

The Unethical Dilemma of an Offense Based Sex Offender Registration and Notification System and the Indiscriminate Effect on the Low Risk Offender.

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For my God, Lord, and King Jesus Christ who has kept me and strengthened me when I was weak. Who in my weakness HIS strength was made perfect. Who made me to finish my course when I was weary. ALL of my help comes from the Lord. You are my rock. Psalms 62.

For my Mother. Who always told me I can be and do anything in life and continues to be my other rock.

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I. INTRODUCTION

Ethics can be defined as the “canonization” of morality. As morality shapes the way a person views the world, ethics is the process in which one defines that shape, their interaction with the world, through their morality. In traditional times, as compared to post-modernity, laws were moral-religious based. Up until the 1960’s, one could not buy alcohol on Sundays and most stores and places of entertainment were closed on Sundays out of respect for Sabbath Day Worship and sentiment. Sodomy, homosexuality, and adultery were pursued and prosecuted as “criminal” acts. As most of these laws have been set-aside or overturned today, they were known as Moral Laws. Post-modernity, a genre of time that is epitomized by inclusion of all cultures, beliefs, and ideologies, determined that moral sentiment within the law does not reflect the multi-cultural population of the United States. In so doing, ethical considerations found no place in criminal law. And in the light of heinous and egregious sex offense crimes, fear has all but eliminated the ethical foundation of human rights that all Americans have to liberty and human dignity. In a rush of fear and anxiety to formulate a response for the heinous crimes that garnered media attention and captured our fears, each state, within its own sexual deviant atrocity within its borders, created its law (Megan’s Law, Amie’s Law, Wetterling Act, Lunsford Act, etc.), and our government in a hastened, unreasoned, indiscriminate, “catch-all” response, layered each act to create a homogenous “soup” that has all the ingredients of goodness and none of fairness. In an attempt to put a face on our fears, our criminal justice system has painted, with very broad strokes, a picture that incorporates all alleged acts of sex offense on the same canvas. No discriminating features or “culpability” distinguishing the LEVEL of one offense from the other. Just one broadly stroked, definitively displayed, notification system that does not provide for adequate discrimination in the “malice” of each offense. All offenders, no matter how slight or egregious, equally hanging by the

same wire. All punished in the same degree. Doesn't American law, codified or common, in light of fair play and justice, require that the punishment must fit the crime? The Eight Amendment of our United States Constitution declares that punishment must not be cruel and unusual – severe or excessive.² Thus, Murder, a capital crime before the court system, has four different levels of culpability proscribing four different levels of punishment. First degree murder is not second-degree murder, even though both are murder. Likewise, petit theft is not grand theft (though both are theft) and each level of culpability, or as the law designates “intent,” mandates the severity of the punishment must equal its culpability. Then why is Adrian, a registered sex offender who had sex with a girl who said she was 18 years old when they met at an Over 18 Club³, on the same list as Jesse Timmendquas, who forcefully sexually assaulted and murdered a seven-year old girl from his neighborhood?⁴ In these cases, and several others we will review, lady justice has been truly blind. Blind to indiscriminate and damaging sociological, psychological, and economic trauma exacted on registered sex offenders as a result of the indiscriminate effects of the notification requirement. Legislature, opting to deal *swiftly* with the offense, has failed to deal accurately with the offender. The current legislation, though appropriate to the offense has been inappropriately applied to the offender. The same registration that binds the serial rapist (Westley Allan Dodd)⁵ murderer, who requested being hanged for his criminal sexual acts AND stated that if he was not put to death he will “kill again and enjoy it,” also binds the drug dealer (Equan Yunus)

² U.S. Const. amend. XIII; “*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*”

³ Susie Bright 761: Sex Offender registries are out of control. Audible (2019).

⁴ Hope E. Durant, Message to sex offenders: Sex Registration and Notification Laws Do not infringe upon your pursuit of happiness. 26 J. Legis. 293 (2000)

[https://heinonlineorg.ezproxy.barry.edu/HOL/LuceneSearch?terms=sex+offender+](https://heinonlineorg.ezproxy.barry.edu/HOL/LuceneSearch?terms=sex+offender+Registration&collection=abajournals&searchtype=advanced&typea=text&tabfrom=&submit)

Registration&collection=abajournals&searchtype=advanced&typea=text&tabfrom=&submit

⁵ Ed Pilkington; There was a lot of shame: Meet the sex offender who is not a sex offender. The Guardian. Oct 2018.

who kidnapped another drug dealers son for ransom and, due to the new law that allows the kidnapping of a minor to be charged as a sex offense even though the crime was not sexually motivated and no sexual deviation was committed. The societal attitude towards sex offenders does not take into consideration the actual culpable offense committed, only the stigmatization that flows with one who has been required to register as a sex offender...even though his actual charge and conviction was simply kidnapping.⁶ Imagine waking daily to signs posted in your yard and painted in bright red letters on your home, reverberating these two deadly words: “CHILD MOLESTER!” AND you have never molested anyone, yet your name is listed on the registry. Though the conviction and sentencing for the actual charges might have been served with punitive disparity, the stigmatization due to registration is served collectively. Even in correctional institutions worldwide, the stigma of sex offenders, or as incarcerated felons say, “CHOMOS” (CHild MOlesterS), generally carries the penalty of death by fellow inmates and most sex offenders who have actually committed child related sex-offenses have to be separated from the general population or they face a heightened risk of being assaulted and murdered. This heightened security usually results in being placed in isolation (generally a solitary confinement 8x8 cell) for protective reasons for 95% of their incarceration. Imagine if within the *incarcerated* population, nationwide, the response is merciless, how can the legislature assume that the victim’s family, neighborhood, community, employers in that community, would respond BETTER towards a registered sex offender who has been released back into society and placed on community notification? The Marshall Project states that “There are over 800,000 Americans on the sex offender registries. In many states, men and women on the registry are all subject to the same rules

⁶ See *id.*

and restrictions, regardless of their crime.”⁷ Though the conviction may be just, I propose that the registration and notification process is not. The registry lacks discriminatory substantive measures designed and implemented to discern the culpability factors that will distinguish heinous acts of a sexual nature from minor violations that are not sexual in nature or proclivity. Such lack of discrimination violates the ethical standards of liberty and human dignity. This article is written to address the following concerns; *First*, a survey of the history of scattered state legislative responses to violent sex offenders, that will culminate to the aggregation of legislation into a Federal and National response tied to funding, and will reveal how the progression of these broad sweeping responses will lead to dismal and inappropriate results. *Second*, a peak into the social stigmatization that has affected the legitimate sex offender and the registered sex offender (who is not a sex offender) equally, catastrophically ostracizing and emasculating potentially positive contributors to society. Lastly, I will suggest remedial measures that will advocate the implementation of possible *assignment* to the Sex Offender and Notification Registration Act based on Culpability Level Assessment of Sex Offender Sentencing (C.L.A.S.S.). C.L.A.S.S. is designed to incorporate a progressive evaluation aspect which will delay offenders being placed immediately on S.O.R.N.A., unless they are convicted of a child related or sexually motivated crime. All other offenses that will legislatively qualify for registration under S.O.R.N.A., such as kidnappings, sexting, mutual copulation of minors, will be subject to progressive evaluation and calculation under the C.L.A.S.S. system. Each era is simply a revelation of how modern our society has become, but in every generation, legislation is born out of fear and not justice, equity, or reason. The displacement of the Indian Tribes, Dred Scot Decision (1857), Plessy v. Ferguson

⁷ David Feige, Shawna: A Life on the Sex Offender Registry. The Marshall Project. September 17, 2017.

