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Sex Offender Registration Laws for the Homeless: Safeguarding Society or Punishing Sexually Dangerous Individuals for Being Homeless?

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SEX OFFENDER REGISTRATION LAWS FOR THE HOMELESS: SAFEGUARDING SOCIETY OR PUNISHING SEXUALLY DANGEROUS INDIVIDUALS FOR BEING HOMELESS?

ABSTRACT

The American criminal justice system pursues a course of punishment for offenders in response to the crime committed. For sex offenders, however, this punishment lasts a lifetime. These offenders fulfill their prison sentences but spend the rest of their lives branded as America's most depraved members of society. When searching for housing, being compelled to maintain a particular distance from schools, churches, and playgrounds appears inconvenient but achievable. In North Dakota, sex offenders must register with local law enforcement within three days of obtaining a new address. This requirement is purported to ensure that law enforcement officers have an enhanced ability to monitor sex offenders through documentation of their whereabouts.

But what happens to the transient offender with no address? Proactive law enforcement prevents the homeless from residing under bridges, in parks, or on benches for more than one night. North Dakota's sex offender registration requirement unjustly penalizes homeless individuals who are incapable of maintaining a consistent residence. Though unpopular and perhaps dangerous, sex offenders deserve an opportunity to comply with reasonable registration requirements.

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I. THE SEX OFFENDER REGISTRATION SYSTEM

America has categorized sex offenders as the most detested members of society. Because of the heinous crimes these offenders committed, society forever ostracizes them. Section A reviews the history of sex offender laws in America and the reasons why the statutes were enacted. Section B examines North Dakota's sex offender registration system.

A. THE HISTORY OF SEX OFFENDER LAWS IN AMERICA

In Minnesota, eleven-year-old Jacob Wetterling was riding his bicycle home from a department store with his friend and his brother when a masked man holding a weapon demanded his playmates leave.¹ Jacob never returned home.² His disappearance brought to light the fact that local law enforcement agencies were unaware that in Jacob's town, halfway houses accommodated numerous sex offenders after they had been released from prison.³ In response to this heartbreaking occurrence, in 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act⁴ to require state law enforcement agencies to track sex offenders⁵ by implementing stringent sex offender registration requirements.⁶

In New Jersey, seven-year-old Megan Kanka was invited to her neighbor's home to play with his new puppy.⁷ Megan, unfortunately, never returned home.⁸ The neighbor, a "twice-convicted pedophile," raped, murdered, and subsequently discarded Megan's body in a neighboring park.⁹ Like the details surrounding Jacob's disappearance, Megan's parents were unaware that sexual predators resided in such close proximity to their home.¹⁰ In 1996, Congress passed Megan's Law,¹¹ which permitted states to publically disseminate sex offender registration information.¹² Megan's Law was passed in an effort to protect members of the public by providing information regarding sex offenders who were required to register under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender

1. *Megan's Law Website: History of the Law and Federal Facts*, PA. STATE POLICE, <http://www.pameganslaw.state.pa.us/History.aspx?dt=> (last visited Dec. 31, 2015) [hereinafter *Megan's Law Website*].

2. *Id.*

3. *Id.*

4. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (1994) (codified as amended at 42 U.S.C. § 14071 (1994)).

5. 42 U.S.C. § 14071(a)(1)(A)-(B).

6. *See Megan's Law Website*, *supra* note 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified as amended at 42 U.S.C. § 14071(d) (1996)). Before the federal version of Megan's Law was enacted by Congress, all states, including the District of Columbia, had enacted a state version of Megan's Law. *Legislative History: Federal Sex Offender Legislation, 1996 – Megan's Law*, OFF. OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, <http://ojp.gov/smart/legislation.htm> (last visited Dec. 31, 2015) [hereinafter *Legislative History*].

12. 42 U.S.C. § 14071(d)(2).

Registration Act.¹³ For example, the California Megan's Law website provides the following information to the public about registered sex offenders: photographs, first, last, and middle names, and addresses—if disclosure is required.¹⁴

In Florida, while his mother was shopping in a different section of a department store, six-year-old Adam Walsh gazed at television screens, as fellow children played video games.¹⁵ When his mother returned to locate her son, Adam was nowhere to be found.¹⁶ Over two weeks passed before the Walsh family, with the assistance of law enforcement, finally discovered the fate of their son.¹⁷ While Adam's body was never recovered, someone did locate his decapitated head.¹⁸ The catastrophic loss of his son led John Walsh to become a victim advocate and led Congress to enact the Adam Walsh Child Protection and Safety Act of 2006 ("AWA").¹⁹ This piece of legislation was implemented to foster safety online and to safeguard America's youth from violent crime, sexual exploitation, child abuse, and child pornography.²⁰

AWA's Title I, which is called the Sex Offender Registration and Notification Act ("SORNA"), created a set of national *minimum* sex offender notification and registration standards to be implemented, increased the number of offenses that require registration, and expanded the jurisdictional reach of the sex offender registration requirements to include Indian Tribe reservations.²¹ When sex offenders are released from prison and make their way into society, SORNA requires they register with local law enforcement agencies who will monitor and track them as they live in our communities.²² By providing this registration information, law enforcement, as well as members of the public, benefit by having access to

13. *Legislative History*, *supra* note 11.

14. Sex Offender Search for Zip Code 92057 in California, *Megan's Law: California Sex Offender Locator Map*, ST. OF CAL., OFF. OF THE ATT'Y GEN., <http://www.meganslaw.ca.gov> (click "Continue"; then check disclaimer box and click "Continue"; then click "Zip Code"; then enter 92057 into Zip Code box and click View Listing tab).

