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Robert T. Farley: Critical Perspectives on Megan's Law

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STEPHEN NEWMAN: Thanks very much. Our next speaker is from the New York State Attorney General's office, Robert Farley, Deputy Attorney General in charge of the Legislative Division, New York State.

Mr. Robert T. Farley

ROBERT FARLEY:¹²² Thank you, Professor, and thank all of you for having us here today. We are delighted to be here, and I want to thank each and every one of you for participating in this very important program. As you know, the constitutional issues that Megan's Law and community notification raise, we believe, have been addressed by the New York State statute, which I am going to be discussing today, but there are still issues out there, and before they can be addressed by legislation, they have to be debated, and although it has been enacted, I think this is a very valuable discussion to allow those issues be brought to the forefront and have all of you be present in a discussion and a debate on them.

One of the things I'd like to tell you about is the issue of how New York's version of Megan's Law, which is not quite as broad as the New Jersey statute,¹²³ came about and what it means today in the present law. For several years New York State had been looking to develop a community notification statute.¹²⁴ It had one on the books previously,

¹²² Deputy Attorney General for Governmental Relations, Chief of the Legislative Division, State of New York, Office of the Attorney General.

¹²³ See generally Goodman, *supra* note 6, at 764 (stating that New Jersey enacted the most comprehensive sex offender legislation in the nation).

¹²⁴ See Robin Schimminger, *Law Would Publicize Sex Predators*, BUFFALO NEWS, Sept. 16, 1994, at 2 (stating the proposed bill would establish a state registry to keep track of anyone found guilty of committing or attempting to commit a sex offense and would require authorities to keep local police, government officials, certain community facilities and local news media notified when a released sex offender lives in a particular community).

but it was very minor.¹²⁵ Basically, law enforcement authorities and school superintendents were provided with some degree of information upon the release of what might be classified as a sexual predator.¹²⁶

However, they were limited in what they could do with it. They could not provide any community notification.¹²⁷ That caused a lot of problems, not just for the people that wanted community notification, but also for law enforcement authorities and school superintendents. Those who wanted notification were turning around and getting sued by the families of the victims because they asked, "why didn't you tell us?"¹²⁸ Well, the law didn't permit it. So that was a problem that we had to address in the law as well.

But this past July, Governor Pataki signed, after many years before the legislature, a community notification statute.¹²⁹ In New York State, it is referred to as the Sexual Offender Registry Act of 1995.¹³⁰ The law establishes a registry of sex offenders and provides procedures for community notification.¹³¹ It is not, as I say, as broad as the New Jersey law.¹³² We learned a great deal from New Jersey's experience. It took a lot longer to get that.¹³³ We did not have Megan in our state,

¹²⁵ 1929 N.Y. Laws Ch. 243 §620.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See, e.g., *Haddock v. City of New York*, 140 A.D.2d 91, (1st Dept. 1988) (finding city liable for negligence in 9-year-old girl's rape when former convict was assigned as playground attendant despite history of violence which included attempted rape); see generally Martin Fox, *Victory Required 'Bulldog's Tenacity' For Fifteen Years; Kerner Cites \$2.5 Million Tort Award As Most Satisfying in 50-Year Career*, N.Y.L.J., Apr. 5, 1990, at 130 (discussing court's finding of city's liability in *Haddock*).

¹²⁹ N.Y. CORRECT. LAW §168 (McKinney 1996).

¹³⁰ *Id.*

¹³¹ *Id.* at §168-f(1) (stating that any sex offender who is about to be released from any correctional facility or hospital must register with the division of criminal justice services within 10 days for the purposes of verifying the offender's intended place of residence).

¹³² Cf. N.J. STAT. ANN. §2C:7-1 to 7-8 (West 1995).

¹³³ N.Y. CORRECT. LAW §168 (McKinney 1996).

although she influenced us and her tragedy did influence the state legislature.¹³⁴ As a matter of fact, her mother and father lobbied the New York State legislature to get this notification act passed, enacted, and signed by the Governor.¹³⁵

What our law does is provide and create a Board of Examiners who ranks the seriousness of the risk to the community posed by the sex offender.¹³⁶ It is a trifurcated ranking.¹³⁷ It goes from the lowest threat to the highest, and the classification determines the level of community notification.¹³⁸

This law also defines what is a sexually violent predator and provides provisions on the direct community notification based on that definition.¹³⁹ The sexually violent predators in the New York statute are the only people whose names get released to the general public, and that is done by way of a "900" telephone number whereby citizens can call

¹³⁴ See *People v. Ross*, 646 N.Y.S. 2d 249 (N.Y. Sup. Ct. 1996).

¹³⁵ See Michael Finnegan, *Silver Takes Heat on Megan's Law*, TIMES UNION (Albany), June 15, 1995, at 2 (stating that Maureen Kanka joined Governor Pataki and New York Republicans to pressure State Assemblyman Sheldon Silver into supporting a community notification bill).

