Pennsylvania's Sex Offender Community Notification Law: Will it Protect Communities from Repeat Sex Offenders?

Michael L. Bell

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the Law Commons

Recommended Citation
Michael L. Bell, Pennsylvania's Sex Offender Community Notification Law: Will it Protect Communities from Repeat Sex Offenders?, 34 Duq. L. Rev. 635 (1996).
Available at: https://dsc.duq.edu/dlr/vol34/iss3/7

This Comment is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
INTRODUCTION

On July 29, 1994, Megan Kanka, a seven-year-old first-grader from Hamilton Township, New Jersey, was walking home from a friend’s house when Jesse Timmendequas (“Timmendequas”), Megan’s thirty-three-year-old neighbor, invited her into his house to pet his new puppy.1 Once inside, Timmendequas led Megan to his upstairs bedroom, strangled her unconscious with a belt, raped her and asphyxiated her to death with a plastic bag.2 Timmendequas then placed Megan’s body in a box, drove to a nearby soccer field and dumped her body in some bushes.3

Unknown to Megan’s parents and their neighbors, Timmendequas was a twice-convicted felon who had served six years for the attempted sexual assault of a child.4 Furthermore, Timmendequas’ two housemates had also served time for sex crimes.5 Why, the residents of Hamilton Township wondered,

2. Jerome, supra note 1, at 46. Timmendequas signed a statement admitting to the crime after investigators found scraps of Megan’s shorts in his house the day after her disappearance. Siegel, supra note 1, at A-1.
3. Jerome, supra note 1, at 46. When Timmendequas realized the local police were searching the neighborhood with dogs, he washed the steps to his house and his truck with ammonia. Siegel, supra note 1, at A-1.
5. Id. See also Stephen W. Dill, Pink Ribbons Symbolize Drive for “Megan’s
had they not been told? Megan's parents and their neighbors soon launched an angry grass roots campaign calling for legislation that would require authorities to notify residents when a convicted sex offender moved into their communities.6

Their pleas fell on receptive ears inside New Jersey's legislature. In less than twenty days after Megan's murder, the New Jersey Assembly and Senate introduced a plethora of measures to deal more harshly with sex offenders, two of which required authorities to notify communities about the release of certain sex offenders from prison.7 The proposed community notification law was modeled after a similar law adopted by the State of Washington, the Community Protection Act.8 On October 31,
1994, three months after Megan’s brutal death, New Jersey’s Governor, Christine Todd Whitman, signed the package into law—“Megan’s Law.”

Pennsylvania followed the lead of New Jersey. The Pennsylvania House of Representatives, in a unanimous 198-0 vote, passed without debate the final draft of Pennsylvania’s version of Megan’s Law, Senate Bill 7 (the “Pennsylvania statute”), on October 17, 1995. Governor Tom Ridge signed the legislation into law one week later, on October 24, 1995.

This comment argues that Pennsylvania’s community notification law will not protect communities from repeat sex offenders. This comment first provides a summary of Pennsylvania’s statute and its pertinent community notification provisions. Because Pennsylvania’s statute will operate in much the same way as New Jersey’s Megan’s Law, this comment reviews recent New Jersey court decisions that reveal several constitutional weaknesses with community notification laws. This comment then presents several policy arguments showing that community notification laws will not prevent released sex offenders from committing further sex crimes. Finally, this comment argues that rehabilitation is the most realistic means to protect communities from repeat sex offenders.


The following states, including the District of Columbia, have neither registration nor community notification laws: Hawaii, Iowa, Maryland, Michigan, Nebraska, New Mexico, New York, North Carolina, South Carolina, and Vermont.


11. Mario F. Cattabiani, Pa. Legislators OK Megan’s Law, ALLENTOWN MORNING CALL, Oct. 18, 1995, at A-1. The bill’s main sponsor was Senator Stewart J. Greenleaf (R-12th Dist.), the influential Chairman of the Senate Judiciary Committee. He is considered by many to be the Republicans’ leading person on crime and judicial matters. See GUIDEBOOK TO PENNSYLVANIA LEGISLATORS 1995-1996 30-31 (Lynelle Jolley ed. 1995). Senator Greenleaf chaired the Senate impeachment panel that heard evidence against former Pennsylvania Supreme Court Justice Rolf Larsen. Id.

12. Stephanie Ebbert, Ridge Lauds Effort to Create Megan’s Law, HARRISBURG PATRIOT, Oct. 25, 1995, at B-3. Governor Ridge was flanked by the bill’s sponsors and children from the Magic Years Childcare and Learning Center in East Pennsboro Township, Pennsylvania as he signed the legislation. Id.
PENNSYLVANIA'S COMMUNITY NOTIFICATION LAW

The most important provisions of Pennsylvania's statute require police authorities to release information about a special category of sex offenders, statutorily defined as "sexually violent predators," to certain segments of the community when the sex offenders are about to be released from custody. The basic policy goal of the statute is to protect the safety of the general public from repeat sex offenders. The Pennsylvania General Assembly focused on community notification as the primary means to achieve this goal for several stated reasons. The legislature found that if the general public is provided with adequate notice and information about "sexually violent predators," the community could develop constructive plans to prepare themselves and their children for the offender's release from custody. The legislature also found that it is an important governmental interest to protect the general public from "sexually violent predators" because they often commit repeated sex crimes after release from incarceration. The general public's lack of knowledge concerning the penal and mental health components of the state justice system was also an important consideration for the legislature. Finally, the legislature found that certain

13. The statute defines a "sexually violent predator" as a person likely to engage in predatory sexually violent offenses due to a mental abnormality or personality disorder. 1995 Pa. Legis. Serv. at 553, § 9792. A "mental abnormality" is further defined as "a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons." Id. "Predatory" is defined as "an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization." Id.

14. 1995 Pa. Legis. Serv. at 556-57, §§ 9797, 9798. The statute also contains provisions that would require certain sex offenders not deemed "sexually violent predators" to register all current and future addresses with authorities for a period of ten years upon commencement of parole or probation. Id. § 9793(a). If a released sex offender is determined to be a "sexually violent predator," the registration requirements continue until the person is no longer determined to be a "sexually violent predator." Id. § 9795(a). The registration requirements of the statute, however, are not the focus of this comment.

15. Id. § 9791(b). In § 9791(b), the legislature also stated that the statute "shall not be construed as punitive." Id. This is an attempt by the legislature to prevent future constitutional attacks against the statute which claim that the social stigma of community notification constitutes "cruel and unusual punishment." See infra notes 84-87 and accompanying text for a discussion of the issue of whether legislatures can simply declare a statute punitive or regulatory.