15. *Megan's Law Website*, *supra* note 1.

16. *Id.*

17. *Id.*

18. *Id.*

19. The Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006) (codified as amended at 42 U.S.C. § 16901 (2006)).

20. *Id.*

21. *SORNA*, OFF. OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, <http://www.smart.gov/sorna.htm> (last visited Mar. 1, 2016); *see* Office of the Attorney General, The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,032 (July 2, 2008).

22. *Sex Offender Registration and Notification Act (SORNA)*, THE U.S. DEP'T OF JUSTICE, <http://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna> (last visited Mar. 1, 2016).

the potentially dangerous offender's name, address, and a history of committed offenses.²³ Typically, those individuals who are required to register have been convicted of a crime involving sexual contact or a sexual act with another person.²⁴ Congress made it a federal crime for anyone to "knowingly fail to register or update a registration" as required under SORNA.²⁵

When a sex offender is required to register with the jurisdiction in which he or she resides, the following information must be placed into the sex offender registry: the offender's name, criminal history, date of birth, social security number, physical description and photograph, address, residence information or temporary lodging information, a DNA sample from the offender, a photocopy of the offender's driver's license, identification card, passport and other immigration related documents, the offender's employment and professional licensing information, fingerprints and palm prints, any internet identifiers or phone numbers that belong to the offender, school information, vehicle information, and all necessary text relating to the offense.²⁶ Even though the jurisdiction collects all of the previously listed data, the public does not have access to the victim's information, any arrests of the offender that did not result in a conviction, the offender's social security number, or the offender's passport and immigration related documents.²⁷

B. THE NORTH DAKOTA SEX OFFENDER REGISTRATION SYSTEM

For the first time, in 1991, the State of North Dakota enacted a sexual offender registration law, which required sexual offenders released from a correctional facility to register their residential addresses with local law enforcement.²⁸ This statute was implemented for four purposes. First and foremost, the sex offender registration requirement allowed the government to more effectively track sex offenders and offenders who committed crimes against children.²⁹ Second, the sex offender registration requirement provided a means by which law enforcement could regulate sex offenders.³⁰

23. *Id.*

24. U.S. DEP'T OF JUSTICE, *Frequently Asked Questions: The Sex Offender Registration and Notification Act (SORNA) Final Guidelines* 5-6 (2008) [hereinafter *SORNA FAQs*], http://ojp.gov/smart/pdfs/faq_sorna_guidelines.pdf.

25. 18 U.S.C. § 2250(a) (2016).

26. *SORNA FAQs*, *supra* note 24, at 11.

27. *Id.* at 12-13.

28. 1991 N.D. Laws ch. 136.

29. *State v. Rubey*, 2000 ND 119, ¶ 17, 611 N.W.2d 888, 891-92.

30. *Id.* at 892 (quoting *Hearing on H.B. 1152 Before the H. Judiciary Comm.*, 54th Leg. Assemb., Reg. Sess. (N.D. Jan. 9, 1995) (testimony of Robert Bennett, Assistant Att'y Gen.)).

Third, the sex offender registration requirement provided local law enforcement with information necessary to further investigations and apprehend dangerous sex offenders.³¹ Finally, the sex offender registration requirement ensured the protection of the health, safety, and welfare of the citizens of the State of North Dakota.³²

In 1999, the North Dakota Supreme Court held that there was a genuine public interest in requiring sex offenders to register their address with police in order to alert the local law enforcement agency that a sex offender had established a presence in their jurisdiction.³³ In support of this position, the court noted that rates of recidivism among sex offenders were found to be as astronomically high as 80 percent.³⁴ Shockingly, the court also cited to a report stating that in America, the recidivism rate among sexual offenders is higher than other types of criminals—higher by thirteen to twenty-seven percent.³⁵

To promote these safeguards, section 12.1-32-15(2) of the North Dakota Century Code requires each convicted sex offender to register with a law enforcement agency within three days of entering into the county and to provide to the agency an address where he or she will reside or will be temporarily domiciled, will be employed, or the address of the educational institution that he or she will attend as a student.³⁶ This section also specifically requires homeless sex offenders to register with law enforcement every three days that the offender is present within the jurisdiction.³⁷ Offenders register by going through a process that involves submitting fingerprints, photographs, signatures, and other information to law enforcement personnel in the offender's county.³⁸ To update the State's DNA identification database, the offender is also required to submit blood and other body fluid samples, which must be certified by a state crime laboratory.³⁹ Within three days of the offender registering, the

31. *Id.*

32. *Id.*

33. *State v. Burr*, 1999 ND 143, ¶¶ 19-20, 598 N.W.2d 147, 154-55 (“Recidivism rates among sexual offenders are high . . .”).

34. *Id.* ¶ 19, 598 N.W.2d at 154 (citing John S. Murray, *California's Chemical Castration Law: A Model for Massachusetts?*, 24 NEW ENG. J. ON CRIM. AND CIV. CONFINEMENT, 729, 734 (1998)).

35. *Id.* at 155 (citing Mike Tharp, *Tracking Sexual Impulses: An Intrusive Program to Stop Offenders from Striking Again*, U.S. NEWS & WORLD REPORT, July 7, 1997, at 34).

36. N.D. CENT. CODE § 12.1-32-15(2) (2015).

37. *Id.*

38. Office of Attorney General, Bureau of Criminal Investigation, *North Dakota Offender Registration Procedures Manual, Requirements Established by North Dakota Century Code Section 12.1-32-15*, Sept. 2012, at 1 [hereinafter *Offender Registration Manual*].