¹³⁶ N.Y. CORRECT. LAW §168-1(5) (McKinney 1996). This section of the Sex Offender Registration Act provides that there shall be a board of examiners of sex offenders consisting of five members appointed by the governor. *Id.* at §168-1(1). It also provides that the board shall develop guidelines and procedures, based on such factors as the sex offender's criminal history, gravity of offense, conditions of release that minimize risk of re-offense, physical conditions that minimize re-offense, to assess the risk of a repeat offense by such offenders and the threat posed to the public safety. *Id.* at §168-1(5).

¹³⁷ *Id.* at §168-1(6); see *People v. Ross*, 646 N.Y.S. 2d 249 (N.Y. Sup. Ct. 1996).

¹³⁸ *Id.* at §168-1(6)(c). Those sex offenders considered to be "sexually violent predators" will be designated as level three offenders. *Id.* In such cases, law enforcement agencies can "disseminate relevant information," and also, information can be "provided in the subdirectory," and could "be made available to the public." *Id.*

¹³⁹ *Id.* at §168-1(6)(c) (defining a sexually violent predator as a person with whom the risk of repeat offense is high and where there exists a threat to public safety).

and get the information about that person.¹⁴⁰ The law also provides for immunity for officials who are charged with releasing the registration information.¹⁴¹ As I said, it establishes the "900" telephone number to permit the community to inquire as to whether a person is on the state registry; it creates a state registry of all the people who are convicted of a sexual offense, and that sexual registry is maintained and established by the Division of Criminal Justice Services within the State of New York.¹⁴² It also provides for an escape clause, if you will, which provides that a person who is otherwise required to register with the Division of Criminal Justice Services on this database can petition the court for a waiver of the registration requirements.¹⁴³

It is important to note that one of the things that has been driving the Megan's Laws to be enacted across the country, which over forty jurisdictions have already done,¹⁴⁴ is the Federal Crime Bill, passed in 1994. If a state does not enact a Megan's Law-type statute, under the Federal Crime Bill the state loses ten percent of its federal funding, which is given to the state to fight local crime.¹⁴⁵ The statute allows for

¹⁴⁰ *Id.* at §168-p (establishing a "900" telephone number that would allow the public to call and inquire whether "a named individual required to register pursuant to the article is listed").

¹⁴¹ N.Y. CORRECT. LAW §168-r (1). No official "shall be subject to any civil or criminal liability for damages for any discretionary decision to release relevant and necessary information pursuant to this section." *Id.*

¹⁴² *Id.* at §168-q (1) (requiring that "[t]he division of criminal justice services shall maintain a subdirectory of sexually violent predators").

¹⁴³ N.Y. CORRECT. LAW §168 (o) (McKinney 1996) (requiring that a sex offender "may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court").

¹⁴⁴ Monte Williams, *Sex Offenders Law Prompts Privacy Debate in New York*, N.Y. TIMES, Feb. 24, 1996, at 1 (stating that laws that require convicted sex offenders to register with the authorities have been enacted in 47 states).

¹⁴⁵ The Violent Crime Control and Law Enforcement Act of 1994 requires that a state establish a program for sex offender registration under the guidelines established by the Attorney General. See 42 U.S.C. §14071(a)(1) (West Supp. 1996). A state is required to establish a sex registration program in compliance with those guidelines within three years from September 13, 1994, except for two additional years granted at the Attorney General's

a three year window to enact such a statute.¹⁴⁶ New York responded within two years.¹⁴⁷ If a state does not act within the three year window, it loses substantial federal funding, which is used for everything from community programs to funding police officers.¹⁴⁸ The registry of sexual offenders requires persons convicted of the following offenses to register:¹⁴⁹ rape in the second and third degrees;¹⁵⁰ sodomy in the second and third degrees;¹⁵¹ sexual abuse in the second degree;¹⁵² incest;¹⁵³ any

discretion to those states which have made a good faith effort to implement this section. *Id.* at §14071(f)(1). Otherwise a state shall lose ten percent of the funds which would otherwise be allocated to the state under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3756). *See* 42 U.S.C. §14701(f)(2).

¹⁴⁶ 42 U.S.C. §14071(f)(1).

¹⁴⁷ *See* N.Y. CORRECT. LAW §168 (McKinney 1996), ratified in 1995, effective as of January 21, 1996.

¹⁴⁸ *See* 42 U.S.C. §14071(f)(1).

¹⁴⁹ N.Y. CORRECT. LAW §168-f(1) (McKinney 1996). A sex offender is defined to include "any person who is convicted of any offenses set forth in subdivision two or three of this section." *Id.* at §168-a(1). Subdivision two and three of the Sex Offender Registration Act provide, inter alia:

§2. "Sex Offense" means:

(a) a conviction of or conviction for an attempt to commit any of the provisions of sections 130.25, 130.30, 130.40, 130.45, 130.60 and 255.25 or article 263 of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnaping offenses, provided the victim of such kidnaping or related offense is less than seventeen years old

§3. "Sexually violent offense" means:

(a) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.35, 130.50, 130.65, 130.67 and 130.70 of the penal law. . . .

