are to construe statutes to avoid, not to create, perceived constitutional difficulties, see, *e.g.*, *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 128 (1810).[23] Besides, the Act's

[23] Even if Alaska required in-person verification, which approximately fourteen States do, that would not render the scheme punitive. Such in-person registration would be reasonably related to advancing the government's public safety purposes by verifying the continued presence, iden-

registration provisions are not remotely comparable to "probation or supervised release," Pet. App. 13a, as the court of appeals claimed. Probation and supervised release are usually characterized by a series of conditions that the probationer or released individual must meet and by the supervision of a case officer who is empowered to seek the revocation of the defendant's conditional release for an infraction, resulting in re-imprisonment for the original offense. See generally *Johnson* v. *United States*, 529 U.S. 694 (2000); *Griffin* v. *Wisconsin*, 483 U.S. 868 (1987). Nothing of the kind occurs in Alaska's registration program, which leaves sex offenders free to move where and when they wish and to engage in whatever employment, recreation, or other activities they desire, without any individualized supervision or governmental power to revoke their freedom.

Nor do the notification provisions have a disabling effect, as the court of appeals believed (Pet. App. 14a). The fact that "community obloquy and scorn" (*ibid.*) may ensue from the public availability of information on the Internet does not transform governmental action into an affirmative disability or restraint. In the first place, private reactions to public information are not *governmentally imposed* limitations. Beyond that, there is no evidence whatsoever that laws like Alaska's have led to any increase in vigilantism against sex offenders. The court of appeals identified only *one* incident in the seven-year life of Alaska's law. *Ibid.* Most studies have reported very little vigilantism associated with sex offender notification laws.[24]

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tity, and reliability of registration information. 64 Fed. Reg. at 581; H.R. Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

[24] 64 Fed. Reg. at 582; *National Conf.* 51 ("Illegal acts actually are quite rare."); Center for Sex Offender Mgmt., *Community Notification and Education* 11 (Apr. 2001); L. Berliner, *Sex Offenders: Policy and Practice*, 92 N.W.U. L. Rev. 1203, 1219-1220 (1998).

The court also expressed concern that Alaska's law might "make it impossible for the offender to find housing or employment." Pet. App. 15a. The ability of employers to do background checks on the criminal records of prospective employees, however, exists independently of Alaska's law and the Wetterling Act. See 42 U.S.C. 5119a (1994 & Supp. V 1999). While Alaska's law does permit the public to learn where offenders are employed, that information does not invariably foreclose housing and employment opportunities; it simply allows members of the public to take such precautions as they deem necessary and to make informed judgments with the information in hand. There are costs to striking the secrecy balance either way, and Alaska reasonably struck that balance in favor of enhancing public knowledge.

(b) Historical treatment: The court of appeals agreed (Pet. App. 18a) that Alaska's law bears no similarity to historic forms of punishment, such as public floggings, the pillory, or branding. The registration and notification law neither restricts physical liberty nor inflicts physical punishment.

(c) Scienter: There is no mental state requirement in Alaska's law that would arguably weigh in favor of finding it to be punitive. As the court of appeals noted, Pet. App. 18a-19a, the law applies to strict liability sex offenses as well as crimes with a *mens rea*—but that is not even the correct question. The operative consideration is whether application of the law itself "comes into play only on a finding of *scienter*." *Kennedy*, 372 U.S. at 168; see also *Hendricks*, 521 U.S. at 362 (scienter inquiry focuses on eligibility for commitment, not underlying behavior); *Ursery*, 518 U.S. at 291 (scienter factor is not implicated by civil forfeiture, even though the underlying crimes required a showing of scienter). The offender's duty to register under Alaska's law does not turn upon any finding of scienter; it turns entirely on

whether the offender has the statutorily identified predicate convictions.

(d) Traditional aims of punishment: The court of appeals held (Pet. App. 19a) that Alaska's law appeared punitive because it "may provide a measure of deterrence" and "its onerous registration obligations appear to be inherently retributive." The court's reasoning is plainly incorrect on both counts.

First, even if the statute has some deterrent effect, that additional salutary purpose would not render the law punitive. Deterrence can equally "serve civil as well as criminal goals." *Hudson*, 522 U.S. at 105; see *Ursery*, 518 U.S. at 292.