(1896), the Chinese Exclusion Act of 1882 (not repealed until 1943), the rise of nationalism leading to the decision in *Buck v. Bell* (1927), and in our present generation, the Sex-Offender Registration. These were all societal fear responses to a perceived threat and the measures that arose to “handle” the threat were inappropriate, wide-sweeping, indiscriminate, unjust and a violation of human dignity. Can we couple fear with reason and produce good? Is it even wise to try to couple fear...ever? Marie Curie said “Nothing in life is to be feared, it is only to be understood. Now is the time to understand more so that we may fear less.”⁸ Michel de Montaigne also stated in relation to fear that “A man who fears suffering is already suffering from what he fears.”⁹ And Patty Wetterling, the mother of Jacob Wetterling, who was a murdered victim of a sex offender, said it best;

On an intellectual level, when these guys are released from prison, we want them to succeed. That's the goal. Then you have no more victims. That's the goal. All these laws they've been passing make sure that they're not going to succeed. They don't have a place to live; they can't get work. Everybody knows of their crime and they've been vilified. There is too much of a knee-jerk reaction to these horrible crimes...I'm not soft on these guys, but I know they're not all the same. They're not all the same and we can't treat them as such.

—Patty Wetterling, mother of Jacob Wetterling, Wetterling Act (2009)

II. HISTORY, CASES, AND CONTROVERSIES

Sunday, October 22, 1989. Eleven year old Jacob Wetterling was leaving his home on bike with his ten year old brother and an eleven year old friend.¹⁰ On their way home from the video store, a man wearing a stocking cap mask, came out of a driveway brandishing a gun and ordered the

⁸ Wisdomquotes.com

⁹ See id.

¹⁰ Alan D Scholle, M.S., Sex Offender Registration Community Notification Laws; 69 FBI Enforcement Bulletin. 17 (2000)

boys to lie face down on the ground.¹¹ He then asked each boy his age.¹² Jacob's brother was told to run away as the perpetrator demanded to view the faces of the two remaining boys.¹³ He picked Jacob and this was the last time Jacob would be seen alive.¹⁴ In 1994, the federal Jacob Wetterling Act was passed and became the first law to institute a state sex-offender registry.¹⁵ This Act gave the states the option of releasing information about registered sex offenders.¹⁶

July 30, 1994. Megan only wanted to see his puppy.¹⁷ Megan Kanka entered her neighbor's home and contrary to his reason for convincing her to come over, Megan did not find a puppy.¹⁸ Jesse Timmendequas, a two time convicted sex offender, strangled her with his belt and then brutally sexually assaulted her.¹⁹ This heinous crime was so shocking to the New Jersey legislature they enacted a sex offender registration and notification law requiring sex offenders to register and to notify local law enforcement of their residence.²⁰ This law became known as "Megan's Law."²¹ In 1996, Megan's Law required that states disclose sex offender information, conditioning this requirement on receiving federal funding for state law enforcement.²²

¹¹ See Id.

¹² See Id.

¹³ See Id.

¹⁴ See Id.

¹⁵ Ramirez, Jessica The Abductions That Changed America. Newsweek. 149 (5): 54–55. ISSN 0028-9604. January 29, 2007.

¹⁶ Alan D Scholle, M.S., Sex Offender Registration Community Notification Laws; 69 FBI L. Enforcement Bulletin. 17 (2000)

¹⁷ Hope E. Durant, Message to sex offenders: Sex Registration and Notification Laws Do not infringe upon your pursuit of happiness. 26 J. Legis. 293 (2000)
<https://heinonlineorg.ezproxy.barry.edu/HOL/LuceneSearch?terms=sex+offender+Registration&collection=abajournals&searchtype=advanced&typea=text&tabfrom=&submit>

¹⁸ See id.

¹⁹ See id.

²⁰ See id.

²¹ See Id.

²² See id.

July 1981. Adam Walsh, six years old at that time, was abducted from a mall in Hollywood, Florida.²³ His severed head was found two weeks later in a drainage canal alongside Highway 60/Yeehaw Junction in rural St. Lucie County, Florida. His death garnered national interest.²⁴ In 1984, the U.S. Congress passed the Missing Children's Assistance Act, owing in part to the advocacy of the Walsh's and other parents of missing children. It allowed the formation of the National Center for Missing & Exploited Children (NCMEC).²⁵

In 1990, Pamela Lychner, a flight attendant bought another house to renovate and sell. Soon after she put it on the market, a man called and asked to see it.²⁶ Little things about the conversation seemed odd to Pam. He told her that he and his wife planned to pay in cash, and that they'd just gotten into town and didn't have a phone number.²⁷ After Pam asked his wife's name, he paused - a bit too long, she thought. "Pamela," he said finally.²⁸ A bit unnerved, Pam asked her husband Joe to go with her and while they waited for the couple, a pickup pulled into the driveway.²⁹ The driver was a workman from a cleaning company Pam had used, and she went to see what he wanted.³⁰ Joe, who was waiting in the dining room, heard a conversation, then a struggle.³¹ He ran towards the noise and saw Pam's feet sticking out of a closet and the workman was trying to pull her clothes off.³² Joe lunged, grappled with the man and pinned him into a corner while Pam,

²³ David L. Hudson Jr., Crime under Fire: Adam Walsh Act Mandates Sex Offender lists, but some say it's Unconstitutional. ABA Journal, Vol. 94, 22 No. I, 2008

²⁴ See id.

²⁵ Mission and History. Archived October 29, 2012 at the Wayback Machine. The National Center for Missing & Exploited Children. Retrieved November 4, 2012.

²⁶ Gray, Lisa. After the Crash. Houston Press. October 23, 1997.