Id. at §168-a(2) and (3).

¹⁵⁰ *Id.* at §168-a (2)(a); *see also* N.Y. PENAL LAW §130.25 (McKinney 1996) (defining rape in the third degree); §130.30 (defining rape in the second degree).

¹⁵¹ N.Y. CORRECT. LAW §168-a (2)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §130.40 (defining sodomy in the third degree) (McKinney 1996); §130.45 (defining sodomy in the second degree).

of the offenses listed in Article 263 of the Penal Law regarding sexual performance by a child,¹⁵⁴ that's child pornography, and any kidnapping offenses.¹⁵⁵ Additionally, violent sexual offenders would have to register¹⁵⁶ if they are convicted of the crime of rape in the first degree,¹⁵⁷ sodomy in the first degree,¹⁵⁸ sexual abuse in the first degree,¹⁵⁹ or aggravated sexual abuse in the first and second degrees.¹⁶⁰ The information that is provided on the registry includes the offender's name, aliases, date of birth, sex, race, height, weight, eye color, driver's license number, home address and expected place of domicile, a photograph of the individual, fingerprints, a description of the offense for which he was convicted, the date of conviction and the sentence received, and any other information that the Division would require by regulation.¹⁶¹ The

¹⁵² N.Y. CORRECT. LAW §168-a (2)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §130.60 (McKinney 1996) (defining sexual abuse in the second degree).

¹⁵³ N.Y. CORRECT. LAW §168-a (2)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §255.25 (McKinney 1996). A person is guilty of incest when he or she marries or engages in sexual intercourse with a person whom he or she knows to be related to him or her. *Id.*

¹⁵⁴ N.Y. CORRECT. LAW §168-a (2)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §§263.00 - 263.25 (McKinney 1996).

¹⁵⁵ N.Y. PENAL LAW §§135.05 - 130.25 (McKinney 1996).

¹⁵⁶ *See generally* Booth, *supra* note 116, and accompanying text. "Sexually violent predator" means a person who has been convicted of committing or attempting to commit a sexually violent offense which includes any of the provisions of sections 130.35 (rape in the first degree), 130.50 (sodomy in the first degree), 130.65 (sexual abuse in the first degree), 130.67 (aggravated sexual abuse in the second degree), and 130.70 (aggravated sexual abuse in the first degree) of the penal law. N.Y. CORRECT. LAW §161-a(7).

¹⁵⁷ N.Y. CORRECT. LAW §168-a(3)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §130.35 (McKinney 1996) (defining rape in the first degree).

¹⁵⁸ N.Y. CORRECT. LAW §168-a(3)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §130.50 (McKinney 1996) (defining sodomy in the first degree).

¹⁵⁹ N.Y. CORRECT. LAW §168-a(3)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §130.65 (McKinney 1996) (defining sexual abuse in the first degree).

¹⁶⁰ N.Y. CORRECT. LAW §168-a(3)(a) (McKinney 1996); *see also* N.Y. PENAL LAW §130.67 (McKinney 1996) (defining aggravated sexual abuse in the second degree); §130.70 (defining aggravated sexual abuse in the first degree).

¹⁶¹ N.Y. CORRECT. LAW §168-b(1) (McKinney 1996).

person, upon discharge from the correctional facility, has ten days to register with the Division of Criminal Justice Services.¹⁶²

Since the act was signed into law in late July of 1995¹⁶³—and took effect 180 days later¹⁶⁴—offenders have already started registering in New York.¹⁶⁵ The database is being constructed and the "900" number is on line.¹⁶⁶ The Board of Examiners has been classifying these individuals to build the database.¹⁶⁷ In classifying these individuals, some of the factors considered are their criminal history,¹⁶⁸ the existence of mental abnormality,¹⁶⁹ whether there is repetitive or compulsive behavior associated with drugs or alcohol,¹⁷⁰ the ages of the offender and victim,¹⁷¹ the sex offender's response to treatment,¹⁷² recent behavior of the offender, including the behavior while he was incarcerated or confined and any recent threats or gestures,¹⁷³ whether those threats or gestures were made against persons whom the registrant later victimized, or any expressions of intent to commit the offense which he ultimately committed,¹⁷⁴ and review of a victim impact statement.¹⁷⁵

¹⁶² *Id.* at §168-f(1).

¹⁶³ *See* *People v. Ross*, 646 N.Y.S. 2d 249 (N.Y. Sup. Ct. 1996).

¹⁶⁴ N.Y. CORRECT. LAW §168 (McKinney 1996) (effective January 21, 1996).

¹⁶⁵ *See, e.g.*, David Kocieniewski, *Police Get List of Freed Sex Offenders*, N.Y. TIMES, Jan. 4, 1997, at 26.

¹⁶⁶ N.Y. CORRECT. LAW §168-p(1)(McKinney 1996) (mandating the "900" number to take effect on January 21, 1996).