Second, the duration of the registration requirements is reasonable. Alaska's judgment that lifetime registration is necessary for the more serious offenders and proven recidivists—a judgment that Congress largely shared in the Wetterling Act, 42 U.S.C. 14071(b)(6) (1994 & Supp. V 1999) —is grounded in substantial evidence showing that the recidivism of sex offenders (unlike most other criminals') does not decline appreciably over time. See note 3, *supra*. Indeed, the very first offender listed on Alaska's registry committed attempted sexual abuse of a minor at the age of 76.

Third, the court's concern (Pet. App. 20a) that the length of the reporting requirement "appears to be measured by the extent of the wrongdoing, not by the extent of the risk posed" is both factually and legally ill-conceived. The lifetime registration requirement, in fact, is triggered by proven recidivism. See Alaska Stat. § 12.63.020(a)(1)(B) (Michie 2000) (having "two or more" eligible offenses triggers lifetime registration obligation). While the life-time registration obligation also applies to those who have committed one "aggravated sex offense," that reasonably reflects the heightened danger that those individuals pose.

(e) Applies to criminal behavior: Finally, the court of appeals emphasized (Pet. App. 21a-23a) that the registration

and notification law applies only to individuals who have been convicted of a sex offense or child kidnapping crime. That the civil regulatory obligation "has some connection to a criminal violation," however, "is far from the 'clearest proof' necessary to show" that the registration obligation amounts to criminal punishment. *Ursery*, 518 U.S. at 292. Quite the opposite, it is "well settled that Congress may impose both a criminal and a civil sanction in respect to the same act or omission." *Ibid.* (internal quotation marks omitted). Further, to the extent Alaska uses the fact of a prior crime as a trigger for its registration and notification scheme, the prior crime "is used solely for evidentiary purposes * * * to support a finding of future dangerousness" sufficient to impose the registration and notification obligation. *Hendricks*, 521 U.S. at 362.

The court's concern (Pet. App. 22a) that Alaska's law does not include those found not guilty by reason of insanity or those civilly committed ignores this Court's decision in *Allen* v. *Illinois*, *supra*, where the Court upheld a sex-offender civil commitment law that applied only to persons against whom the State had brought criminal charges. See 478 U.S. at 370. That Alaska, like Illinois in *Allen*, "has chosen not to apply the Act to the larger class of * * * persons who might be found sexually dangerous does not somehow transform a civil proceeding into a criminal one." *Ibid.* Because there is little doubt that the Act "embrace[s] the great majority of those" who pose a prospective danger to the public, "[i]nferences drawn from the omission of those" other groups "cannot establish, to the degree of certainty required, that [the legislative] concern was *wholly* with" punishing past offenses and not with protecting the public against the prospective risk to safety. *Flemming*, 363 U.S. at 620 (emphasis added).

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In sum, Alaska's sex offender registration and notification provisions are a reasonable means of collecting and disseminating to the public information about a particularly dangerous class of convicted criminals in order to help citizens to protect their own safety. The law functions without imposing intrusive or confining measures on the sex offenders, and it reasonably and unobtrusively advances one of the highest purposes of government—protecting citizens from falling victim to crime. States are free to experiment with more selective registration programs or more targeted notifications, but Alaska's decision to place more publicly available information in the hands of those citizens who choose to inquire does not amount to criminal punishment or a penal measure of any kind, and it does not violate the Ex Post Facto Clause.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JUNE 2002

APPENDIX A

State and Territorial Sex Offender Registries

Jurisdiction	Website with Individual Offender Information	Categorical Disclosure of Offenders	Legislative Purpose
Alabama	www.gsiweb.net/index.html	Yes. See Ala. Code § 15-20-25(a) (2001).	"The Legislature finds that the danger of recidivism posed by criminal sex offenders and that the protection of the public from these offenders is a paramount concern or interest to government." Ala. Code § 15-20-20.1 (2001).
Alaska	www.dps.state.ak.us/nSorcr/asp	Yes. See Alaska Admin. Code, title 13, § 09.050(a) (2000).	"[P]rotecting the public from sex offenders is a primary governmental interest." 1994 Alaska Sess. Law ch. 41, § 1.

American Samoa	No.	No.	"The commissioner of public safety shall be authorized to release offender registry information as necessary to protect the public of American Samoa." American Samoa Code Ann. § 46.2804 (1999).
Arizona	www.azsexoffender.org/	No.	"[T]he legislature * * * intended to protect communities, not punish sex offenders." *Arizona. Dep't of Pub. Safety* v. *Superior Court*, 949 P.2d 983, 988 (Ct. App. 1997), review denied, 964 P.2d 477 (Ariz. 1998).
Arkansas	No.	No.	The "Act has as its announced purpose the preservation of public safety." *Kellar* v. *Fayetteville Police Dep't*, 5 S.W.3d 402, 407 (Ark. 1999).