17. Id. § 9791(a)(2). See infra note 119 and accompanying text for a discussion that questions the assumption that sex offenders have a higher rate of recidivism than other criminals.

sex offenders, especially "sexually violent predators," have a reduced expectation of privacy because protecting the general public from their crimes is of greater importance. 19

Only those sex offenders deemed "sexually violent predators" will be subject to the community notification provisions of the statute. There are two prerequisites for a sex offender to be classified as a "sexually violent predator." First, an individual must be convicted of one of the following crimes that are classified as felonies and the victim must be a minor: kidnapping (except by a parent), 20 rape, 21 involuntary deviate sexual intercourse, 22 aggravated indecent assault, 23 prostitution and relat-

19. Id. § 9791(a)(6).

20. The Pennsylvania Crimes Code provides that:
A person is guilty of kidnapping if he unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following intentions:
(1) To hold for ransom or reward, or as a shield or hostage.
(2) To facilitate commission of any felony or flight thereafter.
(3) To inflict bodily injury on or to terrorize the victim or another.
(4) To interfere with the performance by public officials of any governmental or political function.


21. The Pennsylvania Crimes Code provides that:
A person commits a felony of the first degree when he engages in sexual intercourse with another person not his spouse:
(1) by forcible compulsion;
(2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
(3) who is unconscious; or
(4) who is so mentally deranged or deficient that such person is incapable of consent.


The Crimes Code states that "[s]exual intercourse[,] . . . [i]n addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required." Id. § 3101.

22. The Pennsylvania Crimes Code provides that:
A person commits a felony of the first degree when he engages in deviate sexual intercourse with another person:
(1) by forcible compulsion;
(2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
(3) who is unconscious;
(4) who is so mentally deranged or deficient that such person is incapable of consent; or
(5) who is less than 16 years of age.


The Crimes Code defines "deviate sexual intercourse" as "[s]exual intercourse per os or per anus between human beings who are not husband and wife. . . . The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures." Id. § 3101.

23. The Pennsylvania Crimes Code provides:
ed offenses,24 or distribution of obscene and other sexual materials and performances.25 Persons convicted of the following crimes also meet the first prerequisite of being classified a “sexually violent predator” regardless of the victim’s age: rape, deviate sexual intercourse, aggravated indecent assault, or spousal sexual assault.26 The community notification provisions of the statute will only apply to “sexually violent predators” who have

A person commits a felony of the second degree when he engages in penetration, however slight, of the genitals or anus of another with a part of the actor’s body for any purpose other than good faith medical, hygienic or law enforcement procedures if:

1. he does so without the consent of the other person;
2. he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;
3. he knows that the other person is unaware that the indecent contact is being committed;
4. he has substantially impaired the other person’s power to appraise or control his or her conduct by administering or employing without the knowledge of the other drugs, intoxicants or other means for the purpose of preventing resistance;
5. the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or
6. he is over 18 years of age and the other person is under 14 years of age.


24. The only acts that constitute a felony with regard to prostitution are those where an actor promotes prostitution, compels another to engage in or promote prostitution, promotes prostitution of a child under the age of 16 years, or promotes prostitution of a spouse, child, ward or any person for whose care, protection or support the actor is responsible. See 18 PA. CONS. STAT. § 5902 (1991). An individual who is convicted of being a prostitute or soliciting or procuring a prostitute is only guilty of a misdemeanor. Id.

25. Section 5903 of the Pennsylvania Crimes Code makes it a crime to display, sell, distribute, design or publish obscene materials or performances. 18 PA. CONS. STAT. § 5903(a)(1)-(6) (1991). Any material or performance is obscene if:

1. the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;
2. the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this section; and
3. the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

Id. § 5903(a)(1)-(3).

Section 5903 also makes it a crime to knowingly sell or otherwise provide minors with explicit sexual materials, or to knowingly admit minors to performances that depict nudity or sexual conduct. Id. § 5903.

The above crimes are only felonies if the actor has been previously convicted of these crimes. Id.

26. Section 3128 of the Pennsylvania Crimes Code states that a person commits a felony of the second degree when he engages in sexual intercourse or deviate sexual intercourse with that person’s spouse: “(1) by forcible compulsion; (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or (3) who is unconscious.” 18 PA. CONS. STAT. § 3128(a)-(b) (1991).
been convicted of one of the specified crimes after October 24, 1995, the effective date of the legislation.27

The second prerequisite for a sex offender to be classified as a "sexually violent predator" involves an assessment by a newly created board of experts, called the State Board to Assess Sexually Violent Predators (the "Board").28 The Board is composed of one psychiatrist and one psychologist appointed by the Governor, and one criminal justice expert appointed by the Attorney General.29 After being convicted of one of the above crimes, but before sentencing, the sex offender must be assessed by the Board.30 The Board's assessment will include, but not be limited to, the following factors: the offender's age, the offender's prior criminal record, the victim's age, whether the offense involved multiple victims, use of illegal drugs by the offender, whether the offender completed any prior sentences and participated in programs for sex offenders, the offender's mental condition, the nature of the offender's sexual contact with the victim, whether the offender displayed unusual cruelty during the commission of the crime, and any behavioral characteristics that contributed to the offender's conduct.31 It is important to note, however, that an individual convicted of one of the designated crimes must be presumed by the Board to be a "sexually violent predator," which can only be rebutted by clear and convincing evidence to the contrary.32 The Board has thirty days to submit its findings to the trial court in which the sex offender was con-

27. 1995 Pa. Legis. Serv. at 559, § 9799.5. The basic registration requirements of the statute apply to all sex offenders convicted of an appropriate sex offense, regardless of the date of their conviction, as long as the offender remains under the jurisdiction of the Pennsylvania Board of Probation and Parole or the Department of Corrections. Id.

28. Id. §§ 9794, 9799.3.

29. Id. Each of these professionals must have a minimum of ten years experience and specialized training in the behavior and treatment of sex offenders. Id. § 9799.3(a). Members of the Board will serve four year terms and be compensated $125 per day, plus expenses, while performing the business of the Board. Id. § 9799.3(c)-(d).

30. Id. § 9794(a).

31. Id. § 9794(c)(1)-(10). The statute does not contain any provisions that allow the sex offender to participate during the Board's assessment process. Apparently, the Board will make its assessment without the sex offender even being present.

32. 1995 Pa. Legis. Serv. at 554, § 9794(b). Clear and convincing proof is defined as proof which requires more than a preponderance of the evidence, the standard of proof in most civil proceedings, but less than proof beyond a reasonable doubt, the standard of proof in criminal proceedings. BLACK'S LAW DICTIONARY 251 (6th ed. 1990). See also In re Sylvester, 555 A.2d 1202, 1203-04 (Pa. 1989) (stating that the standard of clear and convincing evidence means evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts at issue).
Upon receipt of the Board's findings, the court will then make the final determination of whether the sex offender is a "sexually violent predator" during a special hearing prior to sentencing. During this proceeding, the sex offender has the right to legal counsel, and both the offender and the district attorney have the right to call witnesses and experts and to cross-examine witnesses. As with the Board's assessment process, the trial court is to presume that the offender is a "sexually violent predator." If an offender is determined to be a "sexually violent predator," the offender may appeal that decision no sooner than one year prior to release, or in five year intervals thereafter.