¹⁶⁷ *See* *People v. Ross*, 646 N.Y.S. 2d 249 (Sup. Ct. 1996) (showing classification of Mr. Ross by the Board of Examiners).

¹⁶⁸ N.Y. CORRECT. LAW §168-l(5)(a) & (b) (McKinney 1996).

¹⁶⁹ *Id.* at §168-l(5)(a)(i).

¹⁷⁰ *Id.* at §168-l(5)(a)(ii).

¹⁷¹ *Id.* at §168-l(5)(a)(iv) & (v).

¹⁷² *Id.* at §168-l(5)(f).

¹⁷³ N.Y. CORRECT. LAW §168-l(5)(g) & (h) (McKinney 1996).

¹⁷⁴ *See* *People v. Ross*, 646 N.Y.S. 2d 249 (N.Y. Sup. Ct. 1996) (explaining that one of the assessed factors of being a repeat offender is whether the offender has recently behaved poorly and if so, has expressed any remorse for his actions).

¹⁷⁵ N.Y. CORRECT. LAW. §168-1 (5)(i) (McKinney 1996).

These factors are all considered in classifying these individuals.

If the risk is low, a Level One designation is given to the sexual offender,¹⁷⁶ and only law enforcement authorities having jurisdiction would, at the time of conviction, be notified.¹⁷⁷ If the risk of the repeat offense is moderate, as determined by the Board of Examiners, a Level Two designation, a mid-level designation, is provided to the offender.¹⁷⁸ In such cases, the notification is provided to any vulnerable population,¹⁷⁹ which includes schools,¹⁸⁰ scout troops,¹⁸¹ day care centers,¹⁸² and other groups that may be viewed as being in harm's way from this individual.¹⁸³ If the risk of re-offense is high, and if the person

¹⁷⁶ *Id.* at §168-1 (6)(a).

¹⁷⁷ *Id.* (providing that where sex offender is designated as Level Two, the law enforcement agency having jurisdiction, as well as the law enforcement agency that had jurisdiction at time of offender's conviction shall be notified and may disseminate relevant information such as approximate address, photograph of offender, background information including crime of conviction, type of victim targeted, mode of operation, and special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by the offender).

¹⁷⁸ *Id.* at §168-1 (6)(b).

¹⁷⁹ *Id.* The vulnerable areas that the notification will be provided to are the law enforcement agency that will have jurisdiction over the sexual offender, and the law enforcement agency that had jurisdiction over the sexual offender at the time of conviction. *Id.* At that point, the law enforcement agencies may distribute the information they deem necessary for public safety, such as background information, approximate address, a photograph of the offender, etc. *Id.*

¹⁸⁰ See generally Jenny A. Montana, Note, *An Ineffective Weapon in the Fight Against Child Sexual Abuse: Megan's Law*, 3 J.L. & POL'Y 569, 573 n.23 (1995) (stating that according to New Jersey's Megan's Law, "[i]f an offender poses a moderate risk of offending, organizations in the community, such as schools, youth and religious groups, will be notified).

¹⁸¹ *Id.*

¹⁸² See generally Petrucelli, *supra* note 2, at 1168 n.213 (describing a Washington state court decision on a similar statute and stating that "depending on the particular methods of an offender, an agency might decide to limit disclosure only to the surrounding neighborhood, or to schools and day care centers).

¹⁸³ See generally *Doe v. Poritz*, 662 A. 2d 367, 382 (N.J. 1995) (limiting "Tier Two notification to those actually in charge of the care or supervision of children or women," and specifically only those organizations that are "likely to encounter" the offender); see also *id.*

is classified as a sexually violent predator and is a threat to public safety, as determined by the Board, he is given a Level Three designation, and then public dissemination is provided by way of the "900" telephone number.¹⁸⁴

The "900" telephone number does two things.¹⁸⁵ First, it allows the general public to find out whether a person is on the database by providing specific information about the potential registrant.¹⁸⁶ The caller must give the other person's address and ask if the neighbor who just moved in is a violent sexual predator;¹⁸⁷ only then will the operator answer the caller.¹⁸⁸ The "900" number provides the information to anyone who calls.¹⁸⁹ But more importantly, in addition to providing

at 385 (stating that the "critical" factor in determining "likely to encounter" is geographic proximity to the offender's residence or place of work or school").

¹⁸⁴ N.Y. CORRECT. LAW §168-l (6)(c) (McKinney 1996); *see also* §168-p (1) (providing that the division of criminal justice services is to operate a special "900" telephone number so that members of the public may call and inquire whether a named individual required to register as a sex offender is listed).

¹⁸⁵ *Id.* at §168-p (1) (stating that callers will be provided with relevant information about a person who is listed); §168-p (4) (providing that the division will submit to the legislature an annual report regarding operation and finances of the "900" telephone number, such as number of calls received and amount of income earned per year).

¹⁸⁶ *Id.* at §168-p (2)(a)-(g) (providing that before the caller is put through to an operator and charges begin to accrue, a preamble is played advising caller that the call will be recorded, what the charges will be, that the caller must identify himself or herself to the operator and provide a current address and notice that the person calling must have certain specific identifying information about the individual in question).