²⁷ See id.

²⁸ See id.

²⁹ See id.

³⁰ See id.

³¹ See id.

³² Gray, Lisa. After the Crash. Houston Press. October 23, 1997.

distraught from the attempted rape, ran outside, screaming for help.³³ The police later found that Pam's assailant, William David Kelley, was a convicted rapist and child molester.³⁴ In addition to carrying a knife and duct tape, William David Kelley had spread a blanket out in the back of his pickup truck.³⁵ The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 established the sex offender database now maintained by the Federal Bureau of Investigations.³⁶ The bill also addresses the interstate commerce of sex offenders who travel between states, requiring them to register with the local law enforcement of the they are present in or face fines and possible prison time.³⁷

February 24, 2005. Jessica Lunsford disappeared from her home in Homosassa, Florida.³⁸ After approximately three weeks of intense searching for her around the area of her home, John Evander Couey, a convicted child sex offender, a 46-year-old long-time resident of Homosassa with an extensive criminal record, listing dozens of arrests for burglary, was eventually arrested.³⁹ Laws at that time did not provide for monitoring of offenders and only gave short sentences, despite his record of being an experienced trespasser and his repeated sexual offenses against children.⁴⁰ On March 12, the Citrus County Sheriff's Office requested Couey be arrested in Augusta, Georgia, and for questioning about Lunsford's disappearance since his Florida home in Homosassa was only sixty-five yards from Lunsford's home.⁴¹ On March 14, police, with the consent of Couey's half-

³³ See id.

³⁴ See id.

³⁵ See id.

³⁶ Alan D Scholle, M.S., Sex Offender Registration Community Notification Laws; 69 FBI L. Enforcement Bulletin. 17 (2000)

³⁷ Lisa Gray. After the Crash. Houston Press. October 23, 1997.

³⁸ Mabel Perez. "Judge throws out Couey confession", *The Ocala Star Banner*, July 1, 2006

³⁹ See id.

⁴⁰ See id.

⁴¹ See id.

sister searched John's trailer at West Snowbird Court in Homosassa. Couey had lived there during the time Jessica was abducted. And during the search, a blood-stained mattress and pillows were found in Couey's closet in his room.⁴² The DNA was Couey's and Jessica's. Couey confessed.

Couey said that he had previously seen Lunsford playing in her yard and thought she was "about six years old." On the night of the abduction, Couey had intended to just burglarize the Lunsford's home, but saw Jessica and "acted on impulse and he took her." He entered Lunsford's house at about three o'clock in the morning through an unlocked door, awakened Lunsford, told her "Don't yell or nothing", and told her to follow him out of the house.[5] He occupied a trailer along with two women, some 100 yards (91 m) away, at the time of Lunsford's abduction.[6] Couey admitted to raping Lunsford in his bedroom, keeping her in his bed that evening, where he raped her again in the morning. Couey put her in his closet and ordered her to remain there, which she did as he reported for work at "Billy's Truck Lot".[5] Three days after he abducted her, Couey tricked Jessica into getting into two garbage bags by saying he was going to "take her home". He instead buried her alive as he decided he could do nothing else with the girl. He said he "Didn't want people seeing him and Lunsford across the street."⁴³

On March 17, Couey was arrested and charged with the murder and on March 19, 2005 the body of Jessica Lunsford was found buried on his residence. She had been buried alive.⁴⁴

Megan Kanka, Jacob Wetterling, Adam Walsh, Pamela Lychner, Jessica Lunsford. These names are familiar to us since the dismay of their untimely and horrific deaths have shaped, and

⁴² See id.

⁴³ See id.

⁴⁴ Mabel Perez. Judge throws out Couey confession, The Ocala Star Banner, July 1, 2006

incrementally strengthened, the registration and notification requirements of the Sex Offender laws since 1994.⁴⁵ The Jacob Wetterling Act gave the states the option of releasing information about registered sex offenders to the public but did not require it, but in 1996, Congress amended the act to *require* states to disclose information about registered sex offenders for *public safety purposes*.⁴⁶ When the Violent Crime Control and Law Enforcement Act included the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act in 1994, the current legislation for sex offenders began its era.⁴⁷ In 2006, the Adam Walsh Act superseded the Wetterling Act. The new act, as an aggregate of legislature became known as the Adam Walsh Child Protection and Safety Act, Public Law 109-248. The following points below were established:

- *a federal requirement that states register juveniles over the age of 14*
- *adjudicated for a sex offense;*
- *a conviction-based scheme distinguishing low, medium, and high-risk offenders;*
- *an expansion of mandatory sentences for federal sex offenders;*
- *an increasing role for the federal government, specifically the U.S. Marshals, in locating unregistered sex offenders (109th Congress, 2006). ”⁴⁸*

⁴⁵ David L. Hudson Jr. Crime under Fire: Adam Walsh Act Mandates Sex Offender lists, but some say it's Unconstitutional. ABA Journal, Vol. 94, 22, No. I, (2008.)
<https://heinonlineorg.ezproxy.barry.edu/HOL/LuceneSearch?terms=sex+offender+Registration&collection=abajournals&searchtype=advanced&typea=text&tabfrom=&submit>

⁴⁶ Alan D Scholle, M.S., Sex Offender Registration Community Notification Laws; 69 FBI L. Enforcement Bulletin. 17 (2000)

⁴⁷ See id.

⁴⁸ Richard G. Wright, PhD; Sex Offenders Laws: Failed Policies, New Directions. Spring Publishing Company, New York. (2008)

- *Making kidnapping and false imprisonment of a child, regardless of sexual intent, a registerable sexual offense;*⁴⁹
- *Requiring registered sex offenders to register in any jurisdiction, not only where they live, but also where they work or attend school;*⁵⁰
- *Requiring sex offenders to verify their addresses once per year for those at tier 1, twice a year for those at tier 2, and 4 times per year for those at tier 3;*⁵¹
- *Making failure to register a felony offense punishable by a maximum of 10 years in prison;*⁵²
- *Giving a registered sex offender 3 days to report a change of address to law enforcement agencies;*⁵³
- *Requiring that registered sex offenders' entire criminal history, not just the sexual offense, fingerprints, palm prints, and a DNA sample be reported to law enforcement agencies;*⁵⁴

⁴⁹ Kelly K Bonnar-Kidd, PhD Sexual Offender laws and Prevention of Sexual Violence or Recidivism, Am J Public Health. 100(3): 412-419. (March 2010)

⁵⁰ See id.

⁵¹ See id.

⁵² See id.

⁵³ See id.

⁵⁴ See id.