Once the trial court has classified the sex offender as a "sexually violent predator," the offender must register all current addresses with the Pennsylvania State Police upon release, parole, or probation. The "sexually violent predator" has a continuing obligation to inform authorities of any address changes within ten days. The offender must also provide fingerprints and a photograph at the time of sentencing. Any "sexually violent predator" who fails to follow the registration requirements of the statute commits a felony of the third degree. The statute also contains verification provisions. Every ninety days, the Pennsylvania State Police are required to send a non-forwardable verification form to the offender's last reported address, which the offender must return within ten days. If the sex offender fails to return the verification form within ten days, the Penn-

34. Id. § 9794(c).
35. Id.
36. Id. § 9794(b).
37. Id. § 9794(f). The appeal must be filed with the court that made the original determination. Id. If the trial court chooses to reconsider the initial determination, it can request a new assessment by the Board. Id.
38. 1995 Pa. Legis. Serv. at 555, § 9795(a). The registration requirements of § 9795(a) continue unless the court that made the original "sexually violent predator" determination reverses its decision. Id.
39. Id. § 9795(b)(2)-(3).
40. Id. § 9795(b)(4).
41. Id. § 9795(d). The Pennsylvania Crimes Code provides that a person convicted of a felony of the third degree may be sentenced to imprisonment for a term of not more than seven years. 18 PA. CONS. STAT. § 1103(3) (1991).
42. 1995 Pa. Legis. Serv. at 556, § 9796.
43. Id. § 9796(a). Offenders not deemed "sexually violent predators," but subject to the 10-year registration requirements of § 9793, are required to complete and return within ten days an annual residence verification form to be provided by the Pennsylvania State Police. Id. § 9796(b).
Pennsylvania State Police are required to immediately notify the local police department, which must locate and arrest the offender. The statute specifies which segments of the general public are to receive information about the release of "sexually violent predators." Within three days after the offender registers with the Pennsylvania State Police or registers a change of address, the local municipal police department, or the State Police if no local police department exists, must give written notice to the offender's victim. The notice must contain the offender's name and address.

The local police or State Police are also required to inform the neighbors of the "sexually violent predator's" location within three days of receiving the offender's information. In addition to neighbors, the authorities are also required to provide information to the following entities within seven days of receiving the offender's information: the director of the Children and Youth Services Agency in the county where the offender resides, the superintendent of each school district and the equivalent official of each private and parochial school enrolling students up through the twelfth grade in the municipality, the director of each licensed day care center and preschool program in the municipality, and the president of each college, university, and community college located within 1,000 feet of the offender's address. The neighbors and the above entities must be notified of the offender's name and address, the offender's convicted offense, and a statement that the offender has been designated as a "sexually violent predator." Because the legislature realized the potential problem of the general public taking the law into its own hands, the statute also contains provisions that

44. Id. § 9796(d). If the local municipality does not have a police department, the State Police must assume the responsibility for locating and arresting the offender. Id.
45. Id. § 9797(a)(1).
46. Id. The victim may terminate the right to receive notification by providing the local police department with a written statement releasing the agency from the duty of providing notification. Id. § 9797(a)(2).
47. 1995 Pa. Legis. Serv. at 557, § 9798(b)(1). The proposed statute does not define "neighbors," nor does it give any indication whether "neighbors" means only next door neighbors or neighbors within the same block. Apparently, the exact meaning and scope of "neighbors" is for the Pennsylvania State Police to determine as part of its duty to develop regulations regarding community notification. Id. § 9799.1(2), (3), (5).
48. Id. § 9798(b)(2)-(5). All the information required by this section must also be made available to any member of the public who requests it. Id. § 9798(d).
49. Id. § 9798(a)(1). The notice provided to these parties must not include any information that might reveal the victim's name, identity, or residence. Id. § 9798(a)(2).
The statute also requires the “sexually violent predator” to attend monthly counseling sessions in a program approved by the Board. The “sexually violent predator” will be responsible for the cost of the counseling, unless the offender can prove financial inability to pay. In that situation, the parole office responsible for monitoring the offender will pay for the cost of the counseling.

In summary, only those sex offenders deemed “sexually violent predators” will be subject to Pennsylvania’s community notification law. “Sexually violent predators” are those sex offenders that the Board and the courts determine are most likely to repeat their sex crimes. All other sex offenders will be subject to the registration requirements of Pennsylvania’s statute. In this respect, the statute is similar to New Jersey’s Megan’s Law.

NEW JERSEY’S COMMUNITY NOTIFICATION LAW—MEGAN’S LAW

Although Pennsylvania used New Jersey’s community notification law—Megan’s Law—as a model for Pennsylvania’s statute, Pennsylvania’s statute is by no means identical to Megan’s Law. In fact, Pennsylvania’s statute is quite different

---

50. Id. § 9799.1(2), (3), (5).
51. Id. § 9799.4(a).
52. 1995 Pa. Legis. Serv. at 559, § 9799.4(a).
53. Id. The statute does not indicate how long the “sexually violent predator” must undergo monthly counseling.
54. Id.
55. Id. It is important to note that the proposed legislation does not provide the necessary funding for covering the counseling costs of indigent sex offenders.
56. N.J. STAT. ANN. §§ 2C:7-1 to -11.
57. See Cattabiani, supra note 11, at A-1 (explaining that delays in passing the legislation were due, in part, to lawmakers keeping a close eye on continuing legal challenges to New Jersey’s Megan’s Law).
58. Many provisions of Pennsylvania’s statute, especially the terminology adopted, mirror provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program Act (the “Violent Crime Control Act”), 42 U.S.C.A. § 14071 (West 1995), which is part of the thirty billion dollar omnibus crime package signed by President Clinton on September 13, 1994. John Aloysius Farrel, Clinton Signs Crime Bill at White House, BOSTON GLOBE, Sept. 14, 1994, at A-1. The Violent Crime Control Act requires States to develop registration and verification requirements almost identical to those found in Pennsylvania’s statute. 42 U.S.C.A. § 14071(a)-(c). The federal legislation provides that states may re-
from Megan's Law in many important respects.

Under Megan's Law, after a sex offender has been convicted of a particular sex offense but before release from custody, the prosecutors from the county in which the registrant is expected to reside and the county in which the offender was convicted must determine whether the offender poses a low, moderate, or high risk of committing a repeated sex crime. If the risk of re-offense is low, or Tier 1, only law enforcement agencies receive information about the offender's release from custody. If the risk of re-offense is moderate, or Tier 2, law enforcement agencies, schools, and religious and youth organizations receive information. If the offender poses a high risk of re-offense, or Tier 3, the above parties and the general public likely to encounter the offender receive information. This review process, which does not allow for the participation of any professionals with training in the behavior and treatment of sex offenders, is not subject to judicial review. This is in stark contrast to the provisions of Pennsylvania's statute.