¹⁸⁷ *Id.* at §168-p (1) (stating that information is to be provided only to those members of the public who can provide an exact street address for the individual in question, including apartment number, driver's license number or birth date, along with additional identifying characteristics, or any combination of the above if an exact address or birth date is not available).

¹⁸⁸ *Id.*

¹⁸⁹ N.Y. CORRECT. LAW §168-p (1) (McKinney 1996) (providing that such information will be released to the caller according to level of risk as described in section 168-l (6)); *see generally* Austin Evans Fenner and Rafael Olmeda, *Sex Offender Hotline to Begin*, DAILY NEWS (New York), Mar. 6, 1996, at Suburban 1 (stating that if offender is a Level One risk, the caller will be provided with a simple confirmation that the individual in question is in the registry; if a Level Two offender is involved, a caller will receive an

information, the proceeds from the calls fund the whole program.¹⁹⁰ Importantly, the "900" number is something the general public can access.¹⁹¹ Only people who want information about who may be moving into their neighborhood need to use the number.¹⁹² It is completely voluntary, but those who want to use it have to take their own initiative and call. But these voluntary callers fund the database which is the key of this program.¹⁹³ More importantly, it enables us to disseminate this information out to those who want it.¹⁹⁴

The charge per call is roughly \$5.00, which is one of the lowest costs, incidentally, in a number of jurisdictions using the "900" number in the nation.¹⁹⁵ The program is self-funding, so if the costs are more, the charge will go up and if the costs are less, it will go down.¹⁹⁶ When

approximate address, neighborhood and zip code; if a Level Three offender, the caller is provided with the exact address and offender's methods).

¹⁹⁰ N.Y. CORRECT. LAW §168-(p)(4) (a)-(f) (McKinney 1996) (stating that an annual report is to be submitted to the legislature on the operation of the "900" telephone number, including such information as number of calls received, amount of income per year through operation of the "900" number, outline of money expended, number of negative and affirmative responses to inquiries, summary of program's success and other relevant data); see also Abril R. Bedarf, *Examining Sex Offender Community Notification Laws*, 83 CALIF. L. REV. 885 (1995) (noting that proceeds from a similar "900" number in California fund the operation of the California program).

¹⁹¹ N.Y. CORRECT. LAW §168-p (1) (McKinney 1996) (setting up a "900" telephone number for use by members of the public to inquire whether an individual is a registered sex offender).

¹⁹² *Id.*

¹⁹³ See generally *id.* at §168-p (4) (stating that the amount of income generated by the "900" telephone number must be reported to the legislature).

¹⁹⁴ See generally *id.* at §168-p (1) (stating that if members of the public call with the correct information they can find out if a person is a registered sex offender).

¹⁹⁵ Fenner and Olmeda, *supra* note 189 (noting a \$5.00 charge in New York); see e.g. Kathryn Wexler, *Sex Felon Line Dials Controversy: California's Phone Check of Offender List Raises Privacy Issues*, WASH. POST, Feb. 9, 1996, at A3 (noting that the cost for similar "900" number in California is \$10.00 per call).

¹⁹⁶ See N.Y. CORRECT. LAW §168-p (4) (McKinney 1996). But see generally Wexler, *supra* note 195, (stating that although such notification programs are to be funded from the "900" charge, California had cleared only \$25,000 for a program which had cost

people call, they will be informed that the call is recorded, the cost of the call, and that the "900" number is not a crime victim hot line, but provides them with notification with respect to the request that they make.¹⁹⁷ That is basically a highlight and an outline of the law.

Dennis Vacco, who is our state's Attorney General, and for whom I am honored to be able to serve, was intermittently involved in the passage and the drafting of this law. I was fortunate to have an involvement in the law with both Assemblyman Dan Feldman and Senator Dean Skelos, who were the two prime sponsors of the law.¹⁹⁸

As I said, we learned from New Jersey and other states that had the experience and the ground-breaking history on this, which had fought that battle before we had to, and we crafted a piece of legislation that we think does not only the job of community notification where it is necessary, but also preserves the rights of the offenders after they have done their time in prison or in another facility.¹⁹⁹ The Attorney General believes that this is an issue that principally is targeted to the protection of our children, and that it is about our children.²⁰⁰ There is no more heinous crime than one that is committed by sex offenders upon our society's most vulnerable people—our children. Every year, news

\$180,000).

¹⁹⁷ N.Y. CORRECT. LAW §168-p(2) (McKinney 1996).

¹⁹⁸ See *Megan's Law, This Carefully Crafted Bill Will Protect Children Without Exciting Community Hysteria*, NEWSDAY, June 24, 1995, at A20; Michael Slackman, *NY's Megan's Law; Begins Today, But Details Not Final*, NEWSDAY, Jan. 21, 1996, at A7.