39. N.D. CENT. CODE § 12.1-32-15(7) (2015).

county then sends the registration information it gathered to the Office of Attorney General, Bureau of Criminal Investigations (“BCI”).⁴⁰ The BCI subsequently uses the information to update the North Dakota sex offender registry.⁴¹

Changes in offender information must also be reported. For example, if an offender changes his or her name, internet identifier, residential address, educational institution, employer, or obtains a new vehicle, he or she must notify the county law enforcement agency, in writing, ten days before the change is to occur.⁴² However, if an offender changes his or her address, the offender must notify the law enforcement agency of the new jurisdiction within three days of the change of residential address.⁴³ In addition, sex offenders are required to “periodically confirm” the registration information kept with the BCI.⁴⁴ All of this information is to be forwarded by the law enforcement agency to the BCI to update the registration database.

Depending on the particular offense and risk assessment of the individual offender, registration will be required for a period of either fifteen years, twenty-five years, or life.⁴⁵ The fifteen-year registration requirement is a base level registration period, which starts to run from the later of the sentencing date, date of deferred or suspended sentence, or release from imprisonment.⁴⁶ The twenty-five year registration requirement is imposed for offenders who have been determined to be a moderate risk.⁴⁷ The registration time period starts to run based on the same criteria as the fifteen-year requirement.⁴⁸ The final life-term registration requirement is imposed upon three classes of sex offenders.⁴⁹ First, an offender will be

40. *Id.*; see also *Offender Registration Manual*, *supra* note 38, at 1.

41. *Offender Registration Manual*, *supra* note 38, at 1.

42. N.D. CENT. CODE § 12.1-32-15(7) (2015). If the change is related to education or employment and due to termination, then he or she must notify law enforcement within five days of the date of termination. *Id.*

43. *Id.*

44. *Id.*; see *Offender Registration Manual*, *supra* note 38, at 2 (explaining that residential addresses must be verified at the 180-day mark, unless the offender is required to register for life, upon which he or she must update their address every three months).

45. N.D. CENT. CODE § 12.1-32-15(8) (2015).

46. *Id.* § 12.1-32-15(8)(a).

47. *Id.* § 12.1-32-15(8)(b); *Sex Offender Web Site*, ST. OF N.D., OFF. OF ATT’Y GEN., <http://www.sexoffender.nd.gov/Laws/laws.shtml> (last visited Jan. 30, 2016). Moderate risk offenders are those who have a designated “moderate” level risk of reoffending. *Id.* The risk is based on the offender’s “criminal history, evaluations, and other pertinent documents” and is assessed by a group of representatives from the Office of the Attorney General, the Department of Corrections and Rehabilitation, local law enforcement, victims’ services, juvenile services, and other professionals. *Id.*

48. N.D. CENT. CODE § 12.1-32-15(8)(b) (2015).

49. *Id.* § 12.1-32-15(8)(c).

required to register for his or her entire life when he or she has been convicted of two or more crimes against a child or sex offender crimes.⁵⁰ Second, an offender will be required to register for his or her entire life when (1) he or she has been convicted of gross sexual imposition by engaging in a sexual act with another person through the use or threat of force;⁵¹ (2) he or she has been convicted of gross sexual imposition by engaging in a sexual act with another person who is under the age of twelve, when the offender is over the age of eighteen;⁵² or (3) if he or she has been convicted of kidnapping and the offender is not one of the victim's parents.⁵³ Third, an offender will be required to register for his or her entire life when he or she has been evaluated and assessed as high risk.⁵⁴

II. THE CATEGORIES OF OFFENDERS THAT ARE REQUIRED TO REGISTER IN NORTH DAKOTA

To determine the appropriate level of punishment and the necessary registration requirements, the North Dakota legislature, through the North Dakota Century Code, requires the classification of offenders into three separate categories. These categories include (1) sexual offenders,⁵⁵ (2) offenders against children,⁵⁶ and (3) sexually dangerous individuals.⁵⁷ Offenders include both juveniles and adults.⁵⁸

The first classification is a collection of offenses made up of sexual offender statutes, such as indecent exposure,⁵⁹ sexual assault,⁶⁰ child pornography,⁶¹ or sex trafficking.⁶² The second classification is a collection of offenses that are crimes against children,⁶³ such as homicide,⁶⁴ assault,⁶⁵

50. *Id.* § 12.1-32-15(8)(c)(1).

51. *Id.* § 12.1-32-15(8)(c)(2); *id.* § 12.1-20-03(1)(b)(a) (explaining that a person is guilty of gross sexual imposition if they “engage in a sexual act with another, or . . . cause[] another to engage in a sexual act” if they “compel[led] the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being”).

52. *Id.* § 12.1-32-15(8)(c)(2); *id.* § 12.1-20-03(1)(d).

53. *Id.* § 12.1-32-15(8)(c)(2); *id.* § 12.1-18-01.

54. *Id.* § 12.1-32-15(8)(c)(3); *Sex Offender Web Site*, *supra* note 47 (explaining that high risk offenders are those who have a designated “high” level risk of reoffending).

55. N.D. CENT. CODE § 12.1-32-15(1)(f) (2015); *see infra* Part II.A (examining the category of “sexual offenders”).

56. N.D. CENT. CODE § 12.1-32-15(1)(a) (2015); *see infra* Part II.B (examining the category of “offenders against children”).

57. N.D. CENT. CODE § 12.1-32-15(1)(g) (2015); *see infra* Part II.C (examining the category of “sexually dangerous individuals”).

58. *Offender Registration Manual*, *supra* note 38, at 1.