California	No. (Public can view registry information at law enforcement offices on CD-ROM or obtain it by telephone.)	Yes. See Cal. Penal Code § 290.4(4)(A) (West 2002).	"This policy of authorizing the release of necessary and relevant information about serious and high-risk sex offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive." *Byron M.* v. *City of Whittier*, 46 F. Supp. 2d 1032, 1035 (C.D. Cal. 1998).
Colorado	www.sor.state.co.us	No.	"[T]he General Assembly did not intend the registration requirement to inflict additional punishment on a person convicted of a sexual offense. Rather, such registration is required in order to aid law enforcement officials in investigating future sex crimes and to protect the public safety." *Jamison* v. *People*, 988 P.2d 177, 180 (Ct. App.1999), cert. denied (Colo. Oct. 18, 1999).

Connecticut	www.state.ct.us/dps/sor.htm (Access temporarily restricted pending liti gation.)	Yes. See Conn. Gen. Stat. Ann. § 54-258(a)(1) (West 2001).	"Certainly one of the most important" purposes for Connecticut's law "is public safety. It enables the recipients to have information that helps to protect them from becoming victims of sexual offenses." *Roe* v. *Office of Adult Probation*, 125 F.3d 47, 54 n.14 (2d Cir. 1997).
Delaware	www.state.de.us/dsp/sexoff/index.htm	No.	"The dissemination of the information pursuant to the notification statute * * * protect[s] members of a community from violent and dangerous sex offenders." *Helman* v. *State*, 784 A.2d 1058, 1073 (Del. 2001).

District of Columbia	http://mpdc.dc.gov/sev/sor/impreminder.shtm	Yes, with respect to all offenses covered by the Wetterling Act. See D.C. Code Ann. § 22-4011(a).	"[T]he purpose of this regime is to promote public safety in at least three ways: by facilitating effective law enforcement; by enabling members of the public to take direct measures of a lawful nature for the protection of themselves and their families; and, by reducing registered offenders' exposure to temptation to commit more offenses." *Cannon* v. *Igborzurkie*, 779 A.2d 887, 890 (D.C. 2001).
Florida	www.fdle.state.fl.us/sexual_predators/search.asp	Yes. See Fla. Stat. Ann. § 943.043(2)-(3) (West 2001).	"[S]exual offenders * * * often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and * * * protection of the public from sexual offenders is a paramount governmental interest." Fla. Stat. Ann. § 944.606(2) (West 2001).

Georgia	www.state.ga.us/gbi/sorsch.cgi	Yes. See Ga. Code Ann. § 42-9-44.1(a) and (e) (1997).	Information will be released "that is necessary to protect the public." Ga. Code. Ann. § 42-1-12 (i)(3) (2001).
Guam	http://jisweb.justice.gov.gu/sor/index.html	Yes, with the exception of misdemeanants. See Guam Code Ann. § 89.10 (2002).	No legislative purpose expressly identified in statute or case law.
Hawaii	No.	Yes, see Haw. Rev. Stat. Ann. § 846E-3 (Michie 1999), but the notification provision was held to violate the Hawaii Constitution in *State* v. *Bani*, 36 P.3d 1255 (Haw. 2001).	"The Hawai'i legislature enacted HRS chapter 846E in 1997 to ensure the release of relevant information concerning the presence of sex offenders necessary to protect the public. 1997 Haw. Sess. L. Act 316, § 1 at 749-5." *State* v. *Bani*, 36 P.3d 1255, 1262 (Haw. 2001).

Idaho	www.isp.state.id.us/identification/sex_offender/public_access.html (Website access is restricted to specified entities and individuals under Idaho Code § 18-8283 (2000). Individuals have unrestricted access to registry information at law enforcement offices.)	Yes. See Idaho Code § 18-8323(1) (2000).	"[S]exual offenders present a significant risk of reoffense and th[e] efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders who commit sexual offenses are impaired by the lack of current information available about individuals who have been convicted of sexual offenses who live within their jurisdiction." Idaho Code § 18-8302 (2000).
Illinois	http://samnet.isp.state.il.us/	No.	"The purpose of the Registration Act is to protect the public from sex offenders." *People* v. *Malchow*, 714 N.E.2d 583, 589 (App. Ct. 1999), aff'd, 739 N.E.2d 433 (Ill. 2000).