- *Mandating that the registry be made available on the Internet and that all tier levels, including tier 1, be subject to such community notification;*⁵⁵
- *Mandating the length of time a registered sexual offender would be required to register; offenders at tier 1 would register for 15 years, offenders at tier 2 for 25 years, and offenders at tier 3 for life; and*⁵⁶
- *Providing additional funds to support offices, software, training, and additional personnel to enforce registered sex offender laws.*⁵⁷

I have intentionally excluded mention of several laws and Acts that affected the expansion of Sexual Offenders Registration and Notification Act (SORNA) because the narrow scope of this paper is not historical but remedial. Yet there are many that currently advocate for addition and amendment to these major four listed above, and future legislative action will expand the law concerning sex offense related crimes to reflect society's apprehension, such as the "*Amie Zyla Law*" which advocates for the inclusion of youth sex offenders on SORNA with public notification and access,⁵⁸ "*Dru's Law*", which established the Dru Sjodin National Sex Offender Public Registry,⁵⁹ The first "*Sexual Predator Law*" adopted in Washington in response to the first-degree rape and assault of seven year old Ryan Alan Hade by Earl Kenneth Shriner, an American criminal

⁵⁵ Kelly K Bonnar-Kidd, PhD., Sexual Offender laws and Prevention of Sexual Violence or Recidivism, Am J Public Health. 100(3): 412-419. (March 2010)

⁵⁶ See id.

⁵⁷ See id.

⁵⁸ Kelly K Bonnar-Kidd, PhD., Sexual Offender laws and Prevention of Sexual Violence or Recidivism, Am J Public Health. 100(3): 412-419. (March 2010)

⁵⁹ See id.

who had an extensive history of sexual assault and sex-related crimes.⁶⁰ Current sex offender registry laws have incorporated a tier-system that classify offenders and provide UNIFORM guidelines for registration. There are two problems with this: First, if the offenses are not uniform in nature, culpability and offense, but the punishment is, then the punishment is excessive for the lesser offense violations. Second, the 3-tier system classifies the offender by evaluation of the risk of re-offense, and this risk is assessed on a “propensity theory” that is not viable evidence in any court in the United States.

CONTROVERSIES

Equan Yunus, New York

This is the story about a sex offender who is not a sex offender.⁶¹ In the early nineties, Equan, like most other youths from his community fell into the New York drug trade.⁶² At 15, he began to sell crack cocaine on the streets of Harlem, Washington Heights, and parts of New Jersey and Philadelphia and by the time he was 20, he was making \$10,000.00 a day.⁶³ Wanting more, Equan began to kidnap the family members of other drug dealers and his first kidnapping ransom paid was \$60,000. His mistake came when he kidnapped another male drug dealer, the fourteen year old son of a major cocaine distributor on the west side of Harlem.⁶⁴ Equan held the boy for less than a day, not knowing the boys age, and when the ransom was paid, the boy was released.⁶⁵ The boy’s father contacted the police, Equan was arrested, he plead guilty and served 15 years in New

⁶⁰ See id.

⁶¹ Ed Pilkington., There was A Lot of Shame: Meet the Sex Offender Who is not a Sex Offender. The Guardian. October 2018

⁶² See Id.

⁶³ See id.

⁶⁴ See Id.

⁶⁵ See id.

York State's maximum security prison.⁶⁶ A month before he was released, Equan received a letter instructing he attend a hearing to evaluate his sex offense risk level and he was stunned! His offense was neither sex-based nor sex motivated so this was a mistake! In New York, ANY adult who kidnapped a child under 17, who was not their own child, is automatically legally determined to be a sex offender even if there is no culpability for a sex motivated act.⁶⁷ Though, after 15 years in New York's Maximum Security Prison, Equan had paid severely for his crime, and impliedly all the others he was not convicted of, he will be committed to another lifetime sentence as a sex-offender and be cast under the umbrella of its punitive stigmatization.

Shawna Baldwin, Oklahoma.

On Shawna's 19th birthday, she decided to celebrate by throwing herself a party and inviting friends.⁶⁸ At the party, a young man put his arm around her and said he did not want to take advantage of her if she was drunk and she stated it was ok.⁶⁹ They had sex.⁷⁰ The next day the boy's mother called Shawna and told her that she reported her at the risk of her son hating her forever.⁷¹ Shawna was called to the police station, questioned, arrested, then told that if her case went to trial, she could go to prison for 20 – 25 years, but if she took a plea her sentence will be 4 months jail, lifetime probation, and lifetime registration.⁷² The Oklahoma Sex Offender Registry has her listed as a level 3 child molester.⁷³ Shawna has two beautiful children and takes them to the park often. The Marshall Project accompanies her to the local Oklahoma Park in October 31,

⁶⁶ See id.

⁶⁷ See id.

⁶⁸ The Marshall Project. Shawna: A life on the sex offender registry.

<https://www.themarshallproject.org/2017/09/17/shawna-a-life-on-the-sex-offender-registry>

⁶⁹ See id.

⁷⁰ See id.

⁷¹ See id.

⁷² See id.

⁷³ See id.

2014, the day before sex offenders are permanently banned from all of Oklahoma’s public parks, her last day she will be allowed to step foot in the park, and consequently not be allowed to be within 1,000 feet of it.⁷⁴

III. HARMFUL STIGMATIZATION OF SEX OFFENDER REGISTRATION AND NOTIFICATION

Collateral Consequences. The result of a felony conviction or offense that extends beyond a persons’ term of incarceration and continues to inhibit their personal life, deny them opportunities afforded to others because of their conviction or classification from that conviction, and punishes the felon beyond their conviction.⁷⁵ *Joblessness, homelessness, ostracization, limitation academically as well as economically, and most of all, disassociation from ones family, neighbors, and community.* “You judge our society for how it treats the least among us; and I think at this point, sex offenders are the least among us.”⁷⁶ “It is as if we have taken this entire category and said these are not human beings, we don’t care about them. We put all of them on the registry with the same restrictions and that doesn’t make sense even as a public safety issue, it doesn’t make sense as public policy, and it surely doesn’t make any sense in terms of justice.”⁷⁷ Our treatment of sex offenders has resulted in the creation of a second class citizen. SORNA requires that sex offenders register within three days of moving to the state, or within three days of their conviction or release. They must provide their names, dates of birth, social

⁷⁴ See id.

⁷⁵ Tracy WP Sohoni. *The Effect of Collateral Consequence Laws on State Rates of Returns to Prison*. University of Maryland, College Park. 2013. PhD Dissertation

⁷⁶ David Feige, *Shawna: A Life on the Sex Offender Registry*. Val Jonas, The Marshall Project. September 17, 2017.