59. N.D. CENT. CODE § 12.1-20-12.1 (2015).

60. *Id.* § 12.1-20-06, -07.

61. *Id.* § 12.1-27.1-04.1.

62. *Id.* § 12.1-41.

63. *Id.* § 12.1-32-15(1)(a) (explaining that the victim must be a minor).

or kidnapping.⁶⁶ The third classification is for an offender who has been rendered a sexually dangerous individual⁶⁷—a person “who is shown to have engaged in sexually predatory conduct” and who has a “sexual disorder, personality disorder, or other mental disorder that makes that individual likely to engage in further acts of sexually predatory conduct” that poses a danger to others.⁶⁸

After a defendant has been found guilty, pled guilty, or pled nolo contendere to one of the abovementioned offenses, he or she is subject to the North Dakota registration requirements.⁶⁹ In addition to these North Dakota statutes, an individual is required to register if he or she was found guilty, pled guilty, or pled nolo contendere to an equivalent offense in another municipal, county, state, tribal, or federal court.⁷⁰

A. SEXUAL OFFENDERS

A sexual offender is a person who has pled guilty, or has been found guilty, of one of the following crimes: gross sexual imposition,⁷¹ continuous sexual abuse of a child,⁷² sexual imposition,⁷³ corruption or solicitation of minors,⁷⁴ luring minors by computer or other electronic means,⁷⁵ sexual abuse of wards,⁷⁶ sexual exploitation by therapist,⁷⁷ sexual assault,⁷⁸ incest,⁷⁹ indecent exposure,⁸⁰ surreptitious intrusion,⁸¹ sexual performances by children,⁸² human trafficking,⁸³ sexual servitude,⁸⁴ patronizing a victim

64. *Id.* § 12.1-16.

65. *Id.* § 12.1-17-01.1.

66. *Id.* § 12.1-18-01.

67. *Id.* § 12.1-32-15(1)(g).

68. *Id.* § 25-03.3-01(8).

69. *Id.* § 12.1-32-15(2)(a)-(e).

70. *Offender Registration Manual*, *supra* note 38, at 3.

71. N.D. CENT. CODE § 12.1-20-03 (2015).

72. *Id.* § 12.1-20-03.1.

73. *Id.* § 12.1-20-04.

74. *Id.* § 12.1-20-05.

75. *Id.* § 12.1-20-05.1.

76. *Id.* § 12.1-20-06.

77. *Id.* § 12.1-20-06.1.

78. *Id.* § 12.1-20-07.

79. *Id.* § 12.1-20-11.

80. *Id.* § 12.1-20-12.1.

81. *Id.* § 12.1-27.2.

82. *Id.* § 12.1-22-03.1(2).

83. *Id.* § 12.1-41-02(1)(b).

84. *Id.* § 12.1-41-04.

of sexual servitude,⁸⁵ or patronizing a minor for commercial sexual activity.⁸⁶

Many of these crimes have a few common elements. First, they tend to involve a sexual act, which is defined as the sexual contact between (1) the penis and the vulva, (2) the penis and the anus, (3) the penis and the mouth, (4) the vulva and the mouth, (5) or any other body part, or foreign object, and the penis, anus, or vulva of the victim.⁸⁷ The second common element is sexual contact. Sexual contact, during a sexual act, occurs when there is penetration of any degree between (1) the penis and the vulva, (2) the penis and the anus, (3) any other body part, or foreign object, and the penis, vulva, or anus of the victim.⁸⁸ The statute also notes that ejaculation is not required for a sexual act to occur.⁸⁹ A separate and distinct type of sexual conduct occurs when an individual engages in either clothed or unclothed touching of a victim's sexual regions or when an individual emits bodily fluids, including semen, urine, and feces, upon a victim to arouse or satisfy their aggressive or sexual desires.⁹⁰ This note will examine three offenses more in depth—sexual imposition, indecent exposure, and sexual performances by a child—because they are common offenses committed that result in a registration requirement.

Sexual imposition is an offense that is committed when a person engages in a sexual act or sexual conduct through threatening behavior or the use of coercion to make the victim believe he or she cannot resist.⁹¹ In addition, sexual imposition can be charged when a person engages in a sexual act or sexual conduct for the purpose of fulfilling an initiation requirement to become associated with a criminal street gang.⁹²

Indecent exposure is an offense that is committed when an individual either masturbates in public or in the company of a juvenile,⁹³ or exposes his or her sexual organs to a minor.⁹⁴ In addition, indecent exposure is committed when an individual exposes his or her sexual organs in public.⁹⁵ The North Dakota legislature specifically noted that a woman breastfeeding

85. *Id.* § 12.1-41-05.

86. *Id.* § 12.1-41-06.

87. *Id.* § 12.1-20-02(4).

88. *Id.*

89. *Id.*

90. *Id.* § 12.1-20-02(5).

91. *Id.* § 12.1-20-04(1).

92. *Id.* § 12.1-20-04(2).

93. *Id.* § 12.1-20-12.1(1)(a).

94. *Id.* § 12.1-20-12.1(1)(b).