Indiana	www.ai.org/serv/cji_sor	Yes. See Ind. Pub. L. No. 116-2002 (amending Ind. Code § 5-2-5-5 (West 2002)).	*Spencer* v. *O'Connor*, 707 N.E.2d 1039, 1043-1045 (Ind. Ct. App. 1999) (holding that notification provisions of the sex offender registration statute were not punitive, but promoted public safety).
Iowa	No.	No.	"[T]he primary purpose of a sex offender registry is not to punish but to aid the efforts of law enforcement officers in protecting society. * * * [W]e believe that the statute was motivated by concern for public safety, not to increase the punishment." *State* v. *Pickens*, 558 N.W.2d 396, 400 (Iowa 1997).
Kansas	www.accesskansas.org/kbi/ro.htm	Yes. See Kan. Stat. Ann. § 22-4909 (2001).	"[The] legislative purpose is to protect public safety and, more specifically, to protect the public from sex offenders as a class of criminals who are likely to reoffend." *State* v. *Wilkinson*, 9 P.3d 1, 5-6 (Kan. 2000).

Kentucky	http://kspsor.state.ky.us/	Yes. See Ky. Rev. Stat. Ann. § 17.580(1)-(2) (Michie 2001).	"The statutory system is a remedial measure designed to protect and inform the public and not to punish the offender." *Martinez* v. *Commonwealth*, 72 S.W.3d 581, 584 (Ky. 2002).
Louisiana	www.lasocpr.lsp.org/Static/Search.htm	Yes. See La. Rev. Stat. Ann. § 15.546(A) (West 2002).	"The legislature finds * * * that protection of the public from sex offenders * * * is of paramount governmental interest." La. Rev. Stat. Ann. § 15.540(A) (West 2002).

Maine	None at present. (There is anticipated "web enabled" direct access to sex offender registration information for law enforcement and, separately, public access to information on predator or high risk offenders. See United States Dep't of Justice, Bureau of Justice Statistics, *Summary of State Sex Offender Registries* 9, App. Table 4 (Mar. 2002)).	No.	"[T]he department shall give notice * * * to members of the public the department determines appropriate to ensure public safety." Me. Rev. Stat. Ann. title 34-A, § 11255(1) (West 2002).

Maryland	www.dpscs.state.md.us/sor/	Yes. See Md. Code Ann., Crim. Proc. § 11-717(a) (2001).	Maryland's statute authorizes disclosure of any information necessary "to protect the public from a specific registrant." Md. Code Ann., Crim. Proc. § 11-718(a) (2001).
Massachsetts	No.	No.	"The general court hereby finds that * * * that the protection of the public from these sex offenders is of paramount interest to the government." Mass. Gen. Laws Ann. ch. 6, § 178C (West 2002).
Michigan	www.mipsor.state.mi.us/	Yes. See Mich Comp. Laws Ann. § 28.728(2) (West 2002).	"[T]he Michigan Act also seeks to provide the local citizenry with information concerning persons residing near them who have been convicted of sexually predatory conduct and who, by virtue of relatively high recidivism rates among such offenders and the devastating impact that sex crimes have on society, pose a serious threat to society." *Lanni* v. *Engler*, 994 F. Supp. 849, 853 (E.D. Mich. 1998).

Minnesota	www.doc.state.mn.us/level3/Search.asp	No.	Disclosures are made as "necessary to protect the public and to counteract the offender's dangerousness." Minn. Stat. Ann. § 244.052(4) (West 2002).
Mississippi	www.sor.mdps.state.ms.us	Yes. See Miss. Code Ann. § 45-33-49 (2001).	"The Legislature finds that the danger of recidivism posed by criminal sex offenders and the protection of the public from these offenders is of paramount concern and interest to government." Miss. Code Ann. § 45-33-21 (2001).
Missouri	No statewide registry, but counties may maintain their own websites. See, *e.g.*, www.jcsd.org/sex.htm	Yes. See Mo. Ann. Stat. § 589.417 (2000).	"The obvious legislative intent for enacting sec. 589.400 was to protect children from violence at the hands of sex offenders." *J.S.* v. *Beaird*, 28 S.W.3d 875, 876 (Mo. 2000).

Montana	http://svor2.doj.state.mt.us:8010/index.htm	No.	A "law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public." Mont. Code Ann. § 46-23-508(1)(b) (1999).
Nebraska	www.nsp.state.ne.us/sor/find.cfm	No.	"The Nebraska State Patrol and any law enforcement agency authorized by the patrol shall release relevant information that is necessary to protect the public." Neb. Rev. Stat. Ann. § 29-4009(3) (2000).