<https://www.themarshallproject.org/2017/09/17/shawna-a-life-on-the-sex-offender-registry>

⁷⁷ David Feige, *Shawna: A Life on the Sex Offender Registry*. Nancy Gertner, The Marshall Project. September 17, 2017.

<https://www.themarshallproject.org/2017/09/17/shawna-a-life-on-the-sex-offender-registry>

security numbers, all aliases, work and school addresses, a photograph, physical descriptions, vehicle information, criminal records, driver's licenses, proof of residency, palm prints, and DNA samples. This information is required to be updated annually and is made available to the public on the registration database. If they fail at any time to provide the information listed above, it is a crime punishable by incarceration.⁷⁸ This is only the beginning.

Housing is a problem. Housing prospects are severely limited due to the restrictions placed on sex offenders.⁷⁹ Sex offenders are generally banned from living within a certain number of feet, or yards, from areas populated with children, such as school bus pick-ups, schools, parks, day care centers.⁸⁰ Continuous relocation and re-registration, since a sex-offender has to register their address every time they have to move within 3 days, or risk reincarceration.⁸¹ Statistics show that registered sex offenders were found to be ineligible for 99.7% of residences.⁸² If the sex offender did not have an address before they were released from prison, they would be picked up by the local sheriff's office and taken to the local jail until they had a valid address that satisfied the dynamics of their restrictions. Several business savvy organizations took advantage of this and purchased remote land, placed several mobile homes on these properties and advertised in the prisons that these properties are available and will meet the sex offender restriction qualifications. Four to five sex offenders were placed in one mobile home and each charged an average of \$400-\$750 a month. Many of the families who desired their sons/daughters to come home from prison paid the cost. These forced restrictions created a new problem of sex-offender created mobile home

⁷⁸ Carla Schultz, The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and the Sex Offense Registry, Vol 2. Themis: Research Journal of Justice Studies and Forensic Science, Spring (2014)

⁷⁹ See Id.

⁸⁰ See Id.

⁸¹ See Id.

⁸² See Id.

parks. These parks became a nuisance for many cities, and several began to place restrictions on the zoning status of these parks. One particular park in St. Petersburg Florida, also known as “Pervert Park,” has garnered national attention in a documentary called Pervert Park, filmed by Swedish-Danish filmmakers Frida and Lasse Barkfors.⁸³

Employment. Difficulty in finding and maintaining employment has dire effects on the sex offenders ability to register their address. The stigmatization of the registration and notification “collapses” the distinction between the level of act committed. When the employer receives notification that James, whom they hired, was a registered sex offender, they do not care that he is 53 years old and the offense in which he is registered for is peeing in public fifteen years ago. The database makes no distinction in the offense and paints the stigma of egregious sex-offense over all registrants. Publix is aware that Troy is a registered sex-offender but no aware that is because he and his girlfriend were “sexting” in high school two years earlier and he was prosecuted under the new sexting laws. 27% report having lost their jobs once their supervisor found them on the registry.⁸⁴

Public Assistance. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), championed by President Bill Clinton as the culmination of his presidential promise to end welfare, was known to ex-offenders as the welfare ban.⁸⁵ After being debated in Congress for two minutes, the ban was imposed on felony offenders and was introduced as an amendment

⁸³ Jen Yamato, Inside ‘Pervert Park’: Safe Haven for Sex Offenders. Daily Beast, May (2016). <https://www.thedailybeast.com/inside-pervert-park-safe-haven-for-sex-offenders?ref=scroll>

⁸⁴ Carla Schultz, The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and the Sex Offense Registry, Vol 2. Themis: Research Journal of Justice Studies and Forensic Science, Spring (2014)

⁸⁵ Rubenstein and Mukamal. *Legislative Barriers to Successful Reintegration*, US Criminal Justice Police: A Contemporary Reader. 173-174 (2010)

to the initial welfare reform bill.⁸⁶ Though the initial bill only focused on the war on drugs, later reforms and amendments applied this bill to other felony offenders such as sex offenders. For example, in April 2019, the Food and Nutrition Service of the Department of Agriculture, in Section 4008 of the 7 C.F.R. (Code of Federal Regulations) “prohibits anyone convicted of Federal aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault, or similar State laws...from receiving SNAP (Supplemental Nutrition Assistance Program).”⁸⁷ SNAP is colloquially referred to as food stamps. Sex offenders are ineligible to receive public assistance in the form of food stamps.

Public outrage. Notification of the current residence of sex offenders is designed to make the community aware that someone who has committed a sex crime is living in their neighborhood. This affords the community notice to take necessary precautions to protect their loved ones. At least that is the intent. Generally, 73% of sex offenders return home to their families and attempt to live a quiet life. This is not always the case. Often sex offenders are harassed, assaulted, and on a few occasions, their roommates were battered as the result of mistaken identity. “This is the dark side of sex-offender registries, which allow public access to offenders’ residential addresses and other personal information.”⁸⁸ In 2005, two registered sex offenders living together, due to the difficulty of obtaining housing because of the restrictions, were murdered by a man posing as an FBI agent claiming to be investigating threats against sex offenders.⁸⁹ Another similar case, an innocent man from Dallas, Texas had moved into an apartment recently vacated by a sex offender

⁸⁶ See Id.

⁸⁷ Federal Register. Vol 84, No.72 (2019)

⁸⁸ Matt Clarke, Vigilantes Assault, Rob and Murder Registered Sex Offenders. Prison Legal News. (May 2017)

⁸⁹ See id.

and was beaten with a bat as a result of mistaken identity.⁹⁰ Sex offenders live under the terror of imminent danger and assault from being required to have their whole life displayed before any person with a computer or a mailbox, and additionally required to stay only at their residence of address. In some states they must sleep at the place on their driver's license a minimum of 3-4 days a week. If they change residences, they have three days to change their drivers' license, and failure to do so results in reincarceration. Many are violated because they are not employed, cannot receive public assistance, and cannot afford the DMV cost of changing their address on their driver's license. Lack of housing, public assistance, low job potential, no job prospects, social stigmatization that ostracizes them, and restrictions on where to walk, live, eat, does not human dignity make. And to add insult to injury, the designated Officer in charge of their registration is authorized to inform their place of business and community who they are and their designation as a sex offender. Yet, the issue this paper is addressing is not less restriction, better treatment, public assistance, or lack of notification. The problem is the lack of discrimination between the offense, and the collapsing distinction among the culpability level of offenders that would separate the Ted Bundy's and the Wesley Allan Dodd's from Equan Yunus and Shawna Baldwin. S.O.R.N.A. does not make such a distinction and in so doing, as the old saying goes, "throws the baby out with the bath water." Discrimination amongst the sex-offenders in the level of offense committed will lessen the municipal burden of homelessness, the unemployment rates of the States, make available housing for those who are not mandated for notification due to the extremely low level of culpability and risk of re-offense. When registered low risk sex offenders are afforded human dignity and equal protection of the laws, and are not subject to the denigrating effects of sex offender stigmatization, they can easily reacclimate to society and become a productive part of

⁹⁰ See id.

their community. As our laws currently stand, they are doing more harm than good, and the cost outweigh their benefits.

