When Sex Doesn’t Sell: Mitigating the Damaging Effect of Megan’s Law on Property Values

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Introduction

Intensified by recent news stories and the increasing publicity of websites such as www.familywatchdog.us, homeowners are rapidly becoming more aware of the presence of sex offenders living or working in close proximity to their homes. The Family Watchdog website allows users to type in an address and provides the user with a map or aerial photograph displaying the home and work locations for all sex offenders within a five-mile radius of that address, shows a picture of each sex offender, and lists the sex offender’s convictions. [FN1] The website is still in test phases, but it has already received a great deal of media and political attention [FN2] and recognition as an important tool for the prevention of future sexual crimes [FN3] since its inception on August 25, 2005. The website provides alarming statistics, such as: 89 percent of all sexual assaults against children are committed by someone whom the victim knows; [FN4] the typical sexual predator will assault 30 to 60 times before being caught; [FN5] and the re-arrest rate for convicted child molesters is 52 percent. [FN6] In addition, the actual number of sexual offenders living or working in the vicinity of the searched address is frequently startling and unnerving to users. [FN7] As such websites gain publicity and usage, a tremendous potential exists for property values to be impacted.

Homeowners who are distressed by the presence of a sexual offender living near their homes and the potential effect that that presence may have on their property values may consider pursuing a variety of remedies. Society must also consider available remedies for the placement of sexual offenders who pose a significant future risk of recidivism. Potential remedies that have not been tested by the courts include: legal action to receive compensation for diminished property value pursuant to the Takings Clause; enjoining past convicted sex offenders from moving into the neighborhood; a nuisance action against the sex offender; and other societal remedies, such as making the sex offender wear a GPS ankle bracelet monitoring device for the remainder of his or her life or prohibiting sex offenders from living in certain cities.

The federal Megan’s Law [FN8] requires states to enact procedures for notifying the public of the presence of dangerous sex offenders in the community, [FN9] but states have discretion in determining what kind of notification procedures to implement and what the predicted risk level of a sex offender should be before notifying the public about his or her presence. As a result, websites such as the Family Watchdog site may potentially provide more information about the location and characteristics of local sex offenders than state listings, and such sites may be significantly more user-friendly. [FN10] The increased public awareness that results from internet notification of nearby sex offenders could impact real estate transactions in a variety of ways, including lowering property values and altering the disclosures required in residential transactions.

Sections I and II of this article address a brief history of sex offender laws and the varying approaches states have used to implement Megan’s Law, respectively. Section III addresses the use of websites for public notification of nearby sex offenders. Section IV discusses the impact that the Megan’s Law notification requirements and the popularization of websites such as the Family Watchdog site have on property values. Section V addresses whether the entire burden of diminished property value falls on individual homeowners, or whether it may also fall on the government and constitute an unconstitutional taking under the Takings Clause of the United States Constitution or state constitutions. Section VI addresses the possibility of maintaining a nuisance action against a
sex offender living nearby. Section VII addresses the use of GPS ankle bracelets for lifetime monitoring of sex offenders and how this technology may evolve in the future, and, finally, Section VIII addresses the option of continued involuntary commitment of sex offenders in the mental health system after the conclusion of their prison sentences.

Regardless of whether a homeowner would be successful in arguing that diminished property value resulting from the enactment of sex offender notification statutes constitutes an unconstitutional taking or whether a nearby sex offender could qualify as a nuisance, policymakers should consider the impact that the dissemination of sex offender information has on property values and take steps to mitigate this impact. The use of lifetime GPS ankle bracelets or *356 continued involuntary commitment in the mental health system are two such steps legislatures are currently considering.

I. Brief Overview of Sex Offender Disclosure Laws

For a little over a decade, the public and the government have increasingly recognized the need for disclosure of nearby sex offenders. [FN11] In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act, [FN12] which requires state implementation of a sex-offender registration program or a forfeiture of certain federal funds. [FN13] The Act prescribes registration requirements for offenders “convicted of a criminal offense against a … minor or … a sexually violent offense” [FN14] ranging from 10 years to life. [FN15] Prior to the passage of that Act, only five states required convicted sex offenders to register their addresses with local law enforcement; “[t]oday, all fifty states have sex offender registries.” [FN16]