Nevada	No.	No.	Nevada's registration law was "not intended to impose a penal consequence but w[as] instead implemented to protect the community and assist law enforcement in solving crimes. * * * As the record of the legislative hearings reflects, the registration and notification requirements were 'designed to be civil in nature and not punitive.'" *Nollette* v. *State*, No. 35926, 2002 WL 1008895, at * 2 (Nev. May 17, 2002).
New Hampshire	No official government website, but the *Union Leader & New Hampshire Sunday News* publishes the list online. See www.theunionleader.com/pages/sexoffenders1.html	Yes. See N.H. Legis. 241 (2002) (amending N.H. Rev. Stat. Ann. § 651B:7(IV) (2000)).	"[The bill] is designed to assist police." *State* v. *Costello*, 643 A.2d 531, 533 (N.H. 1994) (holding that legislative intent was regulatory, not punitive).

New Jersey	www.njsp.org/info/reg_sexoffend.html	No.	"[P]ublic safety will be enhanced by making information about certain sex offenders * * * available to the public through the Internet." N.J. Stat. Ann. § 2C:7-12 (West 2002).
New Mexico	www.nmsexoffender.dps.state.nm.us/	Yes. See N.M. Stat. Ann. § 29-11A-5.1 (Michie 2001).	"The legislature finds that: * * * the efforts of law enforcement agencies to protect their communities from sex offenders are impaired by the lack of information available concerning convicted sex offenders who live within the agencies' jurisdictions." N.M. Stat. Ann. § 29.11A-2 (Michie 2001).
New York	http://criminaljustice.state.ny.us/nsor/index.htm	No.	"The legislative history of the Act supports * * * the twin purposes served by the [Act]—protecting communities by notifying them of the presence of individuals who may present a danger and enhancing law enforcement authorities' ability to fight sex crimes." *Doe* v. *Pataki*, 120 F.3d 1263, 1276 (2d Cir. 1997), cert. denied, 522 U.S. 1122 (1998).

North Carolina	http://sbi.jus.state.nc.us/DOJHAHT/SOR/Default.htm	Yes. See N.C. Gen. Stat. Ann. § 14-208-15(b) (1999).	Sheriffs are required to release relevant information about sex offenders "necessary to protect the public." N.C. Gen. Stat. Ann. § 14-208.10 (1999).
North Dakota	www.ndsexoffender.com/	No.	"The registration information provided by the listed offenders is necessary to aid in the investigation and apprehension of offenders and to protect the health, safety, and welfare of the members of the local community." *State* v. *Burr*, 598 N.W.2d 147, 153 (N.D. 1999).
Northern Mariana Islands	None at present. (Law authorizes the use of any media to distribute information on sex offenders. Pub. L. No. 11-35, § 5).	No.	"To require that all persons convicted of a criminal offense of a sexual nature and other sexually violent crimes register with [the] Department Public Safety and that the community be notified concerning the location of registered offenders when necessary to ensure public safety." Preamble to Pub. L. No. 11-35, H.B. 11-8, 11th N. Marianas Commonwealth Legis.

Ohio	No statewide registry, but counties may maintain their own websites. See, *e.g.*, www.hcso.org/	No.	"The release of information about sexual predators and habitual sex offenders to public agencies and the general public will further the governmental interests of public safety." Ohio Rev. Code Ann. § 2950.02(A)(6) (Anderson 2001).
Oklahoma	No statewide registry, but counties may maintain their own websites. See, *e.g.*, www.tulsapolice.org/sexreg/ A private company maintains a statewide registry, at www.vallely.com/registry.html	Yes. See 2002 Okla. Sess. Law Serv. ch. 20 (H.B. 2300) (amending Okla. Stat. title 47, § 584(F) (2001)).	"The Legislature additionally finds that a system of registration will permit law enforcement officials to identify and alert the public when necessary for protecting the public safety." Okla. Stat. Ann., title 57, § 581(B) (2001).