Another important difference between Megan's Law and Pennsylvania's statute involves the applicability of each law. Whereas Pennsylvania's statute provides that the community notification provisions only apply to "sexually violent predators" who commit crimes after the legislation's effective date, Megan's law has full retroactive applicability. All convicted offenders, without regard to the date of their crime or conviction, are subject to the community notification provisions of Megan's Law if they fall within one of the three risk groups.

Even though Megan's Law only became law on October 31, 1994, several New Jersey courts have already been forced to examine the constitutionality of the law. The plaintiffs in

lease information about sex offenders to the community when necessary to protect the public. Id. States have until September 13, 1997 to develop registration guidelines mandated by the Violent Crime Control Act or face the loss of federal funding. Id.

59. N.J. STAT. ANN. § 2C:7-8d(1).
60. Id.
61. Id.
62. Id.
63. A recent Supreme Court of New Jersey decision, Doe v. Poritz, 662 A.2d 367 (N.J. 1995), now subjects the review process to judicial review.
64. See supra notes 34-37 and accompanying text for a discussion of the judicial review provisions of Pennsylvania's statute.
65. See supra note 27 and accompanying text for the relevant applicability provisions of Pennsylvania's statute.
66. N.J. STAT. ANN. § 2C:7-2a, -7-6.
67. See Doe (holding that the community notification provisions of Megan's Law are not a form of punishment and therefore withstand constitutional scrutiny);
these cases, sex offenders subject to the community notification provisions of the law, have attacked Megan's Law on two important grounds: the Ex Post Facto Clause of the United States Constitution and the prohibition against cruel and unusual punishment as set forth in the Eighth Amendment.

In Artway v. Attorney General, the United States District Court for the District of New Jersey found the retroactive application of the Tiers 2 and 3 community notification provisions of Megan's Law unconstitutional under an Ex Post Facto Clause analysis. The district court also addressed the plaintiff's Eighth Amendment claim, but declined to rule on this argument because of its decision regarding the ex post facto argument. Even though the Artway decision is primarily concerned with the retroactive application of Megan's Law, the court's opinion represents a careful study regarding the various constitutional weaknesses of community notification laws.

A jury found Alexander Artway ("Artway") guilty of sodomy in

---


68. See U.S. CONST. art. I, § 9, cl. 3. The United States Constitution provides that "[n]o . . . ex post facto Law shall be passed." *Id.* New Jersey's Constitution also contains a similar provision: "[T]he Legislature shall not pass any . . . ex post facto law." N.J. CONST. art. IV, § 7, para. 3. An ex post facto law is defined as "a law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." BLACK'S LAW DICTIONARY 580 (6th ed. 1990). See also Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798) (holding that the Ex Post Facto Clause also encompasses laws that aggravate a crime, or make it greater than it was when committed).

69. See U.S. CONST. amend. VIII. The United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.* New Jersey's Constitution contains a similar provision:

> Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted. It shall not be cruel and unusual punishment to impose the death penalty on a person convicted of purposely or knowingly causing death or purposely or knowingly causing serious bodily injury resulting in death who committed the homicidal act by his own conduct or who as an accomplice procured the commission of the offence by payment or promise of payment of anything of pecuniary value.

N.J. CONST. art. 1, para. 12.


72. *Id.* at 679, 683.
1971 and in 1975 sentenced him to a maximum twenty years imprisonment. At Artway's sentencing, the trial judge characterized Artway's conduct as "repetitive and compulsive." Artway was released from custody in 1993 upon completion of his sentence.

Because Artway's conduct at the time of his sentencing was found to be "repetitive and compulsive," Artway was subject to the provisions of Megan's Law even though he was convicted of a sex crime twenty-three years prior to the law's enactment. Artway challenged the constitutionality of Megan's Law based on several arguments, the two most important being the Ex Post Facto Clause of the United States Constitution and the prohibition against cruel and unusual punishment as set forth in the Eighth Amendment.

The court first enumerated the standards for addressing the above constitutional attacks, beginning with an analysis of the

73. Id. at 668. Artway was sentenced in 1975 because he was a fugitive from justice from the time of his conviction until his sentencing. Id. at 668 n.1.

74. Id. at 668. Artway never challenged the determination made at sentencing. Id. He was first imprisoned at the New Jersey State Prison Farm, the Diagnostic Unit, where he was to receive special treatment for his compulsive, sexual behavior. Id. In 1978, Artway was transferred to the Rahway State Prison after it was determined that he lacked the proper involvement and participation in the treatment program. Id.

75. Id.

76. Artway, 876 F. Supp. at 688-70. Ripeness was a potential issue in Artway's challenge because he had not yet been subject to the notification provisions of Megan's Law. Id. at 670. However, because Artway was required to register with authorities prior to midnight on the date of the court's decision (February 28, 1995) or face prosecution for a fourth degree felony, the court decided that Artway's claim was ripe for judicial determination. Id.

77. Id. at 671. Artway also made the following constitutional claims: the constitutional right to privacy, the prohibition against Bills of Attainder, and the Double Jeopardy Clause. Id.

The United States Supreme Court has, in a series of holdings culminating in Roe v. Wade, 410 U.S. 113, 152-53 (1973), recognized an individual's right to protect certain private matters from public scrutiny.

The United States Constitution provides that "[n]o State shall ... pass any Bill of Attainder." U.S. CONST. art. I, § 10, cl. 1. A bill of attainder is any legislative act that applies to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment without a judicial trial. BLACK'S LAW DICTIONARY 165 (6th ed. 1990).

The United States Constitution provides that "[n]o person shall be ... subject for the same offence to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. Known as the Double Jeopardy Clause, this portion of the Fifth Amendment prohibits the federal government from punishing citizens a second time for the same offense for which they had previously been punished. See United States v. Halper, 490 U.S. 435, 449-50 (1989) (holding that a defendant who has already been punished in a criminal prosecution may not be subjected to an additional civil sanction that operates as a deterrent or retribution without violating the Double Jeopardy Clause).
Ex Post Facto Clause. The court noted that the Framers of the Constitution intended to prevent the prospect of prior innocent conduct being rendered criminal by subsequent enactments. The court recognized that a very early United States Supreme Court case, *Calder v. Bull,* is still controlling precedent in ex post facto analyses.