A. Megan’s Law

“The realization [that] registration alone was not enough” came after the rape and murder of 7-year-old Megan Kanka by a twice-convicted sex offender living on her street. [FN17] In 1996, Congress passed section (e) of the Wetterling Act, termed Megan’s Law, mandating state community notification programs. [FN18] “While not *357 intended to punish offenders, the law authorizes local law enforcement to notify the public about high-risk and serious sex offenders who reside in, are employed in, or frequent the community. Using this information to harass or commit any crime against an offender is specifically prohibited by the law.” [FN19] While Megan’s Law “requires all states to conduct community notification[. it] does not set out specific forms and methods, other than requiring the creation of internet sites containing state sex-offender information. Beyond that requirement, states [have] broad discretion [to create] their own policies.” [FN20]

B. Adam Walsh Act

On July 27, 2006, the Adam Walsh Child Protection and Safety Act of 2006, [FN21] named after Adam Walsh who was abducted from a department store twenty-five years ago and later found murdered, became law. According to President George W. Bush, this Act strengthened efforts to protect children against sexual predators in four primary ways: by establishing a comprehensive national system for the registration of sex offenders that will be available on the Internet, [FN22] by strengthening federal penalties for crimes against children,*358 [FN23] by making it harder for sexual predators to reach out to children on the internet, [FN24] and by creating a national child abuse registry and requiring investigators to do background checks of adoptive and foster parents before they are approved to take custody of a child. [FN25] Additionally, the law establishes three tiers of sex offenders, [FN26] requires all states to maintain sex offender registries, [FN27] requires all jurisdictions to enact criminal penalties for sex offenders who fail to comply with registration requirements, [FN28] sets forth the information which sex offenders and jurisdictions must include in a sex offender registry, [FN29] requires sex offenders to appear in person to verify their registration, [FN30] grants immunity from liability to the federal government and jurisdictions and their political subdivisions *359 for good faith conduct under the Act, [FN31] provides for bonus payments to states that implement electronic monitoring of sex offenders, [FN32] imposes a fine and/or term of imprisonment for up to 20 years on sex offenders who knowingly fail to register, [FN33] makes registration as a sex offender a mandatory condition of probation and supervised release,
directs the Attorney General to study the establishment of a nationwide interstate tracking system of persons convicted of, or under investigation for, child abuse. [FN35] directs the Attorney General to make grants to jurisdictions for civil commitment programs for sexually dangerous persons and report to the Judiciary Committees of Congress annually on the progress of jurisdictions in implementing civil commitment programs and the rate of sexually violent offenses for each jurisdiction. [FN36] eliminates the statute of limitations for prosecutions of child abduction and felony sex offenses against children, [FN37] abrogates the confidential marital communication privilege and the adverse spousal privilege in federal proceedings involving a spouse charged with a crime against a child of either spouse or a child under the custody or control of either spouse, [FN38] and directs the Attorney General to provide technical assistance to jurisdictions to help identify and locate sex offenders relocated due to a major disaster. [FN39] Due to the recent enactment of this Act, its impact and potential have yet to be seen.

C. Jessica's Law

One of the latest sex offender laws being considered by state legislatures is Jessica's Law. [FN40] This law is named after 9-year-old Jessica Lunsford, who was abducted, raped, and buried alive only 150 feet from her home by a registered sex offender who had “an extensive criminal history and outstanding warrants for probation violations” and who later confessed to the crime. [FN41] Three states currently have Jessica's Law or an equivalent in place—Florida, Arizona, and Louisiana. [FN42] California is currently considering such legislation. [FN43] If passed, California's law would require molesters of victims under the age of 14 to have a mandatory minimum prison sentence of 15 years, eliminate all “good-time” credits for sex offenders, “electronically monitor convicted sex offenders for life, if they are ever released from prison, through GPS tracking[,]” and prevent sex offenders from living within 2,000 feet from a school or park, among other things. [FN44] This law is considered the “toughest sex offender law in the nation[,]” [FN45] and other states may soon follow suit and consider adopting Jessica’s Law. [FN46]

II. State Implementation of Megan's Laws

The extent of information dissemination regarding local sex offenders varies among states. [FN47] According to a federally-funded project designed to improve the management of sex offenders in the community, nineteen states conduct broad notification (information is widely released to the public), fourteen states conduct notification to those deemed at risk from a particular offender (i.e., child care centers, religious organizations, schools, and other groups that serve children or vulnerable populations), and the remaining seventeen states utilize passive notification (i.e., information is available at local law enforcement offices should citizens wish to obtain it). [FN48] Some jurisdictions distribute flyers about the offender by a criminal justice official, by mail, or by public posting. [FN49] “This often involves a law enforcement or probation/parole officer going door-to-door to personally inform residents that an offender will be moving into their neighborhood[,]” and sometimes open meetings of community members are held to release information about a specific sex offender. [FN50] “The broadest form of notification currently in practice is releasing a notice to the media informing them about a specific sex offender.” [FN51]