¹⁹⁹ See N.Y. CORRECT. LAW §168 (McKinney 1996) (stating that legislative findings suggest that the purpose of New York's registration and notification law was to balance the rights of the convicted sex offenders and the government's interest in protecting society).

²⁰⁰ See generally Eric Wakin, *Editor's Note*, NEWSDAY, July 1, 1995, at A20 (stating that society should focus on the safety of our children rather than the rights of convicted sex offenders); see also Don Van Natta Jr., *U.S. Judge Blocks State's Plan to Release Names and Addresses of Sex Offenders*, N.Y. TIMES, Mar. 8, 1996, at B6 (stating that families need to have information in order to keep their children safe from convicted sex offenders).

reports are replete with stories of how innocent children are abducted.²⁰¹ As a matter of fact, just yesterday, Sarah Ann Woods' father conducted a march across upstate New York all the way to Boston in memory of his daughter.²⁰²

We know these horrific stories are coming to the forefront.²⁰³ This community notification is one effort out of many to provide citizens with a tool to protect themselves.²⁰⁴ It is not perfect, and it is not the end all; it is just one piece of a puzzle. And what we have tried to do is empower our citizenry to keep track of this through their law enforcement officials and to provide notification so that we can protect our own children.²⁰⁵

Now, it is kind of sad that we have to do this, but in this day and age, unfortunately, it is necessary. At present, more than forty states have enacted sex offender registration laws to track the whereabouts of sex offenders.²⁰⁶ The laws take different forms and different shapes in different states, but more than half the states permit some form of

²⁰¹ See *No Freewheeling for Today's Kids*, TAMPA TRIB., Sept. 18, 1996, at 8C (stating that approximately 300 children are abducted, murdered or held for ransom each year).

²⁰² See *NECN Prime Time News*, (NECN television broadcast, Feb. 28, 1996), available in LEXIS, News Library, Curnws file.

²⁰³ See Sandra Smokes, *Child Molester Problem Appears to be Unsolvable*, TIMES UNION (Albany, New York), June 30, 1996, at E5; see also *No Freewheeling for Today's Kids*, *supra* note 201, at 8.

²⁰⁴ See N.Y. CORRECT. LAW §168 (McKinney 1996) (stating legislative findings suggest that the registration of sex offenders will provide law enforcement with information to protect the public and to allow the public to protect themselves from sexual abuse).

²⁰⁵ *Id.*

²⁰⁶ See Jessica R. Ball, Comment, *Public Disclosure of "America's Secret Shame": Child Sex Offender Community Notification in Illinois*, 27 LOY. U. CHI. L.J. 401, 403 n.13 (1996) (citing *Doe v. Poritz*, 662 A.2d 367, 428, stating that in July, 1995, only ten states did not have sex offender registration laws). However, by December 1995 four out of the remaining ten enacted similar registration and notification laws. *Id.*

broader community notification,²⁰⁷ including employer background checks,²⁰⁸ school system advisories,²⁰⁹ and notifications to the general public.²¹⁰

As I said, one of the important components for the speed of why we do this now is the Federal Crime Bill, because in order to share in that ten percent of the federal funding that we desperately need to fund all kinds of criminal justice programs,²¹¹ we had to comply within three years, so to a certain extent all the states will be coming on line with the community notification program, because it has basically been federally mandated.²¹²

One of the problems that has driven this whole issue is that we

²⁰⁷ See *id.* at 410 nn.56-58 (discussing 42 U.S.C.A. §§14071(a)(1)(A) and (d)(3), known as "Crimes Against Children Act," and how it acts as a floor for state regulation, not a ceiling, allowing states to enact laws that would broaden its requirements).

²⁰⁸ See DEL. CODE ANN. tit.11, §4120(i) (1995) (stating an employer or potential employer may request information regarding an applicant from the registry when the employee or potential employee will be dealing with children).

²⁰⁹ See LA. REV. STAT. ANN. §15.542 B(1)(b) (West 1992 & Supp. 1996) (requiring convicted sex offenders to send notice by mail to the superintendent of the school district); see also NEV. REV. STAT. §207.155(2) (Michie 1996) (stating sheriff is to provide the registration data to the board of trustees of the county's school district where the sex offender plans to reside); OKLA. STAT. ANN. tit. 57, §584(E)(1) (West 1991 & Supp. 1996) (stating local law enforcement agencies must make the sex offender registry available to all public and private elementary schools within the jurisdiction).

²¹⁰ See ALA. CODE §15-20-22(a)(1) (Michie 1995 & Supp. 1996) (stating that the chief of police is ordered to notify all persons within 1,000 feet of the declared residence of the sex offender); see also LA. REV. STAT. ANN. §15.542 B(2) (West 1992 & Supp. 1996) (stating a sex offender is required to give notice of the crime he committed by mailing to all persons living in the area where he plans to reside and he is also required to publish the notice in the official journal of the governing body where he plans to reside); MISS. CODE. ANN. §45-33-17(1) (West 1992 & Supp. 1996) (authorizing law enforcement agencies to disclose relevant and necessary information about the sex offender to the public when the information is necessary for public protection).