The district court noted that *Calder* extended the Ex Post Facto Clause to include laws that inflict a greater punishment than the punishment originally associated with the crime. Furthermore, the court noted that this analysis focuses on whether the legislative aim was to punish the individual for past activity. In other words, if Megan's Law is punitive, and if it inflicts a greater punishment—community notification—than the punishment originally associated with the crime when committed—imprisonment—then Megan's Law is unconstitutional for violating the Ex Post Facto Clause.

The central inquiry for the *Artway* court was whether Megan's Law is punitive or regulatory. The New Jersey legislature declared that its intention in passing Megan's Law was to enact a regulatory law that would merely distribute information to certain segments of the community. When the legislature's stated purpose is to enact a procedural rather than a punitive law, as is the case with Megan's Law, the court recognized that it must still examine the law's effects to determine whether the statute operates as a form of punishment. To assist itself in this analysis, the court followed criteria set forth by additional Supreme Court precedent, known as the "Kennedy criteria." The court noted that the non-exclusive list of factors to be applied in determining whether legislation is punitive includes:

Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence,
whether the behavior to which it applies is already a crime, whether an
alternative purpose to which it may rationally be connected is assignable
for it, and whether it appears excessive in relation to the alternative
purpose assigned . . . . 87

The district court then examined the constitutional standards
used when reviewing claims based on the Eighth Amendment's
prohibition against cruel and unusual punishment.88 First, the
court recognized that, as with ex post facto claims, the court
must determine whether the statute constitutes punishment by
using the Kennedy criteria.89 The court then stated that if the
statute is found to be punitive, it must determine whether the
punishment is "cruel and unusual."90 The court noted that the
parameters for "cruel and unusual" focus on whether the penalty
accords with "the dignity of man" and whether the punishment is
"grossly disproportionate" to the crime.91

After setting forth the above standards for reviewing ex post
facto and Eighth Amendment claims, the court then applied them
to the specific provisions of Megan's Law. The court first ad-
dressed the ex post facto claim and specifically addressed each
element of the Kennedy criteria.92

The court found that the community notification provisions of
Megan's Law constitute an affirmative disability or restraint
because they may adversely affect an offender's employability
and association with neighbors.93 The court also determined that

87. Id. at 674 (citations omitted).
88. Id. at 677-78. See supra note 69 for the text of the Eighth Amendment.
89. Artway, 875 F. Supp. at 678.
90. Id.
91. Id. (quoting McCleskey v. Kemp, 481 U.S. 279, 300 (1987) and Trop v.
Court set forth a three-pronged test to be used in evaluating whether or not the
punishment is proportionate to the crime: "(1) the gravity of the offense and the
harshness of the penalty; (2) the sentences imposed on other criminals in the same
jurisdiction; and (3) the sentences imposed for commission of the same crime in
other jurisdictions." Solem, 463 U.S. at 290-92. However, in a later case, the Court
was divided in its lack of continued support for the Solem criteria. See Harmelin v.
Michigan, 501 U.S. 957, 965 (1991) (holding that imposition of a mandatory life
sentence in prison without possibility of parole and without any consideration of
mitigating factors does not constitute cruel and unusual punishment). Currently, it
appears that courts applying Eighth Amendment cruel and unusual punishment
analyses react only to severe harshness bearing no relation to the gravity of the un-
derlying offense. See Artway, 876 F. Supp. at 679.
93. Id. at 689. To counter the argument that community notification does not
constitute a disability because the information is available to the public through
court records, the court noted that community notification laws go much further
than making information available. Id. The court argued that community notification
laws provide active public dissemination, rather than mere access for vigilant mem-

the public dissemination of information regarding an individual's past criminal record has been historically regarded as punishment and is only applied to individuals after a finding of criminal intent. The court then determined that Megan's Law was designed to promote at least one of the traditional aims of punishment—deterrence. Based on this analysis, the court found Megan's Law to be punitive in nature, and therefore declared its retroactive application an unconstitutional violation of the Ex Post Facto Clause of the United States Constitution.

Because the court found Megan's Law to be unconstitutional under its ex post facto analysis, the court did not apply the provisions of Megan's Law to Artway's Eighth Amendment and other constitutional claims. However, the district court repeatedly referred to the community notification provisions of Megan's Law

4. Id.
5. Id. The court noted that the very nature and function of Megan's Law was to deter re-offense by sex offenders through heightened police and public awareness. Id.
6. Id. at 692. Because community notification laws are less common than sex offender registration laws, only a handful of cases have litigated the issues surrounding community notification laws and whether they represent forms of punishment. In fact, one court has found retroactive community notification laws to be an unconstitutional violation of the Ex Post Facto Clause. See State v. Babin, 637 So. 2d 814, 824 (La. Ct. App.) (holding that Louisiana's community notification law is unconstitutional because it is punitive and violates the Ex Post Facto Clause), writ denied, 664 So. 2d 649 (La. 1994). But see Doe v. Poritz, 662 A.2d 367, 388 (N.J. 1995) (holding that New Jersey's Megan's Law is constitutional because it is regulatory in nature and not punitive); State v. Ward, 869 P.2d 1062, 1072 (Wash. 1994) (holding that Washington's community notification law is constitutional because it does not represent a form of punishment).

Registration statutes that do not include community notification provisions have been almost universally sustained in the face of attacks that the laws are forms of punishment and thus subject to constitutional scrutiny. See State v. Noble, 829 P.2d 1217, 1224 (Ariz. 1992) (holding that requiring sex offenders to register with police upon release from custody is not a form of punishment); People v. Adams, 581 N.E.2d 637, 641 (Ill. 1991) (resulting in the same holding as Noble). But see Rowe v. Burton, 884 F. Supp. 1372, 1385 (D. Alaska 1994) (holding that Alaska's sex offender registration law is a form of punishment and therefore is an unconstitutional violation of the Ex Post Facto Clause); In re Reed, 663 P.2d 216, 222 (Cal. 1983) (holding that California's sex offender registration law is a form of punishment and therefore is an unconstitutional violation of the Eighth Amendment's protection against cruel and unusual punishment).

97. Artway, 876 F. Supp. at 692. An important public policy obstacle has recently surfaced that further complicates the viability of New Jersey's Megan's Law. See Robert Hanley, "Megan's Law" Leaves New Jersey Lawyers in a Tough Spot, N.Y. TIMES, Oct. 16, 1995, at B5. A significant number of New Jersey lawyers is threatening not to represent sex offenders pro bono during the community notification review process. Id. Some members of the New Jersey Bar fear that the appeals could last up to five days, require long preparation and involve appeals to higher courts, and force lawyers to pay for expert witnesses. Id. In the words of the New Jersey Bar Association president: "I guess you could call it a strike." Id.
as a "lifelong branding and albatross" that could adversely affect an offender's life after the offender's prison sentence has ended. 98 Furthermore, the court noted that community notification could permanently affect an offender's employability, thus forever hampering the offender's ability to return to a normal, private, law-abiding life. 99 Given this language, it is quite possible that the district court would have found the community notification provisions of Megan's Law to be against "the dignity of man" and "grossly disproportionate" to the crime, and thus in violation of the Eighth Amendment's prohibition against cruel and unusual punishment.