IV. HOW SEX OFFENDER REGISTRATION AND NOTIFICATION WORKS

Recidivism, and/or potential to re-offend, is the measurement currently used by most states. This is a hard assessment tool to apply. This rubric must assess “propensity” and propensity assessment, in the evidence code is NOT ADMISSIBLE in court or criminal adjudication.⁹¹ So why is such an abstract, intangible, unquantifiable, nonfigurative, conjectural, theoretical analysis utilized to evaluate America’s current anathema, even though the courts system, federally and statewide, have determined that propensity determinations to assess if a criminal will reoffend are not probative and are unfairly prejudicial AND cannot be used in the criminal justice system? S.O.R.N.A., through Megan’s Law, has developed a three-tiered system.⁹² Megan’s Law reviews the criminal and behavioral history of the released sex offender to assess the risk of re-offense.⁹³ Thus the current focus of our Sex Offender Registry is primarily to curb recidivism. It does not address the issues and benefits of rehabilitation and reentry into society. The three-tiered system is broken down by the classification level of the *offense*, but this is the problem. The issue is the focus on the offense-based classification system proposed by our legislation, and how legislature has included non-sex motivated offenses, such as kidnapping, to be assigned as a sex motivated crime. The risk assessments is a review of the offense that requires registration and includes the following: 1) studying the nature of the *sexual* acts; 2) whether the offender used force, displayed or used weapons, or injured the victim during the crime; 3) the age of both the victim and the

⁹¹ Charles W. Ehrhardt, Ehrhardt’s Florida Evidence. 2017 Edition Volume 1. (2017)

⁹² Ryan A. Boland; Note, Sex Offender Registration and Community Notification: Protection, not Punishment 30 New Eng. L. Rev. 183 (1995)

⁹³ See id.

offender at the time of the crime; 4) Offender's criminal history and incarceration record; 5) and completed sex offender treatment programs.⁹⁴ Under the first element listed above, if the risk assessment studies the nature of the sexual act, then kidnapping, where a sex-crime has not been committed, should in no way trigger S.O.R.N.A. Elements two and three should only be assessed after element one has been established. If Element one has not been established, then S.O.R.N.A. should not be triggered. Element 4, the criminal history of the offender, already plays a role in future sentencing. Presently the state utilizes the Habitual Felony Offender (HFO) statutes, and the Prison Releasee Reoffender (PRR) sentencing guidelines on all felony offenders or repeat offenders to assess recidivism issues. This is not a novel approach to determine the propensity to recidivate. And, element five is only viable, once element one has been established.

THE THREE-TIERED SYSTEM

The US Department of Justice issued the list of sex offenses that require registry, and the tiers that govern the statutory offense levels. Offenders **MUST** register if convicted of any of the following:⁹⁵

Tier 1. This tier makes a determination that the degree of dangerousness is low and notification information is not a public requirement.⁹⁶ *Offenses involve an element of sexual contact or sexual acts and can include:*

1. Having or receiving child pornography.
2. Falsely imprisoning a minor.
3. Video voyeurism of a minor.

⁹⁴ Alan D Scholle, M.S., Sex Offender Registration Community Notification Laws; 69 FBI L. Enforcement Bulletin. 17 (2000)

⁹⁵ Tammy Cohen, PHR, SHRM-CP, Violations That Can Land You on a Sex Offenders Registry? April (2016). www.infomart-usa.com/blog

⁹⁶ See id.

4. Traveling or facilitating others' travel when the intent of the travel is to engage in illicit conduct.

5. The transmission of information about a minor that will further criminal sexual misconduct.

Tier 2. Tier 2 determinations assess the risk of re-offense to be moderate. This determination then concludes the danger level to require public notification availability.⁹⁷ *Offenses apply to people who have previously been convicted of a Tier 1 offense and can include:*

1. Minors in prostitution and/or sex trafficking.
2. Enticing minors to engage in criminal sexual activity.
3. Engaging in a non-forced or consensual sexual act with a minor aged 16 or 17 year.
4. The act of producing or distributing child pornography.
5. Utilizing minors to commit sexual performance.

Tier 3. Tier 3 assessment makes determinations of offenders at a high risk of reoffending and are quantified as “substantial public interest” and mandates public notification.⁹⁸ *Offenses involve people who have been convicted of a Tier 2 offense and can include:*

1. A non-parent **kidnapping** a minor.
2. Having sex or sexual contact with minors under age 13
3. Sexual abuse, aggravated sexual abuse, sexual abuse of a minor, and abusive sexual contact with a minor under age 13.

The three-tier management system provides for a rubric of assessment that establishes degrees of dangerousness and most importantly a discriminatory system that only requires notification when the offense level has been assessed as a high risk of re-offense. Although the three-tier system

⁹⁷ See id.

⁹⁸ See id.

currently provides a legitimate basis for an offense-based system and not an offender-based system, which is advocated in this review, it will work equally well, if not better, for the C.L.A.S.S. system which is discussed in detail in chapter five.

V. CULPABILITY LEVEL ASSESSMENT OF SEX OFFENDER SENTENCING (C.L.A.S.S.)

The CLASS system of assessment is offender-based. Building a doghouse does not designate you a carpenter. Likewise, committing a killing does not a murderer make. An offense-based system such as SORNA assigns the sex motivated element to the offense itself, not the offender or any culpable act of the offender. SORNA considers kidnapping to be construed as a sex-based offense though a sex motivated intent, nor, act was committed. To require all acts of killing to be adjudicated as a capital crime, requiring an indictment by the grand jury with eligibility for the death penalty, will devolve our criminal justice system and eradicate culpability levels that are fact intensive and assign punitive, rehabilitative, or correctional administration in accordance with the culpability of the act. That is what S.O.R.N.A, an offense-based system, does. C.L.A.S.S. is a culpability level assessment. Culpability is defined as:

*“... the degree of one's blameworthiness in the commission of a crime or offense. Except for strict liability crimes, **the type and severity of punishment often follow the degree of culpability.**”⁹⁹*

Black Law Dictionary also defines Culpable as:

“Blamable; censurable; involving the breach of a legal duty or the commission of a fault. The term is not necessarily equivalent to “criminal,” for, in present use...it implies that the act or conduct spoken of is reprehensible or wrong but not that it

⁹⁹ Black's Law Dictionary Free 2nd Ed. and The Law Dictionary; Thelawdictionary.org. [https://thelawdictionary.org/culpable/](https://thelawdictionary.org/culpable/ "CULPABLE") title="CULPABLE">CULPABLE

*involves malice or a guilty purpose. “Culpable” in fact connotes fault rather than guilt. Railway Co. v. Clayberg, 107 Ill. 051; Bank v. Wright, 8 Allen (Mass.) 121.”*¹⁰⁰

Culpability ratings are a prerequisite in order to accurately adjudicate fault, and the level of punishment can be imputed to the criminal and not the crime, unless a crime is one of strict liability. Again, a person can commit the same crime and incur a vastly different culpability assessment.¹⁰¹ Criminal law recognizes and imputes four different levels of culpability. “The Model Penal Code defines four levels of culpability: purposely, knowingly, recklessly, and negligently (from highest to lowest).”¹⁰² SORNA utilizes a Tier System to determine the level of notification the public needs and that assessment is derived from the offense and does not take into account the culpability of the offender. Though the assignment of Tier levels is determined by offense, the **stigmatization of registration** and notification as a sex offender bears a heavy penalty...borne by the offender. The sexual offender whose fact intensive criminal act details a consensual act between a minor and an adult, with a culpability level of “negligence” or “recklessness,” experiences the same gravity of negative societal stigmatization as a sex offender who stalked, abducted, and raped a twelve year old girl on her way home from school. The purpose of the CLASS system is to officiate legally used Model Penal Code and common law culpability classifications as the initial rubric for addressing these issues. The questions listed below will serve as the analysis to determine if an offender will be required to notify and/or register as a sex offender.

¹⁰⁰ See id.

¹⁰¹ Steve McCartney and Rick Parent, Moral Culpability versus Legal Culpability, Ethics in Law Enforcement. Chapter 8: The Culture of Law Enforcement; (2015)

¹⁰² <https://law.jrank.org/pages/1585/Mens-Rea-Modern-culpability-levels.html>

1. Was the charge sexually motivated? If the answer to this question is “no”, then registration and notification cannot be required. If then answer is “yes”, then question two is prompted.
2. If so, what is the culpability of the offense in terms of intentional and purposeful, knowingly, recklessly (with disregard), and negligently. If the culpability level is determined to be high, such as knowingly, then SORNA will be triggered, but whether and the Tier System established by the legislature will be activated to asses registration and notification. For example, if the culpability level of the offender is negligently, then registration may be required but not public notification.
3. Does THIS offender have prior social and criminal history with sexual deviancy? If this answer is yes, then the highest tier level may be applicable, and registration and notification will be mandatory. Bur for example, if the answer is “yes”, but the offender has the habit of urinating in the public park, while there are no children present, at night, then further assessment will be needed. The objective of C.L.A.S.S is to establish first if the offender is truly a sex offender dangerous to society, and second, to assess potential to reoffend.
4. Was it a mistake in judgment or lack of moral turpitude? This question will serve as the basis for a psychological evaluation. It is important to determine if the offender exhibits a deviant nature that lacks moral consideration, or someone who has made an error in judgment and most likely will return to be a productive member of society.

Our criminal justice systems have always had provisions for moral determinations of criminal acts. Included in the culpability assessment alone provides a peek into ascertaining the criminals “state of mind” in evaluating if the act was intentional (did this on purpose), knowingly (committed with full knowledge and awareness), recklessly (knew the possible outcome but with no disregard for it), and negligently (did not know but should have known). For example, Steven Emanuel’s

Criminal Law Outlines defines the difference between the common law purposely and Model Penal code “Intentionally.”¹⁰³

“A person acts purposely with respect to a particular element if it his “conscious object” to engage in the particular conduct in question, or to cause the particular result in question. [26-27] ...purposely is not the same as knowingly. If D does not desire a particular result but is aware that the conduct or result is certain to follow, this is not purposely. A person acts recklessly if he consciously disregards a substantial and unjustifiable risk (MPC §2.02(2). Idea is that defendant has behaved in such a way that represents a gross deviation from the conduct of a law-abiding person. Some statutes make it a crime to behave negligently if certain results follow. For example, the crime of vehicular homicide is sometimes defined to require a mens real of criminal negligence. Defendant does not have to be aware of the risk imposed by his conduct.”¹⁰⁴

Our CURRENT criminal justice system bears the power to deliver justice tempered with fairness and eliminate the dispassionate indiscriminate reach of the Registration and Notification Act that judges all as one.

The **Actus Reus** of our criminal system is the measurement of the defendant’s conduct.¹⁰⁵

What did the defendant do? Was it a voluntary criminal act? Is a sexual criminal act? If there is not a sexual act or one that has an apparent sexual nature in its commission, then the crime is not a “sexually deviant act” that triggers SORNA (Sex Offenders Registration

¹⁰³ Steven L. Emanuel, Emanuel Law Outlines: Mens Rea Ch. III Capsule Summary; Wolter Kluwers, Aspen Publishers (2007)

¹⁰⁴ See id.

¹⁰⁵ Steven L. Emanuel, Emanuel Law Outlines: Mens Rea Ch. III Capsule Summary; Wolter Kluwers. Aspen Publishers (2007)

and Notification Act). Thus, the defendant will not be eligible for registration as applicable to sex offenders.

The **Mens Rea**, in our criminal justice system, measures the culpable mental state of the defendant.¹⁰⁶ Intent, and the level of that intent, becomes the basis of determination as to the OFFENDER and his/her consciousness towards furthering that intent. Did the defendant have any culpability level (from Intentional to Negligence) towards a sexual motive, IF in the ACTUS REUS, a sexual act OR ACT OF A SEXUAL NATURE, has transpired in the commission of or furtherance of the crime. For example, one intends to commit robbery and in the commission of that act, a 16-year-old hostage is taken *with the intent to secure ones escape or bargain for leniency*. Upon leaving with that hostage the perpetrator is apprehended and charged with Robbery with a Deadly Weapon and Kidnapping. In most states, that kidnapping charge would trigger SORNA, but subject to a CLASS evaluation, the culpability level for the charge of kidnapping would be “knowingly” since the material element of the crime was one of robbery and not kidnapping. In other words, the perpetrator did not desire to kidnap, but was “aware that the conduct or result was certain to follow¹⁰⁷ in light of the circumstances and facts surrounding the criminal act.¹⁰⁸ ***Why kidnapping as a probable sex offense?*** The Amber Alert¹⁰⁹ serves as a beacon to the plight of child kidnappings and abductions with an

¹⁰⁶ See id.