²¹¹ 42 U.S.C.A. §14071 (f) (2)(A) (West 1996).

²¹² See Ball, *supra* note 206, at 409 nn.51-53 (citing "Crime Against Children Act," 42 U.S.C.A. §§14071(a)(1)(A) and (d)(3) (West 1996), requiring states to enact some type of registration legislation before September 13, 1997, as a condition to their receiving federal crime fighting funds).

are really targeting pedophiles here,²¹³ and statistics have demonstrated that recidivism rates are extremely high with this type of crime.²¹⁴ Rehabilitation alone just does not serve as a deterrent with that type of activity.²¹⁵ It is incumbent upon government to provide its citizens with a viable defense to these criminals.²¹⁶ The bill that was enacted seems to accomplish this goal, and it will provide law enforcement officials, in our view, with an effective tool, as well as providing critical information to communities and citizen groups, so as to provide an effective first line

²¹³ See Caroline Louise Lewis, *The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act: An Unconstitutional Deprivation of the Right to Privacy and Substantive Due Process*, 31 HARV. C.R.-C.L. L. REV. 89, 92 (1996) (noting that as sex crimes against children have become more widely publicized, there has been an outcry by communities to learn when a sex offender is living amongst them).

²¹⁴ See *A Modern Day Arthur Dimmesdale: Public Notification When Sex Offenders are Released Into the Community*, 12 GA. ST. U. L. REV. 1187, 1211-12 (1996) (discussing New Jersey Supreme Court ruling in *Artway v. Attorney General of New Jersey*, which acknowledged that the Legislature justified notification laws because several studies showed an "uncommonly high rate of recidivism among sex offenders"); see also *House Judiciary Comm. Subcomm. on Crime on HR 2137, a Bill Requiring the States to Enact Community Notification Laws* (March 7, 1996) (testimony of Ernest E. Allen, president/CEO, National Center for Missing and Exploited Children, stating that research indicates "sex offenders have a high propensity to re-offend." The Bill was incorporated into federal law May 17, 1996, when President Bill Clinton signed into law an amendment to the Violent Crime Control and Law Enforcement Act of 1994, known as Megan's Law).

²¹⁵ See Stuart Scheingold, *The Politics of Sexual Psychopathy: Washington State's Sexual Predator Legislation*, 15 U. PUGET SOUND L. REV. 809 (1992) (noting that while rehabilitation would appear to be the goal of curing and reintroducing sex offenders into society, rehabilitation was "unequivocally rejected" by sentencing reformers who found rehabilitation to be ineffective).

²¹⁶ See *Doe v. Poritz*, 662 A.2d at 372-73 (holding "that the Constitution does not prevent society from" protecting itself from "convicted sex offenders" and further stating that "society has a right to know of sex offenders presence . . . in order to protect itself"); see also Fein, *supra* note 8, at 38 (stating the "laudatory objective of Megan's Law is community self-defense," and the government interest in giving communities information that could diminish sex offenses is "compelling").

of defense for our children and our families.²¹⁷

Today's society should not tolerate criminals who prey upon innocent children.²¹⁸ When children are brutally assaulted or murdered it is devastating, not only to the families, but to the community as a whole. And we must take that into consideration when our legislators speak for us, which they did after substantial forethought, I might add.²¹⁹ With regard to community notification, I think experience has shown that taking a measured approach will allow low level offenders to become known in a responsible way,²²⁰ so that their identities are only given to police and law enforcement agencies.²²¹ The risk and the categorization of these individuals demonstrates the type of activity that they have engaged in, so when the risk is greater, the notification is greater,²²² and that is as it should be. When the risk is slight or

²¹⁷ See *Doe v. Poritz*, 662 A.2d at 372 (stating that the public has a right to know of sex offenders presence, not as a way to punish the offender, but to protect the public); see also *Allen*, *supra* note 214 (noting that a registry of sex offenders can provide law enforcement officials with a "valuable investigativetool," and a notification program allows law enforcement to release necessary information to help protect the public).

²¹⁸ See *Doe v. Poritz*, 662 A.2d at 373-74 (noting the Legislature, in passing Megan's Law, said the dangers of recidivism by sex offenders who prey on children require a registration system so law enforcement can notify the public and public safety will be served); see also Robert Rudolph, *Notifications to Begin as Megan's Law Clears*, STAR LEDGER (Newark), July 2, 1996, at 1 (quoting U.S. District Court Judge John W. Bissell holding that Megan's Law "is not an instrument of vengeance for its own sake," but the primary purpose is to protect children from previously convicted sex offenders).

²¹⁹ N.Y. CORRECT. LAW §168 (McKinney 1996). The legislature's findings and intent of the Sex Offender Registration Act provided that "[t]he legislature finds that the danger of recidivism posed by sex offenders . . . and that the protection of the public from these offenders is of a paramount concern of interest to the government." *Id.*

²²⁰ *Id.* at §168 (discussing the balancing of sex offenders' due process rights with the interests of public security, by releasing information to law enforcement agencies and only allowing the public limited information about sex offenders); see also Robert Schwaneberg, *Prosecutors Ready to Use Megan's Law: Community Notification May Begin as Court Moratorium Expires Today*, STAR LEDGER (Newark), July 9, 1996, at 1 (noting that identities of low-risk offenders are revealed only to local police).