95. *Id.*

her infant, in a discreet manner, does not rise to the level of indecent exposure.⁹⁶

Sexual performances by children is a category of crimes in which an individual either uses a minor in a sexual performance, or consents, as the parent or guardian, to the use of the child in a sexual performance.⁹⁷ A sexual performance is defined as any action of a minor that involves sexual conduct.⁹⁸ For this statute, sexual conduct includes the actual or imitated act of sexual intercourse or other sexual acts as well as the “lewd exhibition” of the genitals, buttocks, or breasts.⁹⁹ Furthermore, it is an offense for an adult to falsely represent his or her age to a minor to entice or coerce the minor to participate in a sexual performance.¹⁰⁰

B. OFFENDERS AGAINST CHILDREN

In North Dakota, an individual who engages in a crime against a child falls under the registration requirements of the North Dakota Century Code.¹⁰¹ An offender against children is an individual who was convicted of one of the following crimes in which the victim was under the age of eighteen¹⁰²: homicide,¹⁰³ assault,¹⁰⁴ aggravated assault,¹⁰⁵ terrorizing,¹⁰⁶ stalking,¹⁰⁷ kidnapping,¹⁰⁸ felonious restraint,¹⁰⁹ removal of a child from state in violation of custody decree,¹¹⁰ prostitution,¹¹¹ human trafficking of a minor,¹¹² or forced labor of a minor.¹¹³ The common denominator in all of the above offenses is that they were committed against or involving a minor. While these offenses are numerous, this note will not go in depth regarding the details of these crimes because they are not offenses which would result in sex offender status.

96. *Id.* § 12.1-20-12.1(4).

97. *Id.* § 12.1-27.2-02(1).

98. *Id.* § 12.1-27.2-01(5).

99. *Id.* § 12.1-27.2-01(4).

100. *Id.* § 12.1-27.2-02(2).

101. *Id.* § 12.1-32-15(1)(a).

102. *Id.* § 12.1-32-15(1)(a).

103. *Id.* § 12.1-16.

104. *Id.* § 12.1-17-01.1 (only if the victim is under twelve years of age).

105. *Id.* § 12.1-17-02.

106. *Id.* § 12.1-17-04.

107. *Id.* § 12.1-17-07.1(6)(a).

108. *Id.* § 12.1-18-01.

109. *Id.* § 12.1-18-02.

110. *Id.* § 12.1-18-05.

111. *Id.* § 12.1-29-01.

112. *Id.* § 12.1-41-02(3).

113. *Id.* § 12.1-41-03(3).

C. SEXUALLY DANGEROUS OFFENDERS

A sexually dangerous individual is one who has taken part in “sexually predatory conduct” and has a sexual, personality, or mental disorder that increases the likelihood they will engage in future acts of sexually predatory conduct that tends to put the general public at risk.¹¹⁴ Sexually predatory conduct includes a laundry list of factors. One could be found to have engaged in sexually predatory conduct for doing the following: attempting to or successfully engaging in either a sexual act or sexual conduct (1) with a victim that was compelled to engage in the conduct because the offender used or threatened force;¹¹⁵ (2) with a victim that was intoxicated by the offender, absent the victim’s knowledge;¹¹⁶ (3) with a victim that was unaware the conduct was being committed;¹¹⁷ (4) with a victim that is under the age of fifteen;¹¹⁸ (5) with a victim that has a disability which renders them unable to understand the nature of the conduct;¹¹⁹ (6) with a victim that is under the care, authority, or control of the offender who is associated with a treatment, healthcare, or correctional facility;¹²⁰ (7) with a victim that is a minor when the offender is an adult;¹²¹ or (8) with a victim whose relationship to the offender makes the act incestuous.¹²²

III. THE HOMELESS REGISTRATION OBLIGATIONS IN NORTH DAKOTA

Being homeless in North Dakota would be bad enough considering the state has harsh long winters that include blowing snow, blizzards, and negative temperatures. In addition to these dreadful conditions, being homeless means no permanent (and many times no temporary) place to live, with nowhere to receive mail, shower, eat, or relax. This Part of the note will discuss the additional hindrances homelessness in North Dakota creates. First, Section A will discuss the homeless registration requirements for the State of North Dakota. Second, Section B will discuss two cases regarding the difficulty in abiding by the homeless registration requirements in North Dakota. Finally, Section C will discuss the impact on the homeless community in North Dakota.

114. *Id.* § 25-03.3-01(8).

115. *Id.* § 25-03.3-01(9)(a)(1).

116. *Id.* § 25-03.3-01(9)(a)(2).

117. *Id.* § 25-03.3-01(9)(a)(3).

118. *Id.* § 25-03.3-01(9)(a)(4).

119. *Id.* § 25-03.3-01(9)(a)(5).

120. *Id.* § 25-03.3-01(9)(a)(6).

121. *Id.* § 25-03.3-01(9)(a)(7).

122. *Id.* § 25-03.3-01(9)(a)(8).

A. THE REQUIREMENTS IN NORTH DAKOTA

A person is deemed “homeless” when he or she is physically present in the State of North Dakota but does not live in a “traditional dwelling”; rather, he or she “lives on the streets,” lives in a park, lives under bridges, or lives in vehicles or campers.¹²³ This definition is the traditional thought behind one who is homeless. Also, in North Dakota, someone who resides in the state without a permanent address is also deemed homeless.¹²⁴ Strangely enough, however, someone is not homeless if they reside in a temporary living shelter, either private or public, or are temporarily domiciled in the state.¹²⁵

As with any other offender, a homeless sex offender must register with the local law enforcement agency no more than three days after entering the county in which he or she will inhabit.¹²⁶ In addition to the initial registration term, a homeless sex offender must register every three days with the law enforcement agency in the jurisdiction in which he or she is present.¹²⁷

B. NORTH DAKOTA CASELAW ON HOMELESS REGISTRATION

In *State v. Rubey*,¹²⁸ Rubey, a sex offender required to register with law enforcement for a gross sexual imposition conviction,¹²⁹ was going from location to location without establishing a new residence.¹³⁰ Rubey was convicted of failing to give notice of a mailing address,¹³¹ which was a post office box,¹³² after he had signed an acknowledgement form agreeing to notify law enforcement within ten days of moving to a new address.¹³³ Rubey argued that he was not required to register because he did not change his address since he was living out of a truck, not a home, which is a place where he was habitually present and intended to return after work or pleasure.¹³⁴ The North Dakota Supreme Court affirmed Rubey’s conviction

123. *Id.* § 12.1-32-15(1)(c).

