

Cooperative Endeavors: A Comparative Analysis of Agency Efforts Regarding Sex Offender Laws in the United States and the United Kingdom

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A. Introduction

Halloween is typically a holiday commemorated by young children in costumes who trick-or-treat for candy at neighboring homes. However, as dusk fell on Halloween night in 2007, sheriff deputies in Maryland were busy visiting the homes of convicted and registered sex offenders to ensure that they had posted the required “No Candy” signs on their front doors. In fact, the St. Mary County Sheriff’s Department, along with task forces consisting of case workers, sheriff’s deputies, and state troopers, began going to the homes of registered sex offenders in that county several days prior to the holiday to ensure that each offender would be in strict compliance with the rules on Halloween night.¹

Intrastate agency cooperation makes it possible to carry out such policing and monitoring of sex offenders. However, not every state has a system of laws and regulations that enable agencies to work together to track sex offenders by the most efficient means possible. In reality, as this Note will discuss later, the fact that each state has implemented its own sex offender registry in the United States has created a lack of uniformity. Thus, many problems in ensuring smooth agency cooperation in tracking sex offenders result, especially where interstate travel of sex offenders is involved. In contrast, the United Kingdom’s sex offender registry, although just recently implemented, has proved to be highly successful in facilitating agency cooperation and in implementing the requirements of sex offender registry laws.² Although the United States is moving towards a national

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¹ Nbc4.com, *S. Md. Sex Offenders to Put Up ‘No Candy’ Signs for Halloween*, <http://www.nbc4.com/news/14465965/detail.html> (last visited 23 February 2008).

² Other countries have found the United Kingdom’s laws and policy on sex offenders to be a positive model. See e.g., A. Thom, *Managing Sex Offenders In the Community: A Safer Way*, at 2, available at <http://www.safenetwork.co.nz/Downloads/Managing%20Sex%20Offenders.pdf> (“The model of managing sex offenders adopted by the United Kingdom provides a blue print for improving the way in which sex offenders are managed in New Zealand.”)

registration system that resembles the system implemented by the United Kingdom, there are differences between the two registration systems and their implementation that explain the United Kingdom's success with registering and tracking sex offenders.

The United Kingdom's sex offender laws under the Sex Offences Act 2003 are similar to the United States' sex offender legislation under Megan's Laws in that both pieces of legislation contain registration requirements for all major sex offenses.³ A key difference between the two registries is that the United States' sex offender registry mandates that information regarding sex offenders be made publicly available, whereas the United Kingdom only releases information to government authorities and victims,⁴ with a few exceptions.⁵ However, the greatest differences between each system can be viewed at the agency level in the implementation of sex offender legislation and in the steps employed to monitor and track sex offenders.

It is here that the United Kingdom's laws have taken a vastly different approach from the United States by creating a highly uniform registry through the use of Multi-Agency Public Protection Arrangements (MAPPAs). These arrangements are used to coordinate the supervision and sharing of information related to sex offenders between the police forces, probation officers, and prisons in each of forty-two designated areas of England and Wales.⁶

Overall, the United Kingdom under its constitutional monarchy and highly unitary form of government⁷ has been able to produce a more uniform registration system by focusing on individual risk assessment of sex offenders and by taking a more preventative approach to sex crimes.⁸ In comparison, the United States' efforts have involved blanket disclosure requirements, mediocre monitoring efforts, and at least 50 different sets of sex offender registry laws.⁹

³ See generally, Sex Offences Act 2003, Ch. 42, s. 78 (Eng.); 42 U.S.C. § 1609 (2006).

⁴ Criminal Justice and Court Services Act 2000, ch. 43 s. 69 (Eng.).

⁵ Author Hilary Benn states:

There may, exceptionally, be some cases where the management of an offender's risk in the community cannot be carried out without the disclosure by the Responsible Authority of some information to a third party outside the MAPPA agencies. For example, where an employer, voluntary group organizer or church leader has a position of responsibility/control over the offender and other persons who may be at serious risk from the offender, the disclosure to them of certain information about the offender is the only way to manage that risk.

H. Benn, *Mappa Guidance*, 31 March 2003, at 25, available at <http://www.probation.homeoffice.gov.uk/files/pdf/MAPPA%20Guidance.pdf>.

⁶ Press Release, *Public Protection From Dangerous Offenders Better Than Ever*, 24 July 2004, http://press.homeoffice.gov.uk/press-releases/Public_Protection_From_Dangerous?version=1.

⁷ Traveldocs.com, United Kingdom Government, <http://www.traveldocs.com/gb/govern.htm> (last visited 28 February 2008).

⁸ See Benn, *supra* note 5, at 10 (explaining that agencies in the United Kingdom have worked together to form Multi-Agency Public Protection Arrangements, and the goals of this multi-agency arrangement include "rigorous risk assessment" and the formation of "risk management plans").

⁹ Hrw.org, *No Easy Answers: Sex Offender Laws in the United States*, <http://hrw.org/reports/2007/>

This Note examines the actions behind the success that the United Kingdom's sex offender registry has had through agency level coordination as compared to the differing state-by-state approaches employed in United States. Part B of this Note provides an overview of the current sex offender registries in place in each respective country. Part C sets up the differing social and legal philosophies that have provided the foundation for the current sex offender registry systems in each country. Part D of this Note then examines the many positive attributes of agency efforts in the United Kingdom, and compares those attributes with the current efforts in place in the United States to track sex offenders and provide for adequate risk assessment. Part E compares and analyzes supplemental methods employed by each country respectively to enforce sex offender laws and aid in sex offender tracking. Finally, Part F of this Note sets out possible proposals of change that each individual state in the United States could adopt based on what is working well for the United Kingdom, and analyzes their potential feasibility and functionality under the federal system of government in the United States.

While the right to privacy is generally a concern when examining the breadth of sex offender laws,¹⁰ this Note does not involve a thorough analysis of that issue, nor does this Note delve deeply into potential constitutional issues that may arise if the United States tries to further nationalize sex offender registration laws. Rather, the focus here is on what methods have been used or could be used at each state's *local* agency level to provide the greatest amount of accuracy and clarity in the United States and provide for the best possible monitoring and tracking of registered sex offenders. Thus, the conclusion of this Note strives to propose solutions that promote agency cooperation and accurate sex offender tracking while still recognizing that sex offender legislation is primarily a state concern.

B. Overview of Sex Offender Registration Laws

I. United States

Sex offender registration in the United States traditionally evolved from the state level to the national level, and the majority of states had sex offender registries in place by the early 1990s.¹¹ The first piece of key national legislation was the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act,¹² which passed as part of the Federal Violent Crime Control and Law Enforcement Act of 1994.¹³ This law required states to implement a

us0907/index.htm (follow 'Sex Offender Registration Laws' hyperlink) (last visited 21 January 2008) (stating that today all fifty states and the District of Columbia have sex offender registries).

¹⁰ For a discussion privacy and sex offender laws, see D. L. Feldman, *The "Scarlet Letter Laws" of the 1990s: A Response to Critics*, 60 Alb. L. Rev. 1081 (1997); B. Menendez, *The Constitutional Implications of Megan's Laws: Permissible Regulations or Unconstitutional Intrusions?*, 24 N.E. J. on Crim. & Civ. Con. 249 (1998).

¹¹ *Herw.org*, *supra* note 9.

¹² 42 U.S.C. § 14071 (2006).

¹³ 42 U.S.C. § 136 (2006).

sex offender and crimes against children registry.¹⁴ Although many states already had sex offender registries in place, Congress passed federal legislation called Megan's Law in 1996, ensuring that *all* states would have to notify the community of pertinent information regarding convicted sex offenders.¹⁵ Today, all fifty states have sex offender registration databases that contain basic information about sex offenders and are available to the public.¹⁶

Megan's Law was not the only legislation implemented on the national level. Recently, the Dru Sjodin National Sex Offender Registry came into existence as a result of legislation that mandated such.¹⁷ The website is coordinated by the Department of Justice, and represents "a cooperative effort between the state agencies hosting public sexual offender registries and the federal government."¹⁸ The website's greatest value is that it supplies an alternative way to search for sex offenders. It provides citizens with a way to search multiple locations for sex offenders by letting them enter several different zip codes at once, or by allowing them to conduct searches of sex offenders based on regions of the country.¹⁹

Likewise, a national office called the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office (SMART) was also created under the Adam Walsh Child Protection and Safety Act of 2006, which President Bush signed into law. The duties of the SMART Office as stated on the US Department of Justice's website include "providing states with guidance regarding the implementation of the Adam Walsh Act, and providing technical assistance to the states, territories, Indian tribes, local governments, and to public and private organizations." The Office also "track[s] important legislative and legal developments related to sex offenders and administer[s] grant programs related to the registration, notification, tracking and monitoring of sex offenders." The implementing legislation also requires the states to enact certain registration and notification guidelines, or forfeit a percentage of federal funds.²⁰

While a uniform national sex offender registry would be favorable, it is questionable to what extent the federal government can impose its own guidelines on states or take the responsibility of the sex offender registry away from the states altogether. Although it would probably be the most consistent way to track sex offenders, the United States will likely never be able to rely solely on a national sex offender registry such as the United Kingdom does because of problems of justifying such under Congress' Commerce Clause power.²¹ Likewise, such a

¹⁴ 42 U.S.C. § 14071.

¹⁵ 42 U.S.C. § 16901 (2006).

¹⁶ CSOM.org, *An Overview of Sex Offender Management*, July 2002, at 7, available at http://www.csom.org/pubs/csom_bro.pdf.

¹⁷ Pub. L. 109-248 120 Stat. 587 (2006).

¹⁸ Nsopr.gov, *Dru Sjodin National Sex Offender Public Website*, <http://www.nsopr.gov/> (last visited 23 February 2008).

¹⁹ *Id.*

²⁰ Ojp.usdoj.gov, *Office of Justice Programs: Sexual Offender Sentence, Monitoring, Apprehending, Registering & Tracking (SMART)*, <http://www.ojp.usdoj.gov/smart/index.htm> (last visited 4 February 2008).

²¹ See *infra* Part E.6 for a discussion of possible problems in justifying a national sex offender registry under the federal Commerce Clause powers of the US government.

registry would not offer any added protections over the state systems unless it was highly sophisticated and implemented across the board.²² Furthermore, as will be discussed later, tracking and monitoring sex offenders has traditionally been a state task,²³ and there are key changes that could be made at the local level to improve each state's current registration system.

II. United Kingdom

It was only a decade ago that the United Kingdom implemented a sex offender registry through legislation called the Sex Offenders Act 1997 ('1997 Act'), which imposed a registration requirement on sex offenders convicted of certain sexual offenses in that country.²⁴ Later, that legislation was amended by the Criminal Justice and Court Services Act 2000, which added the requirement that sex offenders register their foreign travel plans with the police.²⁵ The 1997 Act was subsequently replaced by the Sex Offences Act 2003 ('2003 Act'), which re-implemented many of the requirements of the 1997 Act. The United Kingdom's sex offender registry is a national system, and its jurisdiction extends to England, Wales, Scotland, and Northern Ireland.²⁶

Under the 2003 Act, a sex offender must report his name and address to the police within three days of release.²⁷ In addition, the 2003 Act made several changes to the previous 1997 Act. It added several new offenses, and made specific changes to existing offenses, such as expanding upon the definition of what constitutes rape.²⁸ The 2003 Act, however, has been criticized as including

²² Current information on national sex offender website is no more than a reproduction of information supplied by the states, and thus will reproduce any errors that exist in the state's information. Furthermore, the website advises users that "it is possible that information accessed or obtained through this Web site may not reflect current residences ... or other information regarding such individuals, and users are forewarned that it is incumbent upon them to verify information." Nsopr.gov, *supra* note 18.

²³ California's was established in 1947. California's Megan's Law (California Dept. of Justice), July 2000, at 5, available at http://ag.ca.gov/megan/pdf/ca_megans.pdf. Most other states created sex offender registries in the 1950s and 60s. Elizabeth Pearson, BJS, presentation at the National Conference on Sex Offender Registries: Status and Latest Development in Sex Offender Registration and Notification, <http://www.ojp.usdoj.gov/bjs/pub/ascii/ncsor.txt> (last visited 28 February 2008). Massachusetts created its registry in 1990, and was the last state to do so. The first federal law requiring states to implement sex offender registries was not enacted until 1994, after all states already had some form of sex offender registry in place. Hrw.org, *supra* note 9.

²⁴ B. Heberton & T. Thomas, *Keeping Track? Observations on Sex Offender Registers in the U.S.*, Police Research Group Paper 83 (1997), at 4, available at <http://www.homeoffice.gov.uk/rds/prgpdfs/fcdps83.pdf>.

²⁵ Criminal Justice and Court Services Act 2000, c. 43, s. 5(4) (Eng).

²⁶ The Sexual Offences Act 2003 (Amendment) Bill, House of Commons Research Paper 05/19, 2 March 2005, at 7, available at <http://www.parliament.uk/commons/lib/research/rp2005/rp05-019.pdf>.

²⁷ Sexual Offences Act 2003, c. 42, s. 84(1).

²⁸ Home Office, *Sexual Offences Act 2003: A Stocktake of the Effectiveness of the Act Since its implementation*, Feb. 2006, at 3, available at <http://www.crimereduction.homeoffice.gov.uk/sexual/sexual24.pdf>.

too many offenses, including sexual hugging in public places, and also forbids teenagers under the age of 16 from engaging in any sexual activity, from touching to full intercourse.²⁹

Interestingly, the United Kingdom has historically seen high compliance rates with registration requirements. One year after the sex offender registry was implemented, the national rate of compliance with registration requirements was 94.7 percent.³⁰ Perhaps this may be attributed to the fact that sex offenders feel more secure in releasing their personal information because they know it will stay in the hands of the police and governmental agencies, notwithstanding the standard release of information to the victim,³¹ or some other exceptional circumstances.³² Conversely, because the United States automatically releases offender information to the community at large when a sex offender is convicted of certain crimes, this may act as a deterrent to registration.

Some discussion has taken place as to whether the European Union (EU) should implement a sex offender registry.³³ One recent poll suggested that 97 percent of members of the European Parliament supported an EU-wide sex offender registry. Likewise, almost nine out of ten members of the European Parliament who were canvassed indicated that they would support the introduction of a common EU child abduction policy.³⁴ If the EU passed a directive mandating an EU-wide sex offender registry throughout its member states, it would have drastic effects on the United Kingdom. Specifically, it would preempt the United Kingdom sex offender registry if the United Kingdom's registry was incompatible with it because EU laws must be followed over any conflicting member state laws.³⁵

²⁹ *Id.* See also, G. Wilson, *Teenage Kissing: The New Sex Crime?*, BBC News Online Magazine, 30 April 2004. <http://news.bbc.co.uk/1/hi/magazine/3672591.stm>.

³⁰ J. Plotnikoff & R. Woolfson, *Where Are They Now?: An Evaluation of Sex Offender Registration in England and Wales*, Police Research Series Paper 126 (2000), at 12, available at <http://www.homeoffice.gov.uk/rds/prgpdfs/prs126.pdf>.

³¹ Criminal Justice and Court Services Act 2000, ch. 43 s. 69; Benn, *supra* note 5, at 14.

³² *Id.*, at 13-14.

³³ The United Kingdom has been an EU member state since 1973. Europa: European Countries: United Kingdom http://europa.eu/abc/european_countries/eu_members/unitedkingdom/index_en.htm (last visited 23 February 2008).

³⁴ *MEPs 'Want EU Sex Offender List'*, BBC News Online Magazine, 22 August 2007, http://news.bbc.co.uk/2/hi/uk_news/6958807.stm.

³⁵ See Judgement of 15 July 1964 in *Case 6/64, Flaminio Costa v. ENEL*, [1964] ECR 585. Here the court stated:

It follows from all these observations that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called into question.

For a interesting commentary on the European Court of Justice acting as a "Federator" and a comparison of the preemption doctrine in the United States and the European Union, see D. Starr-Deelen & B. Deelen, *The European Court of Justice as a Federator*, 26 *Publius* 81 (1996).

Thus, the United Kingdom would have to completely conform to the EU registry. However, until such measures are taken by the EU, the United Kingdom's sex offender registry will continue to function without hindrance from the EU.

C. Different Social and Legal Philosophies Behind Sex Offender Laws

The morals, beliefs, and dominant principles found in any society help shape the laws that are passed there.³⁶ The United States and United Kingdom are no exception to this. Although the United States' history and legal principles stem from English law, the two countries have entirely different philosophies regarding self-defense and protectionist roles that affect legislation on sex offender laws passed in each place.³⁷ It is important, therefore, to understand from what basis each country is approaching their sex offender laws from since this has played a role in the type of sex offender registration that has been put in place in each country.

The dominating community philosophy in the United States reflects our belief as a society that *individuals* should protect themselves. This philosophy, in turn, may have driven the United States to implement a sex offender registry that makes convicted sex offender information available to the public at large.³⁸ However, in stark contrast with this is the United Kingdom's view, which has historically limited the rights of its citizens to bear arms, and operates under the philosophy that the police force should be the main protective body in the country.

³⁶ See I. Berlin, *Montesquieu, in Against the Current* (1982) Berlin quoted Montesquieu's theory:

[L]aws are not born in the void, that they are not the result of positive commands either of God or priest or king; that they are, like everything else in society, the expression of the changing moral habits, beliefs, general attitudes of a particular society, at a particular time, on a particular portion of the earth's surface, played upon by the physical and spiritual influence to which their place and period expose human beings.

Id., at 153-154.

³⁷ See e.g., English Bill of Rights of 1689, available at http://www.constitution.org/eng/eng_bor.htm. The Bill of Rights states that "the Subjects which are Protestants *may* have arms for their defence, suitable to their Condition, and as allowed by Law." (italics added). *But see* U.S. Const. amend II. The provision granting the right of a United States citizen to bear arms does qualify the right by including the word "may."

³⁸ See generally, R. Tewksbury, *Sex Offender Registries as a Tool for Public Safety: Views from Registered Offenders*, 7 *W. Criminology Rev.* 1 (2006), available at <http://wcr.sonoma.edu/v07n1/01/sexoffender.pdf> ("The idea behind a publicly accessible sex offender registry is that if community members ... can know of sex offenders' presence in their community they can take steps to prevent ... victimization.")

I. United States

The United States government places heavy emphasis on the protection of its citizens' rights as enumerated in the Constitution.³⁹ Since the mid-20th century, the nation has expanded its protection of individual rights and liberties.⁴⁰ Likewise, the right to self-defense is a right that is so fundamental that the Framers embedded it in the constitutional Bill of Rights, along with numerous other core values.⁴¹ Historically, this right has been recognized as a fairly broad right, and almost every state preserves it to some degree. While the right to self-defense is by no means an absolute right, the fact that the United States places a high value on a person's defense of himself and others can be inferred from the preservation this right in Constitution.⁴² This is also evident in the fact that the Constitution specifically states that the right to bear arms is one that belongs to the *people* themselves.⁴³ As an outgrowth of this philosophy, the federal government of the United States has adopted sex offender registry laws that mandate public disclosure of information about sex offenders, thereby directly providing individuals with the information necessary to protect themselves.⁴⁴

The Adam Walsh Child Protection and Safety Act of 2006 that created the national sex offender registry⁴⁵ stated in its Declaration of Purpose that it was implemented “[i]n order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below”⁴⁶ The Act accomplishes this purpose by requiring the release of information to the public and its availability on an Internet website.⁴⁷

By providing individuals with information regarding the whereabouts of sex offenders, the United States puts pertinent information directly into the hands of those who can use it – the public at large.⁴⁸ In this way, the country sends the message that neither its police nor other protective forces that should be completely responsible for the safety of the public, but rather it is each individual,

³⁹ See Bill of Rights, U.S. Const. amend. I through X.

⁴⁰ For example, the right of a woman to have an abortion was protected in *Roe v. Wade*, 410 U.S. 113, 164-65 (1973). More recently, similar rights to privacy in one's home and to make personal decisions were upheld in *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003). The right to free expression was also upheld in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), where Justice Brennan stated, “If there is a bedrock principle underlying the First Amendment, it is that Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

⁴¹ U.S. Const. amend. II. (“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”)

⁴² See generally, E. Volokh, *State Constitutional Right to Keep and Bear Arms*, <http://www.law.ucla.edu/volokh/beararms/statecon.htm> (last visited 4 February 2008).

⁴³ U.S. Const. amend. II.

⁴⁴ Adam Walsh Child Protection and Safety Act, Pub. L. 109-248 120 Stat. 587 (2006).

⁴⁵ *Id.*

⁴⁶ Pam Lychner Sex Offender Registration and Notification Program, 42 U.S.C. § 16901 (2006).

⁴⁷ *Id.*

⁴⁸ Pub. L. 109-248 120 Stat. 587.

as a citizen of the United States, who is capable of protecting himself. Such a philosophy underlying sex offender legislation places the responsibility in the hands of individuals and validates their efforts to keep themselves safe.⁴⁹

II. United Kingdom

At odds with the United States' view of protection is the United Kingdom's attitude as to who should protect society. The United Kingdom has a view of self-defense that affords less freedom to its citizens to protect themselves.⁵⁰ However, this has not always been the case in that nation. In fact, as author David C. Savino states:

The English Militia was an historical body of practically all Englishmen which was organized in localities to provide for common defense of one another through a band of commoners serving under the sheriff, or a *posse comitatus*. It was the people's responsibility to "raise hue and cry" at the sign of trouble, and to answer that call in person, with arms, and ready to fight. Also it was the people's responsibility to keep "watch and ward" when the village closed its gates every evening. Personal justice was also a norm; it was perfectly legal to organize a small band to deal with a thief, robber, or other criminal. In this way the common people of England were required to defend not only themselves, but the community at large, and ultimately the nation in times of war.⁵¹

However, in the mid-20th century, the government of the United Kingdom began to tighten existing regulations that allowed private citizens to own and carry weapons.⁵² In the mid-1990s, lobbyists called for severe restrictions on handguns, and the Labour Party under Tony Blair passed the Firearms Act 1997, which banned the only type of handguns that had remained legal for citizens to carry in England.⁵³ Some, such as Savino, attribute the loss of the right to bear arms to the "failure of British groups to get organized" and stand up for this right. He notes that a "large number of gun clubs [were] devoted to competition, but none to lobbying."⁵⁴

Out of such a tightening of self-defense rights, the philosophy that the police are the near sole protector of the people in the United Kingdom emerged. The natural outcome of this has been that personal sex offender information is not released to the public, but rather only to the police and other government agencies where a sex offender lives (collectively called the Responsible Authority).⁵⁵

⁴⁹ See Pam Lychner Sex Offender Registration and Notification Program: Declaration of Purpose, *supra* note 46.

⁵⁰ English Bill of Rights, *supra* note 37. D. C. Savino, *Self-Defense and the Right to Bear Arms: A Historical Examination and Analysis of these Populist Rights*, http://www.talonsite.com/armory/Articles%5CpapSelfDefense_and.htm (last visited 6 February 2008).

⁵¹ *Id.*

⁵² R. A. Waters, *No Self Defense: Where We're Headed*, <http://famguardian.org/Subjects/GunControl/Articles/HistGunCtlEngland.htm> (last visited 23 February 2008).

⁵³ Firearms (Amendment) (No. 2) Act 1997, c. 64 (Eng.).

⁵⁴ Savino, *supra* note 50.

⁵⁵ Sexual Offences Act 2003, c 42, s. 84 (Eng); Benn, *supra* note 5, at 20.

D. Agency Cooperation

I. United Kingdom: Overview of Multi-Agency Public Protection Arrangements (MAPPAs)

The United Kingdom's registry has been successful because of strong agency cooperation plans, which were implemented largely through Multi-Agency Public Protection Arrangements. These arrangements coordinate supervision and sharing of information related to sex offenders between the police forces, probation, and prisons in each of the forty-two areas in England and Wales.⁵⁶

The MAPPAs were originally established by the Criminal Justice and Court Services Act 2000,⁵⁷ and this legislation was re-enacted by the Criminal Justice Act 2003.⁵⁸ Under this legislation, the police, prison and probation services, acting together as the Responsible Authority in each of the forty-two Areas of England and Wales, must assess and manage the risk posed by sexually violent offenders.⁵⁹ The Responsible Authority also reviews and monitors arrangements and prepares and publishes an annual report of their operations.⁶⁰ Significantly, the Criminal Justice and Courts Services Act 2000 put a statutory duty on the police and probation to arrange for assessments and risk management of all sex offenders and other dangerous offenders that have been released into the community.⁶¹

1. How MAPPA Works

There are forty-two MAPPA divisions that represent the forty-two areas of England and Wales.⁶² A national MAPPA unit also exists, but it does not hold greater authority than an area MAPPA; rather, this unit works to formalize casework management and it also includes a Strategic Management Board.⁶³ MAPPA outlines four core practices that are to be observed by the MAPPA agencies in England and Wales for public protection. These include "(i) defensible decisions; (ii) rigorous risk assessment; (iii) the delivery of risk management plans which match the identified public protection need; and, (iv) the evaluation of performance to improve delivery."⁶⁴ The Responsible Authority consists of the

⁵⁶ Press Release, *supra* note 6.

⁵⁷ See Criminal Justice and Court Services Act 2000, c. 43, (Eng.).

⁵⁸ Press Release, *supra* note 6.

⁵⁹ Criminal Justice and Court Services Act 2000, c. 43, s. 67-68 (Eng.)

⁶⁰ *Id.*, at s. 67.

⁶¹ K. Knock, *The Police Perspective on Sex Offender Orders: A Preliminary Review of Policy and Practice*, May 2002, at 1, available at <http://www.homeoffice.gov.uk/rds/prgpdfs/prs155.pdf>.

⁶² Benn, *supra* note 5, at 1.

⁶³ *Id.*, at 4.

⁶⁴ *Id.*, at 10.

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authorities in the Area where the sex offender lives typically,⁶⁵ and is comprised of police and probation.⁶⁶

The sex offender system in the United Kingdom revolves around a classification system that identifies MAPPA offenders. These offenders are put into three categories: (1) Registered sex offenders; (2) Violent and other sex offenders; and (3) Other offenders.⁶⁷

Category 1 offenders are those that have been convicted or cautioned of sex offences since 1997 when registration requirements were put in place. In 2003, there were 18,500 offenders in this category.⁶⁸ The length of these offenders' registration requirement is directly related to their sentence and can be anywhere from five years to life.⁶⁹

Category 2 is comprised of “[v]iolent and other sex offenders” that have received a sentence of twelve months or longer.⁷⁰ This category may also include those offenders whose litigation has been more complex and those who have committed specific crimes against children. All offenders in this category are under statutory supervision of the probation service, but these offenses do not necessarily require registration with the police.⁷¹

Category 3 offenders are those who are considered by the Responsible Authority to pose a risk of “serious harm to the public.”⁷² To fall in this category, it must first be established that the person has a conviction for an offense “which indicates that he is capable of causing serious harm to the public” and the Responsible Authority must also “reasonably consider that the offender may cause serious harm to the public.”⁷³ In this way, those offenders who the Responsible Authority determines do not pose a serious threat of harm to the public will not be labeled as Category 3 offenders.⁷⁴

Offenders will eventually be removed from these categories, depending on the occurrence of certain events.⁷⁵ MAPPA clearly lays out criteria for when this will happen for offenders in each of the three categories. Author Hilary Benn states:

For Category 1 offenders it is the point at which the offender completes their registration requirement as determined by the Sex Offender Act 1997.⁷⁶ For Category 2 offenders it is the point of licence expiry and for Category 3 offenders

⁶⁵ *Id.*, at 21.

⁶⁶ *See generally*, Press Release, *supra* note 6.

⁶⁷ Benn, *supra* note 5, at 16.

⁶⁸ Criminal Justice and Court Services Act, c. 43, s. 68(2) (Eng.). *See also*, Benn, *supra* note 5, at 16.

⁶⁹ Benn, *supra* note 5, at 17.

⁷⁰ Criminal Justice and Court Services Act, c. 43, s. 68(3)-(5) (Eng.). *See also*, Benn, *supra* note 5, at 18.

⁷¹ *Id.*, at 18.

⁷² Criminal Justice and Court Services Act, c. 43, s. 67(2)(b) (Eng.). Benn, *supra* note 5, at 18.

⁷³ Benn, *supra* note 5, at 18.

⁷⁴ *Id.*, at 18-19.

⁷⁵ *Id.*, at 12.

⁷⁶ As previously mentioned, the Sex Offender Act 1997 has now been re-codified as the Sex Offences Act 2003, Ch. 42, s. 78 (Eng.).

it will be at a point, determined by the responsible authority, where the offender is considered no longer to pose a risk of serious harm that requires management either by the MAPPA or Level 2 local inter-agency risk management.⁷⁷

Thus, Categories 1 and 2 have concrete criteria that, when met, will automatically remove a sex offender from MAPPA supervision and authority. However, Category 3 is left open for the Responsible Authority to determine when the sex offender should be released from MAPPA.⁷⁸ In this way, discretion may be exercised on a case-by-case basis in order to determine when Responsible Authority feels that the offenders are prepared to be released from MAPPA.⁷⁹ This ensures that those who are most dangerous to society remain under MAPPA supervision until the offenders have demonstrated that the time is right for their release.

2. Conducting Individualized Risk Assessments

The United Kingdom's MAPPA is even more sophisticated in that it incorporates individual risk assessment using highly technical assessment tools. Some of the assessment modules that are utilized by MAPPA include the OASys and Risk Matrix 2000.⁸⁰ These tools are used to “assess [...] an offender's risk of reoffending by systematically examining up to 13 offending-related factors” and “[b]y quantifying that risk of serious harm, identifying to whom it applies and in what circumstances OASys will help prioritise protection concerns and establish the basis for risk management plans.”⁸¹

After risk is assessed, a risk management plan is formed, both by using risk assessment tools and a multi-agency team, to determine what action should be taken to minimize the risk.⁸² Within the three categories of offenders there are also three levels at which risk is assessed and managed. Level 1 is ordinary risk management; Level 2 involves local inter-agency risk management; and Level 3 assures that a full Multi-Agency Protection Panel will become involved for these “critical few” who are considered to be the most dangerous to society.⁸³ All of the forty-two areas in England and Wales must establish and utilize the three levels of risk assessment. This is “important in establishing consistent arrangements” for sex offenders in all areas of England and Wales,⁸⁴ and is one step that has been taken by the United Kingdom to ensure that all agencies are consciously dealing with all sex offenders on a uniform basis.⁸⁵

⁷⁷ Benn, *supra* note 5, at 12.

⁷⁸ *Id.*

⁷⁹ *Id.*, at 36.

⁸⁰ *Id.*, at 6.

⁸¹ *Id.*, at 27.

⁸² *All About MAPPA: Multi-Agency Public Protection Arrangement in Greater Manchester*, (Annual Report 2005/06) Oct. 2006, at 6, available at [http://www.gmp.police.uk/mainsite/0/CE3A076CCFC1FC94802572100038E775/\\$file/Greater%20Manchester%20Area%20MAPPA%20report%202005-2006.pdf](http://www.gmp.police.uk/mainsite/0/CE3A076CCFC1FC94802572100038E775/$file/Greater%20Manchester%20Area%20MAPPA%20report%202005-2006.pdf).

⁸³ Benn, *supra* note 5, at 33-36.

⁸⁴ *Id.*, at 34.

⁸⁵ Consistency was an issue that was raised when research for Multi-Agency Protection Plans was

One vital aspect of the sex offender registry in the United Kingdom is that its system is run on a uniform computer database called ViSOR, which holds the records required under the Sex Offences Act 2003. National implementation of this database began in 2004 and took only about a year to complete. The database can be accessed by police and probation, holds information on each sex offender, and even includes a photographic library of the offender over time.⁸⁶ In 2006, the United Kingdom issued a press release stating that some of the benefits seen from using ViSOR for the past two years were “better risk assessments, linked-up intelligence and quicker information sharing between forces.”⁸⁷ Such a way to connect the police with other relevant forces ensures that all authorities have access to the same information regarding each sex offender. Furthermore, this functions as a safeguard against losing or confusing information, such as a sex offender’s travel. This mechanism also adds to the overall uniformity of sex offender tracking in the United Kingdom.

II. Comparison to the United States: Overview of Agencies Cooperating to Manage Risk

All state agencies assess and manage risk according to the laws of their state. Many states have adopted some form of risk assessment that is used to assess the danger of each sex offender and decide what registration requirements, if any, should apply to the offender.⁸⁸ While some states are effectively using risk assessments on an individual basis, Walker notes that “[s]ome experts have expressed concern that there is no consistent tool being used to determine risk, and in many states, risk is not determined by trained professionals or by the use of researched and reliable risk scales.”⁸⁹

Likewise, the United States operates largely on separate state sex offender databases, unlike the uniform ViSOR database that is employed by the United Kingdom.⁹⁰ While the national sex offender registry does operate in the United States, the bulk of sex offender laws and registration requirements currently still exist under the authority of the states.⁹¹ This approach naturally reflects the federalist form of government of the United States, but it allows room for inconsistencies in each state. However, a national approach to making sex offender

being conducted, and requiring every area to establish the three levels of risk helps remedy this. Benn, *supra* note 5, at 34.

⁸⁶ The Home Office’s Fortnightly Police Reform Bulletin, (Police Reform E-Bulletin No. 77), Aug. 26, 2005, available at <http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform-e-bulletin/E-Bulletin771.pdf?view=Binary>.

⁸⁷ Press Release, *Keeping Communities Safe: Multi-Agency Public Protection Arrangements* (23 October 2006), <http://press.homeoffice.gov.uk/press-releases/multi-agency-public-protection?version=1>.

⁸⁸ See e.g., Minnesota’s current approach. Hr.w.org, *supra* note 9.

⁸⁹ A. Walker, *Considering the Victim in the Implementation of Megan’s Laws*, Aug. 2001, at 4, available at <http://www.mincava.umn.edu/documents/commissioned/meganslaw/meganslaw.pdf>.

⁹⁰ See The Home Office’s Fortnightly Police Reform Bulletin, *supra* note 86.

⁹¹ See *supra* note 23 for a timeline of when states implemented sex offender registries.

information available to the public is not necessarily a better alternative since the national sex offender registry is little more than a compilation of sex offender information supplied to the federal government by the states. This problem has been recognized by the US Department of Justice, and the website for this office warns citizens of this when they are using the national sex offender registry.⁹² The Department of Justice website states:

Members of the public should be aware that not all state Internet sites provide for public disclosure of information about all sex-offenders who reside, work, or attend school in the state. For example, a given state may limit public disclosure over its web site of information concerning offenders who have been determined to be high-risk, while another state may provide for wider disclosure of offender information but make no representation as to risk level of specific offenders. In sum, members of the public may be able to obtain certain types of information about specific offenders who reside, work, or attend school in the state and have been convicted of one or more of the types of offenses specified below, depending on the specific parameters of a given *State's* public notification program.⁹³

The potential differences between state registration systems, as articulated in this statement, have led the United States to favor a more national sex offender registry, even when it offers little more safety to the public.⁹⁴

E. Other Tools for Preventing Sex Crimes and Tracking of Sex Offenders in the United Kingdom:

The United Kingdom consistently utilizes several tools outside simply charging and prosecuting sex offenders with crimes. Such measures were implemented partly because “[o]ver the past few years there has been a growing concern about the risk posed by sex offenders in the community. In response to this, the government introduced a range of legislative and other measures to aid the management and monitoring of sex offenders.”⁹⁵

I. Alternative Measures Used in the United Kingdom:

One alternative method that is utilized to protect the public from sex crimes in the United Kingdom are police cautions. This is the equivalent of a warning to offenders, and while it does not result in a conviction, it appears on one’s criminal record. The purpose of a caution is to act “as a first official warning and deterrent to anyone from getting involved in crime.”⁹⁶ Cautions present an alternative option to being formally prosecuted in the United Kingdom. In order

⁹² Nsopr.gov, *Dru Sjodin National Sex Offender Public Website*, <http://www.nsopr.gov/>, (follow “Background Information” hyperlink on left) (last visited 23 February 2008).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Knock, *supra* note 61, at 1.

⁹⁶ Homeoffice.gov.uk, *The Police: Cautioning*, <http://www.homeoffice.gov.uk/police/powers/cautioning/?version=1> (last visited 11 February 2008).

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to administer a caution, an offender must admit to an act and must not lack the mental capacity to do so. A caution cannot be administered where the evidence does not meet the normal standard that would be necessary for prosecution.⁹⁷

Under the Criminal Justice Act 2003, a caution can be one of two kinds: simple or conditional. A police officer administering a conditional caution can require an offender to meet a specified condition, such as performing community service or enrolling in a drug rehabilitation program. The types of conditions that are attached to a conditional caution must always have rehabilitation or reparation as its objective. The Home Office for the United Kingdom states that the “main aim of a simple caution is to *prevent offenders reoffending*. So if you offend again, you’re likely to be charged with the crime instead of getting a second caution unless: the second offence is a minor offence unrelated to the first; [or] two years or more have elapsed since the original offence.”⁹⁸ The Criminal Justice Act 2003 states the consequences for failing to comply with cautions:

- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the person for the offence in question.
- (2) The document mentioned in section 23(5) is to be admissible in such proceedings.
- (3) Where such proceedings are instituted, the conditional caution is to cease to have effect.⁹⁹

Likewise, by using a conditional caution, an officer could require a would-be offender to do or not do something so that it is more difficult to commit the crime, or the possible offender is less likely to commit the crime. If the offender does not comply with the conditions attached to the conditional caution they will be charged with the original offence and the case will go to court.¹⁰⁰

Another method that is utilized is the issuance of Sex Offender Orders (SOOs). These were introduced in the Crime and Disorders Act 1998 – a law which also provided for extended periods of supervision for released sex offenders.¹⁰¹ SOOs are mandates that are initiated by the police force, and can be used against “anyone with a previous caution or conviction for an offence listed in Schedule 1 of the Sex Offenders Act 1997”¹⁰² The process of issuing a SOO usually begins with the police gathering evidence that shows risky behavior has taken place, involves drafting a SOO with reasonable constraints that tell the offender what he cannot do, and ends by having a judge approve the SOO.¹⁰³ The relevant statute explains:

- (1) If it appears to a chief officer of police that the following conditions are fulfilled with respect to any person in his police area, namely–

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Criminal Justice and Court Services Act 2003 ch. 43 s. 23. (Eng.).

¹⁰⁰ Homeoffice.gov.uk, *supra* note 96.

¹⁰¹ Crime and Disorder Act 1998, c. 37 s. 2 (Eng.); Thom, *supra* note 2, at 8.

¹⁰² Knock, *supra* note 61, at pt. v.

¹⁰³ *Id.*, at pts. vi-vii

(a) that the person is a sex offender; and

(b) that the person has acted, since the relevant date, in such a way as to give reasonable cause to believe that an order under this section is necessary to protect the public from serious harm from him,

the chief officer may apply for an order under this section to be made in respect of the person.¹⁰⁴

If a judge in a magistrate's court finds that the above conditions are met, then the offender is prohibited from doing anything that is described in the order.¹⁰⁵ A civil standard of proof is required in regards to the evidence.¹⁰⁶ By statute, a SOO will remain in effect for at least five years.¹⁰⁷

SOOs are useful because they provide an "additional measure of protection to the public from sex offenders by prohibiting an offender from certain behaviours that had previously been a precursor to offending." In this way, it was intended that SOOs would "help prevent further serious offences from being committed."¹⁰⁸ SOOs are similar to police cautions, but they allow the police to take punishment to the next level – beyond a caution – by actually obtaining a court order with more restrictions on what an offender can and cannot do as a result of displaying some kind of risky behavior. Additionally, SOOs are helpful because any breach of the order is considered a criminal offense that is punishable for up to five years in prison.¹⁰⁹ Conversely, if one breaches a police caution, that person still must be tried and convicted of the underlying offense before being sentenced.¹¹⁰

II. Accommodation Strategies in the United Kingdom:

The United Kingdom has also implemented accommodation strategies that have allowed it to manage sex offenders when they are among the public at large.¹¹¹ A court may use the method of ordering a sex offender to live in a hostel as a condition of his bail, as a requirement of a community sentencing in order to ensure supervision, or as a condition of his release from prison.¹¹² These hostels are designated *exclusively* for sex offenders, and there are about 100 throughout the United Kingdom.¹¹³ This ensures that offenders will not be "free to come and

¹⁰⁴ Crime and Disorder Act 1998, c. 37, s. 2(1) (Eng.).

¹⁰⁵ *Id.*, at s. 3.

¹⁰⁶ Knock, *supra* note 61, at pt. v.

¹⁰⁷ Crime and Disorder Act 1998, c. 37 s. 2(5) (Eng.).

¹⁰⁸ Knock, *supra* note 61, at pt. v.

¹⁰⁹ *Id.*

¹¹⁰ Homeoffice.gov.uk, *supra* note 96.

¹¹¹ In 2004, the United Kingdom government owned 101 "probation hostels" that housed "a range of ex-prisoners at risk of reoffending [and] ... suspects on bail believed to be at risk of harm to the public or in need of protection." M. Bright, *Hostels to Hold Sex Criminals*, Guardian, 14 November 2004, <http://www.guardian.co.uk/print/0,3858,5062741-104770,00.html>.

¹¹² Gwentprobation.gov.uk, *Hostels*, <http://gwentprobation.gov.uk/probation/hostels.html> (last visited 24 February 2008).

¹¹³ Merseyside Probation Area: Hostels, <http://www.merseysideprobation.org/hostels.html> (last visited 23 February 2008).

go as they please, but [will] have to follow strict rules including a hostel curfew, usually from 11 p.m. to 7 a.m.” Hostels are staffed twenty-four hours a day and are in close contact with the police and all other hostel residents. Temporary hostel accommodations ensure that offenders will comply with community requirements, conditions of probation, or rehabilitation orders. They also help released prisoners to find more permanent accommodation, provide for a gradual transition back into the real world, and allow hostel staff workers to have a positive impact on the offenders.¹¹⁴

III. Comparison to Accommodation Strategies in the United States

Likewise, most of the states in the United States also have certain living mandates, but instead of affirmatively requiring a sex offender to live somewhere, these laws are typically phrased in the negative and *prevent* offenders from living certain places, such as within so many feet from a school, park, daycare, etc. As of 2006, twenty-one states and over 400 local governments had enacted such resident restrictions that create safety zones that prohibit sex offenders from living within a certain number of feet of specified locations where children may be present.¹¹⁵ Typically, these laws restrict sex offenders from living within 500 to 2,000 feet of a protected area.¹¹⁶ Restrictions may also be put on how close a sex offender can live to a victim.¹¹⁷

However, such restrictions may produce more problems than benefits.¹¹⁸ Authors Levenson and Cotter noted, “The dispersal of parks and schools may lead to overlapping restriction zones thus making it essentially impossible for sex offenders in some cities to find suitable housing. In some urban areas, offenders might be forced to cluster in high-crime neighborhoods.”¹¹⁹ In a study conducted by these authors to determine the impact on sex offender residency restrictions, they found that fifty percent of participating respondents stated that proximity restrictions forced them to move from somewhere they were previously living, and nearly half also reported that such restrictions prevented them from living with “supportive family members.”¹²⁰ In places like Texas, residency restrictions

¹¹⁴ Gwentprobation.com, *supra* note 112.

¹¹⁵ S. Norman-Eady, *Sex Offenders’ Residency Restrictions*, <http://www.cga.ct.gov/2007/rpt/2007-R-0380.htm> (last visited 24 February 2008). *See id.*, at Table 1 for a complete list of statutes and a description of the restriction for the twenty-one states that have enacted such living restrictions for sex offenders. Norman-Eady also addresses the issue of the constitutionality of sex offender residency restrictions, and lists the states where such restrictions have withstood constitutional challenges.

¹¹⁶ *Id.*, at Table 1.

¹¹⁷ J. S. Levenson & L. P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?*, 49 *Int’l J. of Offender Therapy and Comp. Criminology*, 168, at 168 (2005), available at [http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/\\$FILE/Levenson-1000feet_rule.pdf](http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/Levenson-1000feet_rule.pdf).

¹¹⁸ *See* Norman-Eady, *supra* note 115, for a summary of arguments for and against residency restrictions.

¹¹⁹ Levenson & Cotter, *supra* note 117, at 169.

¹²⁰ *Id.*, at 172.

have had such an impact on sex offenders.¹²¹ A little over a year after Northern Texas cities began restricting where sex offenders could live, towns such as Plano now have ‘safety zones’ that leave only 41 percent of the town available for sex offender to live in. Likewise, the city of Richardson, Texas, has child safety zones of 2,000 feet that make a full 98 percent of the town unavailable for sex offenders to live in. At the same time, a local news investigation found that in Northern Texas, one in six sex offenders do not even reside at their registered address, giving a false illusion to citizens of safety.¹²²

Such problems with ensuring that residency restrictions on sex offenders have positive effects that outweigh the negative ones should lead local and state governments to rethink these laws. The United Kingdom’s approach both provides housing for sex offenders *while at the same time* helping to keep track of where they are located in regards to schools, parks, and children. This may be a better option for the United States to consider, as is discussed in Part F.III.

F. Proposals for Improvement for the United States

I. Introduction

This Article proposes that each state should make changes to their current sex offender registry based on the tools and approaches that the United Kingdom has adopted. First, the United States should strive to adopt legislation that takes a more preventative approach to sex crimes. Preventative measures should involve more innovative approaches that target suspicious behavior by sex offenders. Implementing the equivalent of the United Kingdom’s police cautions and sex offender orders, as well as implementing specific living requirements for certain sex offenders will aid in preventing sex crimes. Improved monitoring of sex offenders post-release through mechanisms in addition to sex offender registries should be utilized.

Second, each state in the United States should take a more individualized approach to sex offender laws and monitoring, and come up with a “best” risk-assessment based on *each individual offender’s* history and potential threat level. The United Kingdom provides several examples of how to better improve intra-state coordination and risk assessment. A starting point for this change could lie in states striving to tighten their communications between agencies and individualize risk assessment by following the mission statement of the United Kingdom’s MAPPA program, and endeavor to make: “(i) defensible decisions; (ii) rigorous risk assessment; (iii) the delivery of risk management plans which match the identified public protection need; and (iv) the evaluation of performance to improve delivery.”¹²³ This could be accomplished in the United States in one way by adopting more strenuous pre-release hearings, and model these off of the

¹²¹ W. Hundley, *Sex Offenders Unmoved by Limits*, Dallas Morning News, 4 November 2007, at 1B, 10B.

¹²² *Id.*, at 10B.

¹²³ Benn, *supra* note 5, at 10.

MAPPAs that are put in place by authorities in the United Kingdom. Furthermore, by delegating responsibility to local police forces, sheriff's departments, and state police, the burden of monitoring sex offenders can be distributed more equally among relevant authorities. This is similar to what is already being implemented in Massachusetts, at least for holidays such as Halloween.¹²⁴

Third, each state should be extremely cognizant of new, innovative approaches that are being used in other states. While having a nation with fifty-one different sets of sex offender laws and registries can produce inconsistencies, it can also function as a huge advantage in that it allows the states to learn from one another. Justice O'Connor recently promoted the idea of letting the states function as "labs" in a recent Supreme Court case.¹²⁵ The United Kingdom has looked to other countries when it was crafting its sex offender laws, and in fact, it relied heavily on what was working and what was not working with the United States' sex offender laws when developing its own system.¹²⁶

States should also consider keeping private the sex offender information of sex offenders who are deemed to be the least dangerous. This could drastically cut costs for states, and these funds could then be funneled into monitoring and tracking those sex offenders deemed to be the most dangerous. Although there is a belief throughout the states and the national government that publicly-released information about sex offenders is the most effective way to keep track of sex offenders, the United Kingdom has been able to track sex offenders more successfully than the United States without releasing sex offender information to the public.¹²⁷

Lastly, federal government's role in monitoring sex offenders should be to bolster the efforts of the states by providing federal funds where needed and conducting necessary research to provide guidance for the states. In this way, the federal government would be taking a more passive role in supporting the states. The federal government could continue to pass legislation based on its spending power to ensure that there are minimum standards in place that each state must meet (or lose federal funds for not doing so), but by shifting their efforts towards supporting the states and away from a national sex offender registry, it would also have more money to pour into the states' efforts.

II. Preventative Approaches

Preventing sex offenses must begin with careful community policing. However, the United States lacks methods punish suspicious and precursory behavior that leads to sex crimes.¹²⁸ Such measures would be helpful because they would allow for some kind of sanction without further burdening the states' court systems.

¹²⁴ Nbc4.com, *supra* note 1.

¹²⁵ See *Gonzales v. Raich*, 545 U.S. 1, 41 (2007).

¹²⁶ See B. Heberton & T. Thomas, *Keeping Track? Observations on Sex Offender Registers in the U.S.*, Nov. 1997, available at <http://www.homeoffice.gov.uk/rds/prgpdfs/fcdps83.pdf>.

¹²⁷ See Plotnikoff & Woolfson, *supra* note 30, at 12.

¹²⁸ Punishment for inchoate crimes or the issuance of a court order in the United States is likely the closest that the states come to punishing suspicious and precursory behavior. See generally,

The United States should target such behavior with the use of police cautions. Police cautions could be implemented with ease in the United States because they would require only minimal training to police officers to put into practice, and would have the effect of lessening the burden on courts. In fact, in the United Kingdom, a full 20 percent of arrests are disposed of by cautions.¹²⁹ A police caution in the United States would fall in the middle ground between a warning and a forma arrest, as they are in the United Kingdom. Similarly, SOOs could be utilized by the United States as well as a preventative measure. A SOO is similar to protective or restraining orders that are already utilized in the United States; however, a major advantage of using a SOO is that the decision to apply for a SOO lies with the *police*, and not with the people.¹³⁰ In this way, the United States could use SOOs as an extra measure in protecting potential victims and the public, but the potential victim would not be required to petition a court before one of these could be implemented against an offender.

Since potential offenders in the United Kingdom have to consent to be cautioned, there should be limited difficulty punishing a sex offender for behavior that is not criminal. However, conditional cautions may be inappropriate for some sex offenses because in order to issue a conditional caution, one of the requirements is that a prosecutor must decide both that “(a) that there is sufficient evidence to charge the offender with the offence, and (b) that a conditional caution should be given to the offender in respect of the offence.”¹³¹ Therefore, unless the sexual offense is relatively minor,¹³² prosecution of the offense may be the more appropriate course of action.

Cooperation between police forces in monitoring sex offenders is vital to efficient sex offender management. Many states require sex offenders to register with the local law enforcement in the states where they live. For example, in Indiana, sex offenders are only required to register with the local Sheriff’s department where they intend to live, work or study for more than seven days at a time.¹³³ A better approach would be to incorporate registration requirements at *all* local police departments in the county where the sex offender plans to live or work. In this way, the sex offender has more of a burden on his or her shoulders to notify police of his whereabouts, while the burden on local law enforcement offices is minimized because less distribution of information is required.

A similar measure that would increase the safety of the public and strengthen sex offender management of those sex offenders who plan to move interstate would involve requiring sex offenders to register in the out-of-state jurisdiction

Incomplete (Inchoate) Crimes, <http://www.apsu.edu/oconnort/3010/3010lect03a.htm> (last visited 29 February 2008).

¹²⁹ P. Cressell, *et. al.*, *Opportunities for Reducing the Administrative Burdens on the Police*, May 1993, at 12, available at <http://www.homeoffice.gov.uk/rds/prgpdfs/fprs3.pdf>.

¹³⁰ Knock, *supra* note 61, at pt. v.

¹³¹ Criminal Justice Act 2003, ch. 44, s. 23 (Eng.). *See also*, Cps.gov.uk, *Cautioning and Diversion*, http://www.cps.gov.uk/legal/section3/chapter_k.html (last visited 23 February 2008).

¹³² While no sexual offense can truly be considered ‘minor’, conditional cautions may be most appropriate in situations of statutory rape where the defendant and the victim are in a consensual relationship with one another.

¹³³ *See e.g.*, Ind. Code §11-8-8-7 (2006).

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that they plan to move to *before* they actually move there. This process would be three-fold: first, the police department managing the sex offender would be responsible for notifying the other state that the sex offender intended to move there, and the police would transmit the sex offender's current information to the other state's police department. Second, the sex offender himself or herself would have to travel to that jurisdiction and register there. Third, the sex offender would have to return to his home state in order to allow the home police department to verify that the sex offender had indeed registered with the state he planned on moving to. This process would ensure that the state receiving the sex offender was on notice that the offender would be registering with the police department there on a *specific* date upon arriving in that state. Additionally, this would also put the out-of-state police department on notice that the sex offender was missing if he did not show up on that given date. Furthermore, the home police department would also know that the sex offender was missing if he did not return again to the home state to verify that he did indeed register with the out-of-state police department.

Although many states have statutes requiring sex offenders to register with the out-of-state police department where they plan to move within a given number of days of arriving in that state,¹³⁴ these laws give the sex offender too large of a window of time in which to complete the registration process, and also allow for sex offenders who travel interstate to avoid registering altogether. Thus, sex offenders get 'lost' when they move from one state to another and fail to register.

The pre-move registration process could be burdensome for those who are not simply moving to a neighboring state, but rather are moving cross-country. For example, it is likely reasonable to require a sex offender in Massachusetts to travel to Vermont to register and then return to Massachusetts. However, it is entirely different to require a sex offender to travel to New York from California to register and then return to his home state. This problem was easily solved by the United Kingdom with the introduction of ViSOR in 2004-05.¹³⁵ This computer software has centralized all information on sex offenders into one database, which is accessible by various government authorities who work in public protection¹³⁶ For example, the Home Office of the United Kingdom stated:

Hours of police officers' time - that would have been spent retrieving information on offenders from around the country - is already being saved. ViSOR is a big step

¹³⁴ See e.g., Ind. Code §11-8-8-11(a) (2006) (must register within three days of moving); Ala. Code §13A-11-200(c) (2006) (must register within seven days to register when moving from one county to another); Haw. Rev. Stat. §846E-2(e) (2006) (must register within three days of arriving in state); Mont. Code Ann. §46-23-504(c) (2006) (must register within three days of arriving in state); N.C. Gen. Stat. §14-208.7(a) (2006) (must register within ten days of establishing residency in the state or within 15 days of being present in the state, whichever comes first).

¹³⁵ Press Release, *Public Protection Arrangements Working to Defend Communities* (17 October 2005), <http://press.homeoffice.gov.uk/press-releases/public-protection-working?version=1> (last visited 22 February 2008).

¹³⁶ The Home Office's Fortnightly Police Reform Bulletin, *supra* note 86.

forward for public protection. The introduction of ViSOR means that, for example, intelligence entered by a probation officer in the north of the country will become immediately searchable by a police officer in the south.¹³⁷

However, because the United States operates on state-individual sex offender registry, and this Note concedes that this method of registration should continue,¹³⁸ the states must find ways to share information on sex offenders in the most efficient and precise ways possible. With that in mind, states could require sex offenders who are moving somewhere outside the state that is still within a given number of miles to register pre-move. At the same time, for long-distance moves outside of a specified mile-radius of travel, the sex offender could obtain a waiver to register in person, provided he notifies the new state of a 48-hour time window as to when he will be arriving there.

Objections to requiring sex offenders to pre-register are somewhat analogous to the mandatory 24-hour wait period for abortions that was in question in *Planned Parenthood v. Casey*.¹³⁹ There, the Court noted that “because of the distances many women must travel to reach an abortion provider, the practical effect will often be a delay of much more than a day because the waiting period requires that a woman seeking an abortion make at least two visits to the doctor.”¹⁴⁰ Likewise in states such as South Dakota for example, a woman may have to travel as far as 400 miles to the sole abortion clinic in that state.¹⁴¹ However, the Court in *Casey* held that “the waiting period is a reasonable measure to implement the State’s interest”¹⁴² Here too, sex offender laws that require some reasonable distance of travel would not be more burdensome than the 24-hour wait periods that are put on women seeking abortions, where states have a similarly strong interest in protecting the public from sex offenders. Such an approach should be considered by the states in order to better track sex offenders and to ensure that sex offenders themselves take responsibility for their own registration requirements.

III. A More Individualized Approach

While many favor the various states’ different registration requirements, certain human rights groups in the United States have recently advocated for an approach that individually tailors a plan for each sex offender by looking at the nature of the offense committed and the totality of the situation.¹⁴³ One such group, Human Rights Watch, has candidly stated:

Even for people who have committed serious offenses, that fact alone is not determinative of their future dangerousness to society, nor can that factor be the basis on which an individual is effectively stripped of their rights. Yet, with only a few

¹³⁷ *Id.*

¹³⁸ See *supra* Part D.II. for a brief discussion of problems with the national sex offender registry.

¹³⁹ 505 U.S. 833, 844 (1992).

¹⁴⁰ *Id.*, at 886.

¹⁴¹ C. Vestal, *States Probe Limits of Abortion Policy*, <http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=121780> (last visited 4 February 2008).

¹⁴² *Casey*, 505 U.S. 833 at 886.

¹⁴³ *Hrw.org, supra* note 9.

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exceptions, states have not established processes by which registration requirements are keyed to an individualized determination of whether a particular offender poses a risk of future reoffending. Moreover, the requirement to register continues long after the point at which the offender poses negligible risk of reoffense.¹⁴⁴

Thus, non-dangerous offenders whose information is kept on public sex offender registries is a waste of the state's resources, and may also subject offenders to public scrutiny and humiliation.¹⁴⁵

By holding individual post-release hearings to assess the level of dangerousness of sex offenders, the government can put more effort forth in pursuing those sex offenders who truly need careful monitoring. This could be done in several different ways. First, a panel in every state prison could be formed that is comprised of a multi-disciplinary team – similar to the United Kingdoms interdisciplinary teams that carry out MAPPA plans.¹⁴⁶ To be able to accurately assess the risk of a sex offender, this panel would have to include someone from the prison who has been familiar with the sex offender's behavior during his time of lockup, a parole or probation officer (ideally one from where the sex offender would be living) who would be responsible for communicating information back to the sex offender's county of residence, an advocate for the victim of the sex crime, and a representative from any treatment provider that is expected to provide services to the offender post-release. This panel would mirror the United Kingdom's use of the Responsible Authority that is made of individual authorities from the police, probation services and prison staff where the offender resides.¹⁴⁷ A decision could be made as to what level of danger the sex offender poses and a plan for his or her release could be devised. Furthermore, with a probation representative present, certain conditions could be added to his probation terms would be carried out upon release.

The advantages of this method are that the multi-disciplinary panel would be able to come up with a workable plan for the sex offender, based on an individual risk evaluation, without clogging the courts. The United Kingdom has laid out an article giving guidance to MAPPA authorities, which states:

The Responsible Authority has an important role to play in helping the Parole Board decide whether to release an offender and on what licence conditions. It is therefore important that the Responsible Authority, through the agency of seconded probation staff or other arrangements if more appropriate (such as the prison's police liaison officer), works closely with the Prison Service to ensure that all the information relevant to assessing and planning the management of risk is shared in good time for it to be properly considered ... [T]he Responsible Authority should plan to assess and plan the release of offenders who are to be managed through a MAPPP at least three months – and usually six months where practicable – before that release.¹⁴⁸

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See generally, Benn, *supra* note 5, at 10-44.

¹⁴⁷ Sexual Offences Act 2003, c 42, s. 67-68 (Eng.).

¹⁴⁸ Benn, *supra* note 5, at 40.

Planning for the offender's release in advance, as the United Kingdom strives to do is not always feasible, but when possible, helps the involved authorities prepare handle the offender when he or she is released back into the community.

A second option, however, would be to hold a post-release hearing in the court that had original jurisdiction over the offender's sex crime and which did indeed convict the offender of that crime. This option, however, may put even more of a burden on judges, many of whom are already dealing with heavy dockets. Written reports could be submitted either to the prison panel or to the judge prior to the post-release hearing if representatives from the necessary authorities could not be present. In this way, all authorities that would have contact with the sex offender after his release could still express their opinions concerning what they think the best plan for the sex offender is.

A downside to this option is that the added cost that these types of assessment may impose. However, documents that are already in existence, such as pre-sentencing reports and any reports of misconduct filed by the prison where the sex offender is serving his sentence could be used as a quick way to gather information about the offender and assess his risk to the community. Furthermore, although staff in prisons and probation departments already have heavy loads of work to handle, post-release hearings of some kind that result in individually-tailored community release plans and conditions for the sex offender may cut down on the risk that the sex offender will violate probation and end up back in court. The cost of such panel or court hearings could also be put on the sex offender to pay back to the state.

Prior to any risk assessment by a panel or judge, individual risk assessment tools should be utilized so that the panel or judge has a clear picture of where the sex offender stands in regards to his danger level. This could be done through a variety of tools. The United Kingdom's MAPPA authorities have used computer programs to do this, such as OASys and Risk Matrix 2000.¹⁴⁹ Another suggestion that has been implemented in some states involves the use of polygraph tests.¹⁵⁰ The Center for Sex Offender Management notes:

The polygraph has become an important asset in treatment and supervision because it provides independent information about compliance with supervision conditions and progress in specialized treatment. When an offender is engaging in noncompliant behavior, a polygraph test may reveal information that can impel the supervision officer to revise the case plan and/or take other action to prevent relapse and encourage success. In many jurisdictions, the polygraph examiner is a key member of the case management team.¹⁵¹

While polygraphs may be costly and time consuming to administer, it may be worth the expense to use these on those that are considered to be the most dangerous offenders, such as the United Kingdom's 'critical few' are regarded to be.¹⁵²

¹⁴⁹ *Id.*, at 26-29.

¹⁵⁰ CSOM.org, *supra* note 16, at 7.

¹⁵¹ *Id.*

¹⁵² Benn, *supra* note 5, at 36-37.

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An additional tool for re-introducing sex offenders into the community are halfway houses. In the United States, these could function as the United Kingdom-equivalent of sex offender hostels. Such housing options would be reserved for sex offenders of the highest risk level. These could be used to better monitor sex offenders, and this would cut down on the need to enforce residence restriction laws. In some respects, the United Kingdom may be taking the more effective approach by providing specified housing for sex offenders as they transition back into the real world, since such state resident restriction laws may severely limit the possible locations where sex offenders can reside. This may have a kind of exile effect on sex offenders, since these laws can lead to “homelessness and transience, which interfere with effective tracking, monitoring, and close probationary supervision”¹⁵³ A downside to the utilization of halfway houses is that cost may be too outrageous for many states to consider. However, strict guidelines should be imposed on the sex offender, requiring him to have a job and to pay for a percentage of his expenses at the halfway house. Failure to comply with the guidelines should be regarded as being the equivalent of a parole violation.

Many states have moved towards or are striving for more individual risk assessment, and in the process, are beginning to utilize some of the tools discussed in this Note. For example, Minnesota is one state that has moved away from blanket laws that cover all sex offenders and instead is using an individualized approach that crafts a plan to fit each individual sex offender. Minnesota state legislators and government officials have constructed evidence-based laws that aim to prevent sexual violence by integrating former sex offenders into the community, and by restricting their rights only to the extent necessary to achieve that goal. Before they are released from prison, convicted sex offenders in Minnesota are assessed by a panel of experts, who determine whether an individual should be subject to registration and community notification, and if so for how long. Community notification is on a need-to-know basis.¹⁵⁴ In this way, Minnesota seems to be on the right track by implementing risk assessment on a case-by-case basis.

Similarly, California operates under a similar system that divides sex offenders into one of four categories, each with different requirements for what information must be publicly available. For example, those in the Home Address Category are simply those sex offenders who have been convicted of specific sex offenses requiring their home address and personal information to be posted. Others in the Zip Code Category have only committed sex offenses that require inclusion of personal information about themselves and their zip code on the sex offender website.¹⁵⁵ California operates on a system similar the United Kingdom in that it has a Sex Offender Tracking Program that keeps track of the dates on which the sex offender must update their information and the state’s Internet web site will show the offender as being in violation of this if they fail to do so. Its program also allows for some discretion by letting sex offenders apply for exclusion from

¹⁵³ *Id.*, at 169.

¹⁵⁴ *Herw.org*, *supra* note 9.

¹⁵⁵ *Meganslaw.ca.gov*, Office of the Attorney General: Megan’s Law: Summary of California Law on Sex Offenders, <http://www.meganslaw.ca.gov/sexreg.htm> (last visited 5 March 2008).

the public sex offender registry if they have committed certain offenses and if the state Department of Justice approves their application.¹⁵⁶ However, Governor Schwarzenegger has vetoed measures that would provide more individualized assessment of sex offenders, including a bill that would have created a Sex Offender Management Board that would be similar to MAPPAs in the United Kingdom, stating that this would have simply created more “red tape,” even though such boards have been successful elsewhere in the states.¹⁵⁷

Texas has also adopted comparable laws. There, the law requires adult and juvenile sex offenders to register with the local law enforcement in the city where they reside. If the sex offender does not reside in a city, he or she must register only with the local law enforcement of the county in he or she resides.¹⁵⁸ Texas views sex offenses as a “preventable social problem” and thus today one of the goals of the Council on Sex Offender Treatment is to educate the public “by the dissemination of information to the public regarding the management of sex offenders.”¹⁵⁹ The stated policy behind the Texas sex offender laws epitomizes the individualistic view that the public should take part in protecting themselves. However, treating sexual offenses as a “preventable social offense” and requiring personal information to be disseminated to the public does not necessarily achieve the state’s policy. Author Alexandra Walker explains:

Similarly, public registrations do little to protect children who preyed upon by someone in their own home. As one scholar stated, Victim advocates point to the well-established fact that most sexual assault victims, particularly children and teenagers, know their offender. By focusing attention to the risk posed by an identified offender, notification may be reinforcing the widely-held belief that most sex offenders are strangers to their victims.¹⁶⁰

IV. Semi-Privatizing State Sex Offender Registries as a Resource Saver

While the above-mentioned measures should be utilized by states to ensure that police accurately and efficiently receive information on sex offenders, state governments should consider privatizing certain parts of the sex offender registry. In this way, sex offenders would still have to take the extra measures as discussed above to get their information to the proper police department, but this information would reside with government authorities, *and would not be accessible to the*

¹⁵⁶ *Id.*

¹⁵⁷ J. Peckenpaugh, *Controlling Sex Offender Reentry: Jessica’s Law Measures in California* 3 (2006) available at http://www.law.stanford.edu/program/centers/scjc/workingpapers/JPeckenpaugh_06.pdf, Texas and Colorado have successfully utilized similar boards to coordinate sex offender policy.

¹⁵⁸ Texas Sex Offender Registration Program, http://records.txdps.state.tx.us/DPS_WEB/Sor/index.aspx, (last visited 2 March 2008).

¹⁵⁹ Texas Dept. of State Health: Council on Sex Offender Treatment, http://www.dshs.state.tx.us/csot/csot_tinfo.shtm (last visited 2 March 2008).

¹⁶⁰ Walker, *supra* note 89, at 7.

public. The United Kingdom has privatized its system, with a few exceptions,¹⁶¹ and has seen substantial compliance with registration requirements.¹⁶² In fact, in regards to what approach other countries are taking to this issue, Human Rights Watch notes:

Officials in Australia, Ireland, and the United Kingdom have considered and in each case rejected the adoption of universal community notification laws (although in some cases, police are authorized to notify the public about the presence of a convicted sex offender in the neighborhood). After reviewing the experience of the United States, they concluded that there is little evidence that community notification protects the public from sex crimes, and that such laws are often accompanied by vigilante violence against registrants.¹⁶³

The extent to which a state chooses to notify the public of sex offenders is the main characteristic that distinguishes one state sex offender registry from the next.¹⁶⁴ Currently, there are three major types of sex offender notification that are being utilized in the United States. The first involves broad community notification, which relies upon ‘actively and widely’ releasing information about sex offenders to the public. Nineteen states are involved in this kind of notification. In its broadest form, this kind of notification can involve issuing media releases on television or going door to door to hand out flyers with sex offenders’ information on it. Fourteen states engage in notifying those people who might be at risk because of the sex offender’s release. This includes sharing information with those “based on the need to protect an individual or vulnerable population from a specific sex offender.” Another 17 states utilize passive notification, which requires individuals to actively seek out information regarding sex offenders.¹⁶⁵

By following the approach of the 14 states who engage in notifying those who might be placed at risk from the sex offender’s release, state governments, after determining that certain offenders are not a grave danger to the community, can avoid added time and efforts of compiling and entering sex offender data onto public websites. This also provides for less maintenance of public websites when sex offenders have a change of address or location. Current broad online sex offender registries can have the effect of “brand[ing] everyone listed on them with a very public ‘scarlet letter’ that signifies not just that they committed a sex offense in the past, but that by virtue of that fact they remain dangerous.”¹⁶⁶

Furthermore, vigilantism can often occur as a result of publicly distributed sex offender information, and this sort of behavior does not increase the safety of citizens. For example, in Wisconsin 23 percent of law enforcement agencies reported incidents of harassment of sex offenders since ... 1997.”¹⁶⁷ Likewise, the United Kingdom has also experienced what can happen when enraged individuals

¹⁶¹ Criminal Justice and Court Services Act, c. 43, s. 69 (Eng.); Benn, *supra* note 5, at 13.

¹⁶² Plotnikoff & Woolfson, *supra* note 30, at 12.

¹⁶³ Hrw.org, *supra* note 9.

¹⁶⁴ Walker, *supra* note 89, at 3.

¹⁶⁵ CSOM.org, *Community Notification and Education (U.S. Dept. of Justice)*, April 2001, <http://www.csom.org/pubs/notedu.html> (last visited 2 February 2008).

¹⁶⁶ Hrw.org, *supra* note 9.

¹⁶⁷ Csom.org, *supra* note 165.

learn the whereabouts of sex offenders. After eight-year-old Sarah Payne was murdered, a local newspaper initiated a ‘name and shame’ campaign in which the newspaper “sought to identify more than 100,000 suspected pedophiles in the UK,” and this caused sex offenders “to flee their homes to avoid persecution and has led to mob riots, physical assaults, property damage, misidentifications, and a suicide that is believed to be related to the campaign.”¹⁶⁸

Many minor offenses that require registration could easily be removed from public sex offender registries without fear that the community will be endangered by these actions. For example, Human Rights Watch notes that “in many states, people who urinate in public, teenagers who have consensual sex with each other, adults who sell sex to other adults, and kids who expose themselves as a prank are required to register as sex offenders.”¹⁶⁹ Some states are taking appropriate measures to decriminalize some of these offenses, such as statutory rape, when certain requirements are met.¹⁷⁰

V. Learning from Each Other

Sex offender registration, tracking and monitoring is a heavy responsibility for the states to assume, and one which is often difficult for states to fully carry out.¹⁷¹ There are also some distinct advantages to letting each state freely form its own methods for tackling such a problem. As the Center for Sex Offender Management states, “No two jurisdictions can or should manage sex offenders in exactly the same manner; local practices must take into account the nature of the local population of sex offenders as well as the resources available to respond to sex offending behavior.”¹⁷² Thus, each state should ideally strive to adopt a sex offender registration and tracking program that meets not only minimum national standards, but that is also custom tailored to its community and to its sex offender population.

The idea of allowing state to act as laboratories and experiment with legislation was first made popular by Justice Brandeis in a 1932 Supreme Court decision dealing with state economic legislation. In his dissent, Brandeis stated:

There must be power in the States and the Nation to remould, through experimentation, our economic practices and institutions to meet changing social

¹⁶⁸ *Id.*

¹⁶⁹ Hrw.org, *supra* note 9.

¹⁷⁰ *See*, Ind. Code § 35-42-4-9(e) (2007). The statute creates a defense to the charge of sexual misconduct with a minor if all of the following apply: the defendant was not more than four years older than the victim; the relationship between the person and the victim was a dating relationship or an ongoing personal relationship; the crime was not committed by a person who is at least twenty-one years of age; was not committed by using or threatening the use of deadly force; was not committed while armed with a deadly weapon; and did not result in serious bodily injury.

¹⁷¹ *See*, Press Release, *National Center for Missing and Exploited Children Creates New Unit to Help Find 100,000 Missing Sex Offenders and Calls for the States to do Their Part* (28 February 2007), http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=3081.

¹⁷² *See* Csom.org, *supra* note 16, at 4.

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and economic needs ... It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.¹⁷³

This idea was again recently endorsed by Justice O'Connor in her dissent in *Gonzales v. Raich*.¹⁷⁴ There she stated that "[t]he States' core police powers have always included authority to define criminal law and to protect the health, safety, and welfare of their citizens."¹⁷⁵ O'Connor criticized the Court's decision to "extinguish" an experiment by the state of California that dealt with legalizing marijuana.¹⁷⁶

The states began working together to solve the problem of losing track of sex offenders who cross state lines, even before monetary incentives were offered by the federal government.¹⁷⁷ This was done through drafting a voluntary compact that the states could choose to sign, which standardized rules for allowing sex offenders (as well as other kinds of offenders) to move across state lines. The agreement, known as the Interstate Commission for Adult Offender Supervision (ICAOS) was designed to "promote cooperation and coordination ... and provide oversight and assistance in administering the Interstate Compact for Adult Offender Supervision, which was approved in 2002." All fifty states and the District of Columbia signatories to the Compact.¹⁷⁸

Under ICAOS, no court or paroling authority may authorize an offender to relocate before the receiving state agrees to accept that offender. The compact has the authority of federal law,¹⁷⁹ and the National Commission that promulgates rules pertaining ICAOS is comprised of one representative from each state; thus, each state has a vote in the proposed regulations. If a majority of representatives from the member states reject a proposed rule, then that rule becomes void.¹⁸⁰ If states continue to learn from the types of sex offender legislation each state individually implements, but also works together through measures such as ICAOS, they can standardize some aspects of sex offender laws without the help of the federal government.

¹⁷³ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

¹⁷⁴ 545 U.S. 1, at 41 (O'Connor, J., dissenting).

¹⁷⁵ *Id.*, at 43.

¹⁷⁶ *Id.*

¹⁷⁷ The ICAOS has been in places since 1937. [Interstatecompact.org](http://www.interstatecompact.org/About/History/tabid/58/Default.aspx), <http://www.interstatecompact.org/About/History/tabid/58/Default.aspx> (follow "History" hyperlink). All fifty states and the District of Columbia are signatories to the ICAOS. Conversely, the first legislation that conditioned federal funds on implementing certain sex offender legislation was the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071 (2006).

¹⁷⁸ Florida Dept. of Corrections, *Interstate Compact for Adult Offender Supervision: Transferring Supervised Offenders Across State Boundaries*, <http://www.dc.state.fl.us/pub/ic/index.html> (last visited 22 February 2008).

¹⁷⁹ *Id.*

¹⁸⁰ ICAOS, *Frequently Asked Questions*, <http://www.interstatecompact.org/About/FAQ/tabid/57/Default.aspx> (follow hyperlink titled "What control will states have over the National Commission if we don't agree with what it is doing?") (last visited 2 February 2008).

VI. The Federal Government Taking a Passive Position

Certain constitutional considerations complicate the process of tracking and monitoring of sex offender laws in the United States.¹⁸¹ The federal government does not possess a general federal police power; rather, the Constitution provides explicitly for only three types of crimes: counterfeiting, treason, and piracy.¹⁸² Thus, the United States government cannot enact legislation for purposes of health, safety or welfare of its citizens as the states can. The two primary clauses in the Constitution that justify most federal interventions are the Commerce Clause and the Taxing and Spending Clause.¹⁸³

Because the form of the federal government in the United States is different from that of the United Kingdom,¹⁸⁴ it should not strive to adopt the same approach that the United Kingdom has by nationalizing the sex offender registration and tracking system. Rather, the federal government of the United States should continue to exercise conditional spending incentives in addition to taking a more passive role by simply researching statistics and formulating guidelines and training manuals for the states to use. Additionally, the national sex offender registry should be limited to its current role as a secondary resource for the states and its citizens because it offers little or no additional protection to citizens beyond that which state registries already provide. Even if citizens in State A wish to find information on sex offenders of State B, nothing precludes citizens of State A from logging on to the online sex offender registry of State B or any other state to search for this information.

The federal government should continue to implement legislation that conditions state funds on the adoption of certain minimum national standards. This is justified under the federal government's taxing and spending powers, which it already utilizes to regulate this area of the law. For example, the Adam Walsh Child Protection and Safety Act of 2000 required states to implement the Sex Offender Registration and Notification guidelines proposed by that office within the next three years. Failure to substantially implement such guidelines resulted in a ten percent reduction in federal funds to each state, but compliance before July of 2009 allows the states to receive a federal money bonus.¹⁸⁵

¹⁸¹ For a view of some of the constitutional issues that sex offender laws implicate, see W. A. Logan, *Constitutional Collectivism and Ex-Offender Residence Exclusion Laws*, 92 Iowa L. Rev. 1 (2006) (discussing how some residency restrictions violate the Ex Post Facto Clause and encroach on interstate commerce); S. Oakes, *Megan's Law: Analysis on Whether it is Constitutional to Notify the Public via the Internet*, 17 J. Marshall J. Computer & Info. L. 1133 (1999) (discussing a range of constitutional issues regarding sex offender laws, including double jeopardy, Commerce Clause, and privacy issues.)

¹⁸² Cato.org, *Cato Handbook for Congress: The Expanding Federal Police Power*, <http://www.cato.org/pubs/handbook/hb105-17.html> (last visited 4 February 2008); see also, *United States v. Lopez*, 514 U.S. 549, 564-65 (1995).

¹⁸³ See U.S. Const. art I, § 8.

¹⁸⁴ See *Traveldocs.com*, *supra* note 7. Cf. to *USconstitution.net*, *Constitutional Topic: Federalism*, http://www.usconstitution.net/consttop_fedr.html (last visited 2 March 2008).

¹⁸⁵ *Ojp.usdoj.gov*, *supra* note 20.

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In *South Dakota v. Dole*, the Court stated that this sort of conditional spending is constitutional, as long as several conditions are met. First, the exercise of the spending power must be in pursuit of the general welfare.¹⁸⁶ Broad deference is afforded to Congress in determining what the general welfare of the state is.¹⁸⁷ Second, Congress' conditions on the receipt of federal funds must be imposed unambiguously so that the states are able to exercise their choice knowingly and carefully.¹⁸⁸ Third, the condition on federal funds must be reasonably related to the federal interest in the project it is promoting.¹⁸⁹ Lastly, the federal government cannot threaten to withhold such a high amount of federal funds that the state is so dependent on it that it has no real choice but to conform to federal standards.¹⁹⁰ The US Department of Justice website explains that “[s]ince the SORNA requirements relating to sex offender registration and notification are, in relation to the States, only partial funding eligibility conditions, creation of these requirements is within the constitutional authority of the federal government.”¹⁹¹

Such partial funding by the federal government should certainly continue, and at the same time, cooperation between individual states and the federal government should improve. Although the states have individual sex offender registries, some minimum standards for all the states do exist,¹⁹² and the federal government should continue to implement these, but only when necessary to promote uniformity on critical issues. The US Department of Justice has stated:

While sex offender registration and notification in the United States are generally carried out through programs operated by the individual States and other non-federal jurisdictions, their effectiveness depends on also having effective arrangements for tracking of registrants as they move among jurisdictions and some national baseline of registration and notification standards. In a federal union like the United States with a mobile population, sex offender registration could not be effective if registered sex offenders could simply disappear from the purview of the registration authorities by moving from one jurisdiction to another, or if registration and notification requirements could be evaded by moving from a jurisdiction with an effective program to a nearby jurisdiction that required little or nothing in terms of registration and notification. Hence, there have been national standards for sex offender registration in the United States ...¹⁹³

¹⁸⁶ 483 U.S. 203, 207 (1987)

¹⁸⁷ *Id.* at 207:

The breadth of this power was made clear in *United States v. Butler*, 297 U.S. 1, 66 (1936), where the Court, resolving a longstanding debate over the scope of the Spending Clause, determined that “the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.”

¹⁸⁸ *Id.*, at 207.

¹⁸⁹ *Id.*, at 207-208.

¹⁹⁰ *Id.*, 210-211.

¹⁹¹ Ojp.usdoj.gov, *supra* note 20.

¹⁹² See The Jacob Wetterling Crimes Against Children and Sexually Violent Offender, Registration Act, 42 U.S.C. § 14071 (2006); Pam Lyncher Sexual Offender Tracking and Identification Act of 1996, P.L. 104-236, 110 Stat. 3093 (2006).

¹⁹³ Nsopr.gov, *supra* note 18.

While minimum standards are necessary, the states are better able to experiment with new legislation and attempt new approaches to solving the problem of missing sex offenders and lack of coordination between state agencies.

It is vital that an entity exist to collect and analyze data regarding the current state of sex offender laws. Because each state has its own sex offender laws and registration system, the federal government could assume this role. Accordingly, the federal government would still be assuming an incredibly important role by giving the states a greater perspective of what is happening and in what direction current and future sex offender laws of the states are moving.¹⁹⁴

The approach of the federal government giving the states the overall picture of how well each one is functioning has been quite successful in the United Kingdom. While the United Kingdom does not have individual states, it has indeed broken its territories down into forty-two areas, each of which have a strategic management board that control the MAPPAs for that area. Recently, some changes were made to the composition of the management board under the Criminal Justice Act 2003. This Act “introduced direct public scrutiny of MAPPAs by requiring the Secretary of State to appoint two lay advisers to each of the forty-two strategic management boards that review them.” These lay advisers can question what is being done on the board, and help to bring the people’s perspective to how sex offenders are managed. The United Kingdom’s National Probation Director Stephen Murphy commented, “The third annual MAPPAs reports published today show that the framework for managing potentially dangerous offenders in the community has gone from strength to strength.” Most importantly, however, each of these forty-two boards are required to publish annual reports that details the work that MAPPAs does, and explains how well each area is doing in protecting the public from dangerous sex offenders.¹⁹⁵ In return, the national government of the United Kingdom works hard to take the information from these reports and compile the overall results into charts and reports to give to the forty-two areas of England and Wales. These are largely published of the National Probation Services for England and Wales, and as part of the Police Research Series Papers.¹⁹⁶

Thus, the federal government of the United States could be most valuable resources by pouring its resources into research that could supplement the states’ own views of their sex offender laws. The federal government could bolster the

¹⁹⁴ A prime example of this is a fact sheet with state sex offender registry information that was published several years ago by the US Department of Justice. See [Ojp.usdoj.gov, Bureau of Justice Statistics Fact Sheet: Summary of State Sex Offender Registries \(2001\)](http://www.ojp.usdoj.gov/bjs/pub/pdf/ssor01.pdf), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssor01.pdf>. See [Csom.org](http://www.csom.org), *supra* note 16, for a similar report by the US Department of Justice, which is also an ideal example of literature that the federal government should be circulating to the states. For an example of a state-compiled training manual that could be used as a model for the federal government to produce, see C. Pruitt, *et al.*, *State Sex Offender Protocol Training Manual*, available at <http://www.acic.org/Registration/Sex%20Offender%20Manual%204th%20edition%2007.pdf>.

¹⁹⁵ Press Release, *supra* note 87.

¹⁹⁶ See *e.g.*, Plotnikoff & Woolfson, *supra* note 30; [Homeoffice.gov](http://www.homeoffice.gov), *National Statistics For Multi-Agency Public Protection Arrangements (MAPPA) Annual Reports, 2005-06*, available at <http://press.homeoffice.gov.uk/documents/Multi-Agency-Stats.pdf?view=Binary>; Benn, *supra* note 6.

amounts of money available to support such efforts by rerouting its resources from promoting national offender legislation to providing incentives for the states to enact certain standards regarding their own sex offender laws.

G. Conclusion

Through changing the way that each individual state in the United States approaches sex offender management, states can shore up sex offender tracking, monitoring, and risk assessment efforts. While the United Kingdom operates on a very different system of law, there are many innovative tools that individual it has utilized that the individual states of the United States can implement in their respective jurisdictions to ensure that a proper risk assessment plan is in place for each individual offender. Furthermore, by implementing some of the United Kingdom's ideas, the states can take a more preventative approach to sex crimes, and therefore better ensure for the safety of their citizens and their communities.