¹⁰⁷ See id.

¹⁰⁸ See id.

¹⁰⁹ An amber alert or a child abduction emergency alert (SAME code: CAE) is a message distributed

by a child abduction alert system to ask the public for help in finding abducted children. It originated in the United States in 1996. AMBER is officially an acronym for *America's Missing: Broadcast Emergency Response*, but that is a contrived acronym, originally named after Amber Hagerman, a 9-year-old girl abducted and murdered in Arlington, Texas, in 1996.

emphasis on the intent behind most juvenile abductions being sex motivated. Again, in response to the uphill battle concerning the sexual abuse of our children, our criminal justice system responds by determining that the criminal act of kidnapping will trigger SORNA, even if the act was not sex motivated. The reasoning is based on the fact that a sexual violation is **probable** if a minor is kidnapped. If something is probable, then the percentage of it happening or not happening is equal. A justice system based on a crime happening being probable is reflected in the movie “Minority Report” where in the future, year 2054, a special police unit is able to arrest murderers before they commit their crimes.¹¹⁰ The movie represents a criminal justice system that arrest and incarcerate individuals on a crime that has not been committed but is probable, depriving an individual of their liberty and freedom...for a crime THEY DID NOT COMMIT. Such is the result when you hold a person criminally liable for a sex-based registration and notification system with a crime that, in its act or nature, is not sex based and no sexual crime was actually committed...but was probable. A MORE ACCURATE assessment is one based on empirical evidence of “probability.” The difference between probable and probability is more distinct than the difference of an adjective and a noun. Probability is defined as “The ratio of the number of outcomes favorable for the event to the total number of possible outcomes is termed as probability.”¹¹¹ In laymen terms, to have a ratio, there must be a base number in which to work with, for example if Charlie Defendant, ten out of ten times, went

¹¹⁰ Minority Report (2002). Box Office Mojo. Retrieved December 8, 2010. “Minority Report is a 2002 American cyberpunk action thriller film directed by Steven Spielberg and loosely based on the 1956 short story "The Minority Report" by Philip K. Dick. It is set primarily in Washington, D.C., and Northern Virginia in the year 2054, where Pre-Crime, a specialized police department, apprehends criminals based on foreknowledge provided by three psychics called "precogs."

¹¹¹ <https://www.chegg.com/homework-help/definitions/simple-probability-67>

to Vicky Victims ice cream shop and bought chocolate ice cream, the probability of Charlie buying vanilla ice cream the eleventh time is 0. If Equan¹¹² committed several acts of kidnapping and not one was sexually motivated and no sex violation occurred, then why is he being charged with a crime he did not commit? Does our justice system justify taking away ones liberty because the opportunity to commit an act that you DID NOT commit made it probable to commit it? This logic suggest we should arrest every person addicted to hydrocodone that enters a pharmacy because it's probable they will commit a robbery. This illogical assertion is rooted in the legal justification of a sweeping offense-based system. When the system takes an offender based approach, the evaluation will assess the offender as an individual, and the act he/she has actually committed (actus reus), accordingly with the level of intent in its commission (mens rea), and accurately adjudicate according to the crime that was actually committed, not the crime that was probable. Then a probability assessment will NARROW THE FOCUS applying the following factors: 1) How many times has this person committed this crime; 2) how many of these commissions of criminal behavior were sex-based or had a sexual overtone or nature; 3) the level of criminal deviancy in the commission of the act (i.e., Ted Bundy¹¹³, Jeffrey Dahmer¹¹⁴, John Wayne Gacy¹¹⁵ versus Equan Yunus, Shawna Baldwin).

¹¹² Ed Pilkington; There was a lot of shame: Meet the sex offender who is not a sex offender. The Guardian. Oct 2018.

¹¹³ Janet McClellan, Case Study, Project: Serial Murder an Ongoing Analysis. Journal of Security Education. October (2008)
<https://www.researchgate.net/publication/261589036>

¹¹⁴ Don Terry, Jeffrey Dahmer, Multiple Killer is Bludgeoned to Death in Prison, N.Y. Times, Nov. 29, at A1 (1994)

¹¹⁵ True Crimes: Serial Killers, Time-Life Books ed., 48-90 (1992)

VI. CONCLUSION

It would seem semi reasonable that today we as a nation would have “evolved” beyond knee-jerk reactions to our fears. Our sex laws are expansive and all-encompassing so that many people are unaware that the current of their act will sweep them into the net of SORNA. Urinating in public years ago was the way to relieve your “pressure” after a long drive on the road with no restrooms in sight. Now, if you are doing so and a police officer (highway patrol) spots you...well, you are a sex-offender and that triggers SORNA. Sexting, also known as texting sexually explicit content, is now also pulled by the undercurrents of SORNA into the net of sex-offender, and the law, as it stands today, makes no distinction as to whether you sent a racy, provocative photo, meme, emoji, etc., to your spouse of 20 years or to your high school lust crush. They all trigger SORNA and are all stigmatized equally. It is unethical to place all in one net without distinction since they all have not committed a sexually based triggering event exhibiting a level of criminal culpability. There must be a triggering event that our criminal justice system can empirically identify and utilize to accurately ensure the safety of our youth, and our national dignity, while simultaneously also protecting the rights of each and every citizen alike. CLASS. Culpability Level Assessment of Sex Offender Sentencing employs a system that engages a method our criminal justice system currently utilizes, distinguishes each offender with empirical evaluations of fact intensive evidence, requires registration and notice only for those who have committed a crime that is sex motivated, under a precedented culpability level, and who is most likely to reoffend, and liberate those who might have been swept into the net of injustice and unfairness. A friend once told me a joke. He stated:

“A woman was praying. God please send a cure for cancer. God please send a cure for cancer. She then falls ill to cancer and yet she continues to pray to God saying,

“God please send the cure to cancer.” She eventually dies of cancer not long after. As she enters heaven, she comes before the Lord. She asks HIM “Lord, I prayed so hard and so long for the cure to cancer! Why did you not answer my prayer?” The LORD responded “I did. You aborted her.”

The lady in the joke above represents society and their benighted response to the sex offender dilemma. Good and productive people, like Adrian who was in his junior year of college, who may have been the next founder, inventor, or doctor who found the cure for dementia or alzheimers, but through his negligent act, was drawn into the indiscriminate nets of SORNA like minnows cast in with the sharks, and goldfish blanketed under the same warning sign as piranhas. Stigmatized under the unforgiving banner of SORNA and ultimately...aborted by society. Its time our legal system exhibits C.L.A.S.S.