124. *Id.*

125. *Id.*

126. *Id.* § 12.1-32-15(2).

127. *Id.*

128. 2000 ND 119, 611 N.W.2d 888. This case centered around the older N.D. CENT. Code § 12.1-32.15 (1997).

129. *Rubey*, ¶ 2, 611 N.W.2d at 889.

130. *Id.* ¶ 4.

131. *Id.* ¶ 13, 611 N.W.2d at 891.

132. *Rubey*, ¶¶ 4, 20, 611 N.W.2d at 889, 892.

133. *Id.* ¶ 3, 611 N.W.2d at 889.

134. *Id.* ¶ 12, 611 N.W.2d at 891; *see Dietz v. City of Medora*, 333 N.W.2d 702, 705 (N.D. 1983) (explaining that a residence is a place in which a person “has established his home, where

because the justices wanted to prevent sex offenders from “slip[ing] through the cracks” by leaving one address and not obtaining another.¹³⁵ Here, the court held that the North Dakota legislature intended “address” to mean a mailing or residential address.¹³⁶ Based on this interpretation, Rubey’s conviction was upheld.¹³⁷

In *State v. Meador*,¹³⁸ David Meador’s conviction of failing to register his change in address as a sex offender in the State of North Dakota was affirmed.¹³⁹ Meador had been convicted of a sex offense in Kentucky that required him to register as a sex offender in North Dakota.¹⁴⁰ Meador had been living in a camper in the parking lot of a gas station located in Valley City, North Dakota, but police told him he could no longer stay there.¹⁴¹ Over the next five days, he went to live in a city park, on various streets, and in a state park.¹⁴² The sixth day after being kicked out of his parking lot location, Meador informed law enforcement that he intended to move to Tower City.¹⁴³ Two days later, he did just that and registered with the local law enforcement agency.¹⁴⁴ Little did Meador know, the day he informed law enforcement that he intended to move to Tower City, he was being charged with failure to comply with sex offender registration requirements.¹⁴⁵ Meador was found guilty¹⁴⁶ and later appealed.¹⁴⁷ Meador argued that the North Dakota sex offender statute required him to register a new address “within three days of obtaining a new residence,” but did not require him to find a new residence within three days.¹⁴⁸ The North Dakota Supreme Court, however, affirmed the lower court’s ruling.¹⁴⁹

Meador next filed a habeas corpus petition, again claiming that the courts in North Dakota abused their discretion in holding that Meador was required to register when he “did not move to a new residence for three

he is habitually present, and which he intends to return to when he is away for business or pleasure”).

135. *Id.* ¶ 18, 611 N.W.2d at 892.

136. *Id.* ¶ 19.

137. *Id.* ¶ 20.

138. 2010 ND 139, 785 N.W.2d 886.

139. *Meador*, ¶ 4, 785 N.W.2d at 888-89.

140. *See id.* ¶¶ 1-2, 785 N.W.2d at 888.

141. *Id.* ¶ 2 (explaining that this was the address he had registered with the local law enforcement agency).

142. *Id.* ¶ 3.

143. *Id.*

144. *Id.*

145. *Id.* ¶ 3-4, 785 N.W.2d at 888-89.

146. *Id.* ¶ 4, 785 N.W.2d at 889.

147. *Id.* ¶ 1, 785 N.W.2d at 888.

148. *Id.* ¶ 14, 785 N.W.2d at 891.

149. *Id.* ¶¶ 16-17.

days.”¹⁵⁰ In addition to the requirement that a transient sex offender must register a new residential location within three days, the State of North Dakota requires offenders to notify the local law enforcement agency, in writing, within ten days of a planned change in name, residential address, school, or employment address.¹⁵¹ As the North Dakota District Court noted, “It is difficult to understand how a sex offender would know ten days in advance of the possibility of a one or two night stay at a temporary location if [he or she] was suddenly roused from his [or her] last registered address.”¹⁵²

Essentially, Meador argued that the State was requiring him to find a new address within three days, which was not the intent of the North Dakota legislature when they implemented the law.¹⁵³ The intent was to have a sex offender register “a new address within three days of obtaining a new residence.”¹⁵⁴ The court determined that Meador was not entitled to habeas relief and that the North Dakota Supreme Court, therefore, interpreted the statute in a constitutional manner.¹⁵⁵ Following this denial of habeas relief, Meador appealed to the Eighth Circuit Court of Appeals,¹⁵⁶ arguing that since he did not have a residence, employment address, or school, he was not required to register with law enforcement.¹⁵⁷ The Eighth Circuit held that there was no constitutional violation in the North Dakota Supreme Court’s interpretation of the North Dakota sex offender statute.¹⁵⁸

C. THE IMPACT OF THESE REQUIREMENTS ON SOCIETY

These two cases provide for an unfriendly and unrealistic environment for transient sex offenders. Instead of creating a registration system that is user-friendly and would likely promote a continual following, the North Dakota courts, and the Eighth Circuit, have interpreted the North Dakota sex offender registration laws in a way that will only increase the rate that offenders fail to register. It seems as if this statute has been interpreted to punish sex offenders, even if they attempt to abide by the law.