Oregon	No statewide registry, but counties may maintain their own websites. See, *e.g.*, www.co.bentonor.us/sheriff/corrections/bccc/sonote/	Yes, with respect to all offenses covered by the Wetterling Act. See Or. Rev. Stat. § 181.589 (1999).	"[T]he intended purpose of the sex offender registration requirement was to assist law enforcement in protecting the community from future sex crimes." *State* v. *Matthews*, 978 P.2d 423, 426 (Or. Ct. App. 1999).
Pennsylvania	No.	No.	"These sexually violent predators pose a high risk of engaging in further offenses even after being released from incarceration or commitment and th[e] protection of the public from this type of offender is a paramount governmental interest." 42 Pa. Cons. Stat. Ann. § 9791(a)(2) (West 2000).
Puerto Rico	No.	Yes. See P.R. Laws Ann. title 4, § 535e (1998).	Information shall be made available "in view of the threat and danger the persons that commit any of the crimes listed in this chapter, could represent to the [public]." P.R. Laws Ann. title 4, § 535e (1998).

Rhode Island	No.	No.	"Clearly, the Legislature's intent in enacting stricter provisions is to maintain accurate and updated records of persons who pose a potential threat to the safety and health of other persons due to convictions for sexually predatory conduct, sexually aggravated offenses, and a likelihood of committing additional offenses because of demonstrated recidivism." *State* v. *Williams*, No. P197-4106A, 2000 WL 977297, *3 (R.I. Super. Ct. App. 2000).
South Carolina	www.sled.state.sc.us/SLED/default.asp?Category=SCSO&Service=SCSO_01	No.	Information may be disseminated if a "law enforcement officer has reason to believe the release of this information will deter criminal activity or enhance public safety." S.C. Code Ann. § 23-3-490(c) (Law Co-op 2001).

South Dakota	No.	Yes. See S.D. Codified Laws § 22-22-40 (Michie 1998).	"[T]he purpose of the public access to registrant information as provided in SDCL 22-22-40 was to alert the public in the interest of community safety." *Meinders* v. *Weber*, 604 N.W.2d 248, 255 (S.D. 2000).
Tennessee	www.ticic.state.tn.us/SEX_ofndr/search_short.asp	Yes. See 2002 Tenn. Laws Pub. Ch. 469 (H.B. 561) (amending Tenn. Code Ann., title 40, ch. 39, Pt. 1).	*Cutshall* v. *Sundquist*, 193 F.3d 466, 474 (6th Cir. 1999) (finding legislative intent of sex offender registration was not punitive, but to monitor the whereabouts of convicted sex offenders and to disclose that information when necessary to protect the public), cert. denied, 529 U.S. 1053 (2000).

Texas	http://records.txdps.state.tx.us/soSearch/soSearch.cfm	Yes. See Tex. Code Crim. P. Ann., § 62.08 (West 2002).	"The legislature's goal in passing the registration and notification provisions was to advance public safety objectives by facilitating law enforcement's monitoring of sex offenders and by alerting members of the public who may be in an especially vulnerable situation to take appropriate precautions which could deter or prevent further crimes." *Dean* v. *State*, 60 S.W.3d 217, 222 (Tex. App. 2001).
Utah	http://corrections.utah.gov/asp-bin/sexoffendersearchform.asp	Yes. See 2002 Utah Laws ch. 48 (H.B. 245) (amending Utah Code Ann. § 77-27-21.5 (2001)).	"Utah has sought to use the sex offender registry to aid in the civil purpose of prevention and investigation of future sex crimes." *Femedeer* v. *Haun*, 227 F.3d 1244, 1252 (10th Cir. 2000).

Vermont	No.	No.	Disclosure authorized when "necessary to protect the public concerning persons required to register under this subchapter." Vt. Stat. Ann., title 13, § 5402(b)(3) (2001).
Virginia	http://sex-offender.vsp.state.va.us	No.	"The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming victims of criminal offenders." Va. Code Ann. § 19.2-390.1 (Michie 2000).
Virgin Islands	No.	No.	Offenders required to register under this act are those "predispose[d] to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons." V.I. Code Ann. title 14, § 1723 (2001).

Washington	No statewide registry, but counties may maintain their own websites. See, *e.g.*, www.co.cowlitz.wa.us/sheriff/rso/	No.	"Public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender." Wash. Rev. Code Ann. § 4.24.550 (West 2002).
West Virginia	www.wvstatepolice.com/sexoff/websearchform.cfm	No.	"The Legislature clearly set forth the purpose of the statute as being regulatory by assisting law enforcement officials' efforts to protect the innocent public from sex offenders." *Hensler* v. *Cross*, 558 S.E.2d 330, 335 (W. Va. 2001).
Wisconsin	http://offender.doc.state.wi.us/public/	No.	"We view this sex offender registration requirement as a safeguard to protect past victims and the public in general, and not a direct punishment." *State* v. *Bollig*, 593 N.W.2d 67, 75 (Ct. App. 1999), aff'd, 605 N.W.2d 199 (Wisc. 2000).