PENNSYLVANIA'S COMMUNITY NOTIFICATION LAW IN LIGHT OF ARTWAY

It is obvious that the Artway decision is not controlling precedent on Pennsylvania's courts. 100 It is of some importance, however, that the United States District Court for New Jersey is part of the Third Circuit, the same circuit that encompasses Pennsylvania. 101 For this reason, the Artway decision deserves important consideration by anyone interested in the viability of Pennsylvania's community notification law.

This comment has noted the important differences between Pennsylvania's statute and New Jersey's Megan's Law. 102 One of those differences is the applicability provisions of the two laws. 103 In fact, the Pennsylvania legislature seemed to realize that the retroactive applicability of community notification laws could run afoul of the Ex Post Facto Clause. 104 Unlike New Jer-

99. Id. at 688-89.
100. See Cianfrani v. Johns-Manville Corp., 482 A.2d 1049, 1051 (Pa. Super. Ct. 1984) (holding that in the absence of a ruling from the United States Supreme Court, the decision of a federal intermediate appellate panel is not binding on Pennsylvania courts); Commonwealth v. Rundle, 201 A.2d 615, 623 (Pa. Super. Ct. 1964) (holding that decisions of lower federal courts are not binding on state courts even though a federal question is involved).
102. See supra notes 56-66 and accompanying text for several differences between Pennsylvania's statute and New Jersey's Megan's Law.
103. See supra notes 65-66 and accompanying text for a discussion of the applicability.
104. A strong argument can be made that Pennsylvania's House of Representative had access to the Artway decision when it made its revisions to Senate Bill 7, which eventually was enacted into Pennsylvania's statute. The Artway decision regarding the retroactive application of New Jersey's Megan's Law was filed on February 28, 1995, the same day Pennsylvania's Senate passed Senate Bill 7. Section
sey, which subjects all sex offenders, regardless of the date of their crimes or convictions, to the community notification provisions of Megan's Law, Pennsylvania's statute only applies to sex offenders who commit a punishable offense after the effective date of the legislation. In recognizing this important consideration, Pennsylvania's legislature effectively created a community notification law that is immune from an Ex Post Facto Clause attack.

The Pennsylvania legislature, however, did not create a community notification law that is immune from a constitutional attack based on the Eighth Amendment's prohibition of cruel and unusual punishment. Pennsylvania's statute, and any other similar laws that release an individual's past criminal record to segments of the general public, are punitive laws that are not in accordance with "the dignity of man" and are "grossly disproportionate" to the punishable crimes. Simply put, Pennsylvania's statute represents an unconstitutional violation of a sex offender's right to be free from cruel and unusual punishment.

As the Artway decision correctly indicated, there is a two-pronged analysis used to determine whether a law violates the Eighth Amendment's prohibition against cruel and unusual punishment. First, a court must determine whether the law in question can be categorized as "punishment." If a court determines that the law is punitive, it must then decide whether the law constitutes cruel and unusual punishment.

Pennsylvania's statute is punitive in nature because it meets the requirements of the Kennedy criteria. Even though the Pennsylvania legislature declared that the statute should "not be construed as punitive," a court must look to the effect of the law to determine whether in fact it is punitive. This is the

9799.2 of the original version of Senate Bill 7, as passed by the Senate, provided that the community notification provisions would apply to offenders released on or after January 1, 1996, which would have clearly violated the Ex Post Facto Clause. Because Artway declared the retroactive applicability of Megan's Law unconstitutional, Pennsylvania's House of Representatives wisely changed Senate Bill 7 to make an ex post facto attack null and void. If the House of Representatives did have access to the Artway decision when making its amendments, that is tacit recognition that the Artway decision and its analysis of community notification laws carries significant importance.


107. Id. at 678.

108. See supra notes 85-87 and accompanying text for a discussion of the Kennedy criteria which are used to determine whether a law is punitive in nature.


110. See Collins v. Youngblood, 497 U.S. 37, 46 (1990) (stating that by simply
exact analysis that the Artway court performed in finding that New Jersey's community notification law is indeed punitive.\textsuperscript{111}

Pennsylvania's community notification law is similar enough to New Jersey's Megan's Law to also be considered punitive in nature. First, Pennsylvania's community notification law represents an affirmative disability to or restraint of individuals subject to its provisions. The public dissemination of information about "sexually violent predators" will subject those individuals to continuous police scrutiny and community suspicion. Furthermore, notifying segments of the community about a sex offender's release from custody will forever impair that individual's employability and ability to return to a normal life. Such an adverse effect on an individual's future can only lead to the conclusion that Pennsylvania's statute will act as an affirmative disability or restraint.

The public dissemination of an individual's past criminal activity, which is the main thrust of Pennsylvania's statute, has been historically regarded as punishment.\textsuperscript{112} The Artway decision noted the traditional Judeo-Christian story of the "Mark of Cain" as perhaps the earliest example where public notification clearly operated as a form of punishment.\textsuperscript{113} In fact, virtually every society has, at some point in its history, used the public dissemination of an individual's wrongdoing to exact punishment.\textsuperscript{114}

As further evidence that Pennsylvania's statute is punitive in nature, the law will only affect those individuals who have been convicted of crimes that require a degree of intent or a criminal mens rea.\textsuperscript{115} Each of the statutory offenses that an offender must first be convicted of before being labeled a "sexually violent offender" requires a finding of criminal intent.\textsuperscript{116}

\textsuperscript{111} See Artway, 876 F. Supp. at 688-92.
\textsuperscript{112} Id. at 689-90.
\textsuperscript{113} Id. at 689. Cain killed his brother Abel out of jealousy. \textit{Genesis} 4:8 (King James). The Lord physically marked Cain so that all who encountered Cain would identify him as the murderer of his brother. \textit{Id.} at 4:15.
\textsuperscript{115} "Mens rea" is defined as a guilty or wrongful purpose that involves guilty knowledge and willfulness. BLACK'S LAW DICTIONARY 985 (6th ed. 1990).
\textsuperscript{116} See supra notes 20-26 and accompanying text for a discussion of the
Finally, Pennsylvania's community notification statute clearly promotes deterrence, which is one of the traditional aims of punishment.\(^{117}\) As part of the legislative findings and declaration of policy, the statute itself states that the public dissemination of information is intended to prevent "sexually violent predators" from committing repeat sex crimes.\(^{118}\) Although "deterrence" is not the stated motive behind the proposed legislation, it is the legislature's hidden motive in light of two important assumptions found in the legislation. First, the legislature declared that "sexually violent predators" pose a high risk of committing repeat sex crimes upon release from custody.\(^{119}\) Second, the legislature declared that the public at large will be able to deter future crimes by implementing prevention and protection plans with the information it is provided under the statute.\(^{120}\) The obvious motive of Pennsylvania's statute is to deter "sexually violent predators" from committing future sex crimes by allowing the general public to take appropriate precautions.

Even though Pennsylvania's community notification law must be considered punitive in nature, it must also represent a form of cruel and unusual punishment before it can be declared unconstitutional under the Eighth Amendment. As previously mentioned, defining the parameters of what is "cruel and unusual" basically involves a finding that the punishment is severely harsh and has no relation to the gravity of the underlying crime.\(^{121}\) If the pun-


\(^{119}\) Id. § 9791(a)(2). The question of whether sex offenders have a higher rate of recidivism than other criminals is far from being an established scientific fact. See e.g., Stuart Scheingold, The Politics of Sexual Psychopathy: Washington State's Sexual Predator Legislation, 15 U. PUGET SOUND L. REV. 809, 811-16 (1992) (arguing that sex offenders are no more likely to commit repeated offenses than other categories of criminals). Scheingold notes one study that indicated that robbers had a higher re-arrest rate than sex offenders, and murderers had a re-arrest rate almost equal to that of sex offenders. Id. at 812.

\(^{120}\) 1995 Pa. Legis. Serv. at 552-53, § 9791(a)(1). This assumption is also questionable given the fact that recent studies indicate that mothers, fathers, and other family members make up the largest group of sex offenders. Jeanette Krebs, Megan's Law Sparks Debate, Bill Won't Protect Kids from All Sex Offenders, SUNDAY PATRIOT-NEWS (Harrisburg, Pa.), Oct. 1, 1995, at B-1. Some argue that the threat of the whole family being the object of public humiliation will deter families from reporting the crimes in the first place. Id.

\(^{121}\) Artway, 876 F. Supp. at 679.
ishment is not in accordance with "the dignity of man" and is "grossly disproportionate" to the underlying crime, the punishment violates the Eighth Amendment's protection from cruel and unusual punishment. 122

The community notification provisions of Pennsylvania's statute represent cruel and unusual punishment because the public dissemination of information will act as a lifelong badge of humiliation. Such perpetual punishments are against "the dignity of man." 122 Through the operation of Pennsylvania's statute, a sex offender will never be able to return to a normal life, even after the offender has completed a prison sentence. Furthermore, the offender's employability will be forever impaired.

The drafters of Pennsylvania's statute implied that sex crimes are so horrific that sex offenders have a diminished expectation of privacy and do not deserve to lead normal lives. 124 Sex crimes are horrific, but they are no more tragic than the crimes committed by a cold-blooded killer who shoots a defenseless cashier in the back of the head to eliminate a witness to a robbery. There is no logical reason why communities should be notified of only released sex offenders and not all criminals who are released from custody. Responsible parents, according to the logic of Pennsylvania's statute, should demand information about released murderers and arsonists, as well as released sex offenders. Murderers and arsonists are just as dangerous to the public as sex offenders, but there are no community notification laws for all categories of criminals because lifelong public humiliation is a form of punishment that does not comport with "the dignity of man."

In Trop v. Dulles, 125 the Supreme Court stated that the Eighth Amendment's prohibition against "cruel and unusual punishment" centers on the concept of an "evolving standard of decency that marks the progress of a maturing society." 126 Although public humiliation was an acceptable form of punishment

122. Id. at 678.
123. See Weems v. United States, 217 U.S. 349, 366 (1910) (stating that keeping a criminal forever under the shadow of a crime is oppressive and represents a deprivation of essential liberty). It is important to note that the defendant in Weems, after being released from his prison sentence, was not able to change his domicile without notifying and receiving permission from local police authorities, a punishment similar to that inflicted by community notification laws. Weems, 217 U.S. at 366. In Weems, the defendant was convicted of falsifying a cash book of the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands. Id. at 357.
in the colonial United States, it is a form of punishment that no longer comports with "the dignity of man" in a mature soci-
ety.127

The community notification provisions of Pennsylvania's stat-
ute are punitive in nature and the public dissemination of a sex offender's information will act as a lifelong badge of shame that will forever prevent the offender from returning to a normal, law-
abiding life. Due to its never-ending effect, Pennsylvania's stat-
ute represents a form of punishment that violates the Eighth Amendment's prohibition against cruel and unusual punishment.

PUBLIC POLICY CONSIDERATIONS THAT WEAKEN PENNSYLVANIA'S COMMUNITY NOTIFICATION LAW

In addition to the questionable constitutionality of Pennsylvania's community notification law, there are two impor-
tant public policy considerations that reflect weaknesses in the legislation's ability to protect communities from repeat sex of-
fenders. There is evidence that a large number of released sex offenders subject to community notification laws report false addresses or never register with the proper authorities. Commu-
nity notification laws also encourage members of the community to take the law into their own hands, resulting in an increase of violent crimes while ineffectively limiting repeated sex crimes.

In order for Pennsylvania's statute to accomplish the goal of protecting communities from repeat sex offenders, it requires the cooperation of released sex offenders. Upon release from custody, the "sexually violent predator" must register all current address-
es, and any address changes, with the Pennsylvania State Po-
lace.128 However, critics of Megan's Law have pointed out that a sex offender could easily defeat the entire purpose of the law by

---

127. The cruelty of public humiliation is best described in the following passage from Nathaniel Hawthorne's The Scarlet Letter:

But the point which drew all eyes, and, as it were transfigured the wear-
er,—so that both men and women, who had been familiarly acquainted with Hester Prynne, were now impressed as if they beheld her for the first time,—was that SCARLET LETTER, so fantastically embroidered and illumin-
ated upon her bosom. It had the effect of a spell, taking her out of the ordi-
nary relations with humanity, and enclosing her in a sphere by herself.

NATHANIEL HAWTHORNE, THE SCARLET LETTER 42 (Amaranth Press ed. 1985) (em-
phasis added). See also Michelle Pia Jerusalem, Note, A Framework For Post-Sen-
tence Sex Offender Legislation: Perspectives on Prevention, Registration, and the Public's "Right" to Know, 48 VAND. L. REV. 219, 224-27 (1995) (discussing the histor-
ical development and subsequent rejection of humiliation as a form of punishment).

128. 1995 Pa. Legis. Serv. at 555-56, §§ 9795(a), 9796(b)(2), 9796(a). Any of-
fender who fails to follow the registration requirements commits a felony of the third degree. Id. §§ 9795(d), 9796(e).
simply not registering with the authorities upon release or by registering under a false address. One New Jersey attorney has admitted that some of his clients will not register unless forced to do so by a court order. Recent studies indicate that a significant number of released sex offenders are failing to register their address information with authorities, rendering community notification laws useless. To compound the problem, police departments often do not have enough resources to track down released sex offenders who have not registered. One law enforcement official admitted that when faced with investing time and resources in an ongoing criminal investigation or tracking down an unregistered sex offender, attention will be devoted to the ongoing criminal investigation.