150. *Meador v. Branson*, No. 1:10-CV-059, 2011 U.S. Dist. LEXIS 115183, at *5 (D.N.D. Aug. 23, 2011).

151. N.D. CENT. CODE § 12.1-32-15(7) (2015) (requiring a ten-day advance notice to law enforcement).

152. *Meador*, 2011 U.S. Dist. LEXIS 115183, at *50.

153. *Id.* at *23.

154. *Id.* at *31.

155. *Id.* at *80-81.

156. See Brief for Petitioner-Appellant at 2, *Meador v. Branson*, 688 F.3d 433 (8th Cir. 2012) (No. 11-3088).

157. *Id.* at 15-16.

158. *Meador*, 688 F.3d at 434.

IV. IS THERE A MORE EFFECTIVE SEX OFFENDER REGISTRATION SYSTEM?

After reviewing *Rubey*¹⁵⁹ and the *Meador* cases,¹⁶⁰ the North Dakota cases regarding homeless sex offenders in North Dakota, it is apparent that changes need to be implemented to prevent injustice. The laws in North Dakota make it nearly impossible for homeless sex offenders to reside within the state without being in violation of a registration requirement. Section A assesses the shortcomings of the North Dakota sex offender registration requirement system. Section B provides information regarding the California homeless sex offender registration system. Section C offers information regarding the Pennsylvania homeless sex offender registration system.

A. THE INADEQUACIES OF THE SEX OFFENDER LAWS IN NORTH DAKOTA

The laws in North Dakota regarding sex offenders have three inadequacies. First, the law creates a requirement that is nearly impossible for transient offenders to comply. Second, the requirements are unrealistic. Finally, the law creates a fair notice issue because offenders may not realize that they are required to register.

First, as evidenced in both *Rubey* and *Meador*, transient offenders are not able to abide by the registration requirements. This is not because they are simply trying to “slip through the cracks,” but rather because they cannot provide to law enforcement an address which they do not have. As noted in *Meador*, it is nearly impossible for a homeless individual to know his or her next location ten days in advance.¹⁶¹ In addition, it seems as if these offenders are in a “Catch-22”: give law enforcement your current location, which might change, and face some sort of charge for providing false information, or wait until you have an address and face a failure to register charge.

Second, registration requirements calling for homeless individuals to notify law enforcement within three days of a change of address are unrealistic. These offenders likely have no place to sleep, eat, or shower, and likely have no way to get to the local law enforcement center in order to provide a new location.

159. *State v. Rubey*, 2000 ND 119, 611 N.W.2d 888.

160. *State v. Meador*, 2010 ND 139, 785 N.W.2d 886; *Meador v. Branson*, No. 1:10-CV-059, 2011 U.S. Dist. LEXIS 115183 (D.N.D. Aug. 23, 2011); *Meador*, 688 F.3d 433.

161. *Meador*, 2011 U.S. Dist. LEXIS 115183, at *50.

Finally, there seems to be a fair notice issue with the North Dakota sex offender registration requirements. It does not appear from reading the plain language of the statute that an offender would realize that he was required to register a new location in which he or she temporarily stays. In addition, as Meador unsuccessfully argued, it is more natural to read the statute as requiring registration within three days of obtaining a new address, not within three days of changing locations within a city even if there is no new address.

B. THE STATE OF CALIFORNIA SEX OFFENDER REGISTRATION SYSTEM

The next sections will examine the California and Pennsylvania statutes, which provide a realistic approach to sex offender registration. As with all other states in the nation, the State of California requires sex offenders to register with local law enforcement agencies in order to better track their whereabouts.¹⁶² Because the issues surrounding transient sex offenders tend to be problematic, the California legislature enacted an independent section focused solely on this category of offenders.¹⁶³ Here, a “transient” is defined as an individual with no residence.¹⁶⁴ A residence is at least one address in which an individual “regularly resides” irrespective of the total time actually spent at that location.¹⁶⁵ The following locations constitute a residence: a structure which is discoverable via a street address, such as an apartment, hotel, house, homeless shelter, or a recreational vehicle.¹⁶⁶

No later than five working days after entering a jurisdiction in California, a transient sex offender must register with the local law enforcement agency.¹⁶⁷ Following the initial registration, a transient sex offender must register every thirty days that he or she is present within a jurisdiction.¹⁶⁸ Then, upon the first birthday of the offender after the initial registration, the offender must again register and continue to re-register every thirty days with the local law enforcement agency.¹⁶⁹ If a transient sex offender relocates to an out-of-state location, he or she must notify the local law enforcement agency—in person—within five days of the

162. CAL. PENAL CODE §§ 290, 290.010 (West 2015).

163. *Id.* § 290.011.

164. *Id.* § 290.011(g).

165. *Id.*

166. *Id.*

167. *Id.* § 290.011(a).

168. *Id.*

169. *Id.* § 290.011(c).

relocation.¹⁷⁰ When a transient sex offender registers, he or she must provide a list of locations in which he or she frequents, sleeps, works, eats, or “engages in leisure activities.”¹⁷¹

This registration system provides an effective and efficient sex offender tracking scheme. With the largest population of registered sex offenders located within one state, California set the example for other states to implement sex offender registration laws.¹⁷² It appears that with a simpler and more reasonable system, such as California’s, offenders located within a particular jurisdiction are more likely to actually register and stay up-to-date with the registration requirements. In addition to a simpler system, this provides a more just requirement for offenders living within our communities.