The methods for determining which offenders require registration and community notification also varies among states. Most states require community notification regarding any offender convicted of specific violent sex offenses against minors. [FN52] “In other states, however, agencies responsible for conducting notification are given the discretion to determine which offenders are subjected to notification.” [FN53]

*362 In these states an offender is assessed for the risk he or she poses of reoffending, and a decision is made to conduct notification regarding offenders deemed to be high risk. Methods of assessing offender risk include scientific risk assessment instruments and multi-disciplinary committees convened to review offender risk. Risk assessment instruments calculate risk based on an inventory of various behaviors and past offenses, assigning points to each element. Several risk assess-
ment instruments are currently being used by jurisdictions to classify offenders as low or high risk, usually categorizing them according to a three-tiered system of classification … Some 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. [FN54] Because of privacy and liberty rights, states are constitutionally limited as to the information disseminated about certain offenders. For example, the Massachusetts Supreme Court balanced the interests of offenders and the risk of danger to the public when it only permitted the Sex Offender Board to publish sex offender information on the internet relating to level three offenders. [FN55] Nonetheless, some states allow extremely broad monitoring of sex offenders. For example:

[i]n Louisiana, the public has complete access to information on offenders and their movements. One company offers email alerts to families warning of sex offenders moving to homes near them … In Washington, law enforcement officers can call at every house in the neighborhood to warn people about an offender moving in …. Sex offenders in Oregon can be forced to display a sign in their windows. [FN56] Despite constitutional challenges by convicted sex offenders, the United States Supreme Court has upheld state sex offender registration acts that require offenders to register with the state, to provide a wide range of personal information such as their appearance, location, employment, and circumstances of conviction, and to notify the state of any changes in the registration information, even if the act applies retroactively, so long as the act is a civil, non-punitive means of identifying previous offenders for the protection of the public, properly based on the high incidence of recidivism of such *363 offenders. [FN57] In a case involving the Alaska Sex Offender Registration Act, [FN58] the United States Supreme Court held that the stigma and adverse community reactions that could result from registration did not render the Act effectively punitive if the dissemination of the registration information, which was largely a matter of public record, did not constitute the imposition of any significant affirmative disability or restraint. [FN59] The Court found that the notification requirements of Megan's Law do not constitute state-inflicted “punishment” on sex offenders for purposes of the Ex Post Facto [FN60] and Double Jeopardy [FN61] Clauses; however, the Due Process Clause of the United States Constitution requires the government to bear the burden of persuasion and to justify an offender’s classification and notification plans by clear and convincing evidence if the state uses a tiered system of classification and notification based on the severity of the offense committed and risk of recidivism. [FN62]

In *Doe v. Poritz*, [FN63] the New Jersey Supreme Court upheld the disclosure requirements of the Registration and Community Notification Laws [FN64] against a challenge that public disclosure of private information related to convicted sex offenders invaded their privacy rights. [FN65] The court first inquired whether a sex offender “has a reasonable expectation of privacy in the information disclosed ….” [FN66] If a sex offender has such a reasonable expectation, the court must then ask “whether the intrusion on the right of privacy is justified, balancing the governmental interest in disclosure against the *364 private interest in confidentiality.” [FN67] The court determined that a sex offender had no reasonable expectation of privacy in most of the required disclosures because that information was readily available to the public. [FN68] The court noted that the records of the Division of Motor Vehicles, including the applicant’s address, were public records, but that disclosure of a home address implicated privacy interests because it might result in unsolicited contact. [FN69] The court also held that “a privacy interest is implicated when the government assembles those diverse pieces of information into a single package and disseminates that package to the public.” [FN70] Nevertheless, the court held that “[t]he state interest in protecting the safety of members of the public from sex
offenders is clear and compelling[, and that] the degree and scope of disclosure is carefully calibrated to the need for public disclosure: the risk of reoffense.” [FN71] In ruling that community notification laws were constitutional, the court held that “the constitution does not prevent society from attempting to protect itself from convicted sex offenders … so long as the means of protection are reasonably designed for that purpose, and only for that purpose, and not designed to punish ….” [FN72] The court found, however, that the appellant had a protectible liberty interest in his privacy and reputation, which triggered the right to due process; thus, a judicial hearing was constitutionally mandated prior to community