Wyoming	http://attorneygeneral.state.wy.us/dci/so/so_registration.html	No.	"[T]he legislature intended to facilitate law enforcement and protection of children." *Snyder* v. *State*, 912 P.2d 1127, 1131 (Wyo. 1996).

APPENDIX B

STATUTORY PROVISIONS INVOLVED

Section 14071 of Title 42 (1994 & Supp. V 1999) of the United States Code provides:

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In general

(1) State guidelines

The Attorney General shall establish guidelines for State programs that require–

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.

(2) Determination of sexually violent predator status; waiver; alternative measures

(A) In general

A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver

The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures

The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(3) Definitions

For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor; or

(viii) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18 or as described in the State criminal code).

(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or

personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term "employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation

An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State

prison officer, the court, or another responsible officer or official, shall—

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1) of this section, the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identi-

fying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in national sex offender registry

(A) State reporting

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting

A State shall participate in the national database established under section 14072(b) of this title in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification

(A) For a person required to register under subparagraph (A) of subsection (a)(1) of this section, State procedures shall provide for verification of address at least annually.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section,

except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address

A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another State

A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration

A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until—

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person—

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders

As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border

Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) Release of information

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(f) Immunity for good faith conduct

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance

(1) Compliance date

Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.

(B) Reallocation of funds.—Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints

Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 14072(h) of this title.

(i) Grants to States for costs of compliance

(1) Program authorized

(A) In general

The Director of the Bureau of Justice Assistance (in this subsection referred to as the "Director") shall carry out a program, which shall be known as the "Sex Offender Management Assistance Program" (in this subsection referred to as the "SOMA program"), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds

Each grant awarded under this subsection shall be—

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility

(A) Application

To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

(i) the State complies with (or made a good faith effort to comply with) this section; and

(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations

(i) In general

Not later than 90 days after October 30, 1998, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

(ii) Certain training programs

Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 13941 of this title. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection, $25,000,000 for each of fiscal years 1999 and 2000.

(j) Notice of enrollment at or employment by institutions of higher education[*]

(1) Notice by offenders

(A) In general

In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

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[*] This subsection will take effect on October 28, 2002. See Campus Sex Crimes Prevention Act, Pub. L. No. 106-386, § 1601(c)(2), 114 Stat. 1538.

(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and

(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

(B) Change in status

A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

(2) State reporting

State procedures shall ensure that the registration information collected under paragraph (1)—

(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and

(B) entered into the appropriate State records or data system.

(3) Request

Nothing in this subsection shall require an educational institution to request such information from any State.

Section 14072 of Title 42 (Supp. V 1999) of the United States Code provides:

FBI Database

(a) Definitions

For purposes of this section—

(1) the term "FBI" means the Federal Bureau of Investigation;

(2) the terms "criminal offense against a victim who is a minor", "sexually violent offense", "sexually violent predator", "mental abnormality", "predatory", "employed, carries on a vocation", and "student" have the same meanings as in section 14071(a)(3) of this title; and

(3) the term "minimally sufficient sexual offender registration program" means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense in a range of offenses specified by State law which is comparable to or exceeds that described in subparagraph (A) or (B) of section 14071(a)(1) of this title;

(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;

(C) provides for verification of address at least annually;[1]

(D) requires that each person who is required to register under subparagraph (A) shall do

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[1] So in original. Probably should be followed by "and".

so for a period of not less than 10 years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

(b) Establishment

The Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of—

(1) each person who has been convicted of a criminal offense against a victim who is a minor;

(2) each person who has been convicted of a sexually violent offense; and

(3) each person who is a sexually violent predator.

(c) Registration requirement

Each person described in subsection (b) of this section who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current address, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) of this section for the time period specified under subsection (d) of this section.

(d) Length of registration

A person described in subsection (b) of this section who is required to register under subsection (c) of this section shall, except during ensuing periods of incarceration, continue to comply with this section—

(1) until 10 years after the date on which the person was released from prison or placed on parole, supervised release, or probation; or

(2) for the life of the person, if that person—

(A) has 2 or more convictions for an offense described in subsection (b) of this section;

(B) has been convicted of aggravated sexual abuse, as defined in section 2241 of Title 18 or in a comparable provision of State law; or

(C) has been determined to be a sexually violent predator.