²²¹ N.Y. CORRECT. LAW §168 (McKinney 1996).

²²² *Id.* at §168-1(6).

moderate, then not only can the individual obtain a waiver,²²³ but they can also just go to the law enforcement officials who should be keeping an eye on them.²²⁴ Similarly, when the individuals have demonstrated themselves to be a substantial and a repetitive threat, that is, violent sexual predators, every single level of community notification, the "900" number, school groups, and police agencies, should be employed.²²⁵ That is only fair and it is only right.

To turn around and say that the civil rights of these individuals is being violated is not a responsible approach because we have taken that into account.²²⁶ As you look at New York's statute, I think you have to keep in mind that when you commit a crime that is felonious in nature and that incarcerates you for a long period of time, you do not have the same level of civil rights that a person who has lived a good clean life does.²²⁷ Very often the right of franchise has been taken from you, and very often other civil rights, including the right of freedom when you're incarcerated, is taken away from you.²²⁸ This is a responsible and responsive approach.²²⁹ It does not overreach, and it takes into consideration all the factors considered.²³⁰

²²³ *Id.* at §168-1(o) (explaining that an offender may receive a petition of relief from the sentencing court which would waive the sex offender's duty to register).

²²⁴ *Id.* at §168-1(6) (explaining that if a sex offender is characterized as a low repeat offender, the official will not disclose his information, or if the sex offender is characterized as a moderate offender it is up to the discretion of the official as to whether the information he has received should be disclosed).

²²⁵ *Id.* at §168-1(6)(c) (explaining that a high risk offender is subjected to the subdirectory, "900" number, and disclosure to any vulnerable entity).

²²⁶ *See* Rudolph, *supra* note 218, at 3 (quoting Judge Bissell, that the government always has had the authority to warn the public about dangerous people, and those warnings have never been viewed as "imposing unconstitutional punishment").

²²⁷ *See* Koch v. Lewis, 62 F.3d 1424 (9th Cir. 1995) (noting the constitutional rights of prisoners are limited by the "fact of their confinement").

²²⁸ *Id.*

²²⁹ *See* People v. Afrika, 168 Misc. 2d 618, 622 (N.Y. Sup. Ct. 1996) (citing the legislative statement of purposes and findings of New York's Sex Offender Registration Act).

²³⁰ *Id.*

Both Assemblyman Feldman and Senator Skelos, from different political wings²³¹ and different political views, came together to do this.²³² The State Assembly, as many of you know, is a rather liberal body.²³³ It is controlled by Democrats by almost a two-to-one margin,²³⁴ principally out of the liberal philosophy. The Senate, on the other hand, is controlled by Republicans in this state and has a more conservative bend.²³⁵ These two branches of government, the two sides of the legislature, came together and almost universally supported the passage of this bill.²³⁶ Together, they worked hard on this, and they came up with, I think, a responsible approach in New York, and I think it will stand the test of time. The Attorney General is confident that the law will withstand any constitutional challenge because it is a responsible approach.²³⁷

²³¹ Erik Kriss, *Woods Lend Support To N.Y.S. Version Of 'Megan's Law' Bill Registers Convicted Sex Offenders, Notifies Communities*, SYRACUSE HERALD J., Mar. 8, 1995, at A1 (stating that Sen. Skelos (R-Rockville Centre) and Assemblyman Feldman (D-Brooklyn) were the bill's chief sponsors).

²³² *Id.*

²³³ *Reynolds is GOP Leader in Assembly*, BUFFALO NEWS, Aug. 16, 1995, at B5 (quoting Reynolds as stating, "if we are truly going to change New York State and break away from the failed liberal policies that dominated state government for two decades, then we must change the New York State Assembly").

²³⁴ Tom Precious, *Group Sees Little Possibility of Big GOP Gains in Assembly*, TIMES UNION (Albany, New York), Mar. 30, 1996, at B2 (noting that Democrats rule the assembly by a 94-55 margin).

²³⁵ *Younger Conservatives Win Senate Gop Leadership*, WALL ST. J., June 13, 1996.

²³⁶ *Pataki Gives Final Approval To 'Megan's Law'*, TIMES UNION (Albany), July 26, 1995, at B2 (reporting that legislation passed the Assembly with only nine "no" votes and passed the Senate with only one dissenting vote).

²³⁷ Gene Warner, *Sixty-one on Parole in County as Sex Offenders*, BUFFALO NEWS, Mar. 12, 1996, at A1 (quoting Attorney General Dennis Vacco, "[t]he public dissemination of information relating to the identities of sex offenders who have been convicted in our courts is designed to ensure public safety and is not a form of unconstitutional punishment").