Although the Pennsylvania legislature believes that the public will use the information released under Pennsylvania's statute in a constructive and legal manner to safeguard communities from repeat sex offenders, the truth is that Pennsylvania's community notification law may turn some law-abiding individuals into vigilantes. Although the legislation calls for the Pennsylvania State Police to develop guidelines on how communities should properly use the released information, reality dictates that a book of guidelines will do little to quell the fears of a neighborhood stirred into a frenzy over the release of an individual labeled a "sexually violent predator."

In fact, one Pennsylvania man knows firsthand what the community notification provisions of New Jersey's Megan's Law can do to a community susceptible to irrational fears. Tom Vicari, a truck driver from Allentown, Pennsylvania, spent the night of January 9, 1995 at his fiancee's cousin's house in nearby Phillipsburg, New Jersey, because the heat in his Allentown apartment was not working. Also staying at the cousin's

131. Tomas Guillen, Thousands of Sex Offenders Now Registered—Data Survey Finds 73% Compliance by Those in Most Serious Cases, SEATTLE TIMES, July 7, 1991, at B-3. A survey conducted in Washington, which enacted its community notification law—the Community Protection Act—in 1990, found that almost thirty percent of released sex offenders failed to register with the proper authorities. Id.
133. Williams, supra note 132, at A-6.
135. Jerome, supra note 1, at 50.
house that night was the cousin's live-in nephew, Michael Groff, a recently released sex offender whose name and address was released to the Phillipsburg community under Megan's Law.\(^{136}\) Shortly after Vicari fell asleep, he was awakened by an intruder wearing a black ski mask.\(^{137}\) Mistaking Vicari as the recently released sex offender, the intruder began punching and kicking Vicari, and a second intruder hurled a beer bottle through a window.\(^{138}\) The intruders were a 52-year-old neighbor and his son.\(^{139}\) Any law that increases the likelihood of violent crime while dubiously attempting to prevent future crimes is not a well-reasoned piece of legislation.

**REHABILITATION AS THE MOST EFFECTIVE MEANS TO PROTECT COMMUNITIES FROM REPEAT SEX OFFENDERS**

Pennsylvania's community notification law is a "quick fix." Any legislator who wants to be viewed as "tough on crime" will vote in favor of a law that leaves it to the community-at-large to solve the complex problem of repeat sex offenders. In this sense, Pennsylvania's statute presents a political "win-win" situation. Curtailing the rights of sex offenders will not cost legislators important votes in an upcoming election and the statute will not require lawmakers to dip too deeply into taxpayers' pockets.

But solving the problem of repeat sex offenders is not an issue that lends itself to a cheap, quick fix. If lawmakers truly want to protect communities and reduce the number of repeat sex crimes, they will need to focus on the cause of deviant sexual behavior and rehabilitate those individuals that display such behavior.

The token measures in the legislation requiring "sexually violent predators" to attend monthly counseling sessions are inadequate.\(^{140}\) The monthly counseling sessions are not made a part of an offender's parole and there are no enforcement provisions that would force the offender to attend the sessions. But more importantly, requiring an offender to pay the costs of counseling, unless the offender can prove financial inability to do so, will create an incentive for the Board to approve cheap and inef-

---

\(^{136}\) *Id.*

\(^{137}\) *Id.*

\(^{138}\) *Id.*

\(^{139}\) *Id.* The father and son were charged with burglary, assault, conspiracy and criminal mischief. *Id.* Vicari made some insightful comments about the effectiveness of community notification laws: "This law didn't stop no crime. It created crime. And what if I'd been killed? I got two children of my own. What would Megan's Law have done for them? Nothing." *Id.*

\(^{140}\) See *supra* notes 53-55 and accompanying text for the counseling requirements of Pennsylvania's statute.
effective counseling so the state can avoid paying for more expensive and effective treatment.

For rehabilitation to work as an effective tool in the prevention of repeat sex crimes, the state must assume the majority of the cost of treating sex offenders. One possible solution is a relatively new therapy called "relapse prevention." This type of therapy assumes that sex offenders may never be fully cured of their abnormal sexual behavior, but instead helps sex offenders control their sexual urges. "Relapse prevention" allows sex offenders to develop empathy for the victims of their crimes by requiring the offenders to watch videotapes from a victim's perspective, reading victim accounts of sex crimes, and reenacting the sex crime while playing the role of the victim. This therapy should take place while the offender is in prison or under a period of probation. But in order to ensure that a sex offender does not relapse, appropriate monitoring needs to continue once the offender is released from therapy. Admittedly, "relapse prevention" represents a solution that many will characterize as being "soft on crime." More importantly, it will be expensive. But if the legislature's true goal is to reduce the number of repeat sex offenses, a solution that reaches to the source of the problem, such as "relapse prevention," will achieve better results than community notification.

CONCLUSION

Pennsylvania's sex offender community notification law is an attempt by the legislature to deal with a real problem. No person should be the victim of a sex crime, let alone one committed by a previously convicted sex offender. But a community notification law will not make Pennsylvania's communities safe from repeat sex offenders. Because Pennsylvania's statute is punitive in nature and will work as a lifelong social stigma for those offenders subject to its provisions, it violates the Eighth Amendment's prohibition against "cruel and unusual punishment." In addition to constitutional flaws, the community notification provisions


142. Goleman, supra note 141, at C-1.

143. Id. at C-11.

144. See supra notes 105-27 and accompanying text for a discussion of how the community notification provisions of Pennsylvania's statute represent a form of cruel and unusual punishment.
of Pennsylvania's statute will be meaningless against those offenders who fail to register their addresses with the proper authorities. The proposed legislation also ensures that some citizens will turn into vigilantes, exacting their own form of justice on recently released sex offenders. To effectively protect communities from repeat sex offenders, the Pennsylvania legislature should concentrate on implementing better rehabilitative techniques, such as "relapse prevention" therapy, to prevent repeat sex offenders from acting on their harmful sexual urges in the first place. A policy centered on the rehabilitation of sexual offenders will be more expensive than a community notification law, but a more costly and realistic legislative plan is better than a "quick fix" that allows Pennsylvania's political leaders to pretend they are "tough on crime."

Michael L. Bell

145. See supra notes 128-33 and accompanying text for a discussion of how sex offenders subject to community notification will be able to render the statute useless by failing to register their addresses or registering false information.

146. See supra notes 134-39 and accompanying text for a discussion of vigilantism.

147. See supra notes 141-43 and accompanying text for a discussion of "relapse prevention" therapy.