(e) Verification

(1) Persons convicted of an offense against a minor or a sexually violent offense

In the case of a person required to register under subsection (c) of this section, the FBI shall, during the period in which the person is required to register under subsection (d) of this section, verify the person's address in accordance with guidelines that shall be promulgated by the Attorney General. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individual.

(2) Sexually violent predators

Paragraph (1) shall apply to a person described in subsection (b)(3) of this section, except that such person must verify the registration once every 90 days after the date of the initial release or commencement of parole of that person.

(f) Community notification

(1) In general

Subject to paragraph (2), the FBI may release relevant information concerning a person required to register under subsection (c) of this section that is necessary to protect the public.

(2) Identity of victim

In no case shall the FBI release the identity of any victim of an offense that requires registration by the offender with the FBI.

(g) Notification of FBI of changes in residence

(1) Establishment of new residence

For purposes of this section, a person shall be deemed to have established a new residence during any period in which that person resides for not less than 10 days.

(2) Persons required to register with the FBI

Each establishment of a new residence, including the initial establishment of a residence immediately following release from prison, or placement on parole, supervised release, or probation, by a person required to register under subsection (c) of this section shall be reported to the FBI not later than 10 days after that person establishes a new residence.

(3) Individual registration requirement

A person required to register under subsection (c) of this section or under a State sexual offender offender[2] registration program, including a program established under section 14071 of this title, who changes address to a State other than

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[2] So in original.

the State in which the person resided at the time of the immediately preceding registration shall, not later than 10 days after that person establishes a new residence, register a current address, fingerprints, and photograph of that person, for inclusion in the appropriate database, with—

(A) the FBI; and

(B) the State in which the new residence is established.

(4) State registration requirement

Any time any State agency in a State with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, is notified of a change of address by a person required to register under such program within or outside of such State, the State shall notify—

(A) the law enforcement officials of the jurisdiction to which, and the jurisdiction from which, the person has relocated; and

(B) the FBI.

(5) Verification

(A) Notification of local law enforcement officials

The FBI shall ensure that State and local law enforcement officials of the jurisdiction from which, and the State and local law enforcement officials of the jurisdiction to which, a person required to register under subsection (c) of this section relocates are notified of the new residence of such person.

(B) Notification of FBI

A State agency receiving notification under this subsection shall notify the FBI of the new residence of the offender.

(C) Verification

(i) State agencies

If a State agency cannot verify the address of or locate a person required to register with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, the State shall immediately notify the FBI.

(ii) FBI

If the FBI cannot verify the address of or locate a person required to register under subsection (c) of this section or if the FBI receives notification from a State under clause (i), the FBI shall—

(I) classify the person as being in violation of the registration requirements of the national database; and

(II) add the name of the person to the National Crime Information Center Wanted person file and create a wanted persons record: *Provided*, That an arrest warrant which meets the requirements for entry into the file is issued in connection with the violation.

(h) Fingerprints

(1) FBI registration

For each person required to register under subsection (c) of this section, fingerprints shall be obtained and

verified by the FBI or a local law enforcement official pursuant to regulations issued by the Attorney General.

(2) State registration systems

In a State that has a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, fingerprints required to be registered with the FBI under this section shall be obtained and verified in accordance with State requirements. The State agency responsible for registration shall ensure that the fingerprints and all other information required to be registered is registered with the FBI.

(i) Penalty

A person who is—

(1) required to register under paragraph (1), (2), or (3) of subsection (g) of this section and knowingly fails to comply with this section;

(2) required to register under a sexual offender registration program in the person's State of residence and knowingly fails to register in any other State in which the person is employed, carries on a vocation, or is a student;

(3) described in section 4042(c)(4) of title 18, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation; or

(4) sentenced by a court martial for conduct in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105-119, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation, shall, in the case of a first offense under this subsection, be imprisoned

for not more than 1 year and, in the case of a second or subsequent offense under this subsection, be imprisoned for not more than 10 years.

(j) Release of information

The information collected by the FBI under this section shall be disclosed by the FBI—

(1) to Federal, State, and local criminal justice agencies for—

(A) law enforcement purposes; and

(B) community notification in accordance with section 14071(d)(3) of this title; and

(2) to Federal, State, and local governmental agencies responsible for conducting employment-related background checks under section 5119a of this title.

(k) Notification upon release

Any State not having established a program described in subsection (a)(3) of this section must—

(1) upon release from prison, or placement on parole, supervised release, or probation, notify each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title of their duty to register with the FBI; and

(2) notify the FBI of the release of each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title.