C. THE COMMONWEALTH OF PENNSYLVANIA SEX OFFENDER REGISTRATION SYSTEM

The Commonwealth of Pennsylvania breaks down sex offenders into six categories: Tier I, Tier II, Tier III, Juvenile Offenders, Sexually Violent Delinquent Children, and Sexually Violent Predators.¹⁷³ Tier I¹⁷⁴ categorization applies to a sex offender who has been convicted of various crimes, including but not limited to, luring a child into a vehicle,¹⁷⁵ sexual abuse of a child,¹⁷⁶ and video voyeurism.¹⁷⁷ Tier II¹⁷⁸ categorization applies to a sex offender who has been convicted of certain crimes, including but not limited to, sexual exploitation of children¹⁷⁹ and selling or buying children.¹⁸⁰ Tier III¹⁸¹ categorization applies to offenders who have been convicted of certain crimes, including but not limited to, kidnapping,¹⁸² rape,¹⁸³ and incest.¹⁸⁴

170. *Id.* § 290.011(f).

171. *Id.* § 290.011(d) (explaining that the sex offender is not required to submit additional information on occasions other than the thirty-day registration date).

172. *Megan’s Law – Sex Offender Registration and Exclusion Information: Sex Offenders Tracking*, ST. OF CAL., DEP’T OF JUST., OFF. OF THE ATT’Y GEN., <http://meganslaw.ca.gov/sexreg.htm> (last visited Jan. 9, 2016).

173. *Megan’s Law Website*, *supra* note 1.

174. 42 PA. CONS. STAT. § 9799.14(b) (2016).

175. 18 PA. CONS. STAT. § 2910 (2016).

176. *Id.* § 6312(d).

177. *Id.* § 1801 (2015).

178. 42 PA. CONS. STAT. § 9799.14(c) (2016).

179. 18 PA. CONS. STAT. § 6320 (2016).

180. 18 U.S.C. § 2251A (2015).

181. 42 PA. CONS. STAT. § 9799.14(d) (2016).

182. 18 PA. CONS. STAT. § 2901(a.1) (2016).

183. *Id.* § 3121.

184. *Id.* § 4302(b).

Tier I offenders are required to register for a period of fifteen years.¹⁸⁵ Tier II offenders are required to register for a period of twenty-five years.¹⁸⁶ Tier III,¹⁸⁷ sexually violent delinquent children,¹⁸⁸ and sexually violent predators are required to register for life.¹⁸⁹ In addition to the annual registration requirements,¹⁹⁰ Tier I offenders must appear in person on an annual basis;¹⁹¹ Tier II offenders must appear in person on a semiannual basis;¹⁹² and Tier III offenders,¹⁹³ sexually violent predators,¹⁹⁴ and sexually violent delinquent children—who are not transients¹⁹⁵—must appear in person on a quarterly basis.

In Pennsylvania, a transient offender is someone who resides within the Commonwealth, in a temporary habitat, dwelling, or adobe, including either a homeless shelter or park, but not a residence.¹⁹⁶ Transient offenders must register and provide a photograph to law enforcement on a monthly basis until they establish a residence.¹⁹⁷ In addition, transients must notify law enforcement of the location in which they receive mail and if they are planning on traveling outside of the Commonwealth.¹⁹⁸ Information, such as the location in which transients frequent, eat, and participate in activities of leisure, is provided to the public.¹⁹⁹

As with the California transient sex offender registration requirements, Pennsylvania has a reasonable thirty-day requirement that will likely promote compliance. Unlike the North Dakota statute, it only requires a transient offender to register in person once a month. It does not require a transient offender to notify law enforcement every time he or she changes locations within a jurisdiction.

185. 42 PA. CONS. STAT. § 9799.15(a)(1) (2016).

186. *Id.* § 9799.15(a)(2).

187. *Id.* § 9799.15(a)(3).

188. *Id.* § 9799.15(a)(5).

189. *Id.* § 9799.15(a)(6).

190. *Id.* § 9799.16(b).

191. *Id.* § 9799.15(e)(1).

192. *Id.* § 9799.15(e)(2).

193. *Id.* § 9799.15(e)(3).

194. *Id.* § 9799.15(f)(2).

195. *Id.* § 9799.15(h)(3).

196. *Id.* § 9799.12.

197. *Id.* § 9799.15(h)(1).

198. PENNSYLVANIA PRISON SOCIETY, PENNSYLVANIA'S NEW SEX OFFENDER REGISTRATION AND NOTIFICATION LAW: WHAT YOU NEED TO KNOW IF YOU ARE ON THE REGISTRY AS OF DECEMBER 20, 2012, at 1, http://www.pccd.pa.gov/criminaljustice/advisory_boards/Documents/PA-SORNA%20pamphlet%20for%20current%20registrants%20rev%209-19-12%20-%20final.pdf.

199. *Id.*

V. CONCLUSION

This note detailed the history of the sex offender registration laws, examined the North Dakota, California, and Pennsylvania statutes, and identified caselaw that depicts the unreasonableness of the transient sex offender laws currently in place in North Dakota. Although the North Dakota transient sex offender laws have been reviewed by the court system in North Dakota as well as the Eighth circuit, courts should take another glance and recognize that there are some major issues. After reviewing the laws, North Dakota should follow the registration requirements implemented in California and/or Pennsylvania to allow for a more just, reasonable, and effective sex offender tracking system. In addition to effectiveness, these homeless offender requirements are the current trend as six states require monthly registration, ten states require weekly registration, and Minnesota requires either weekly or monthly registration depending on the offense.²⁰⁰

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200. CALIFORNIA REFORM SEX OFFENDER LAWS, US SEX OFFENDER REGISTRATION LAWS AS OF MAY 19, 2014, at 1, http://californiarsol.org/lawsbystates/rsol_states_Overview.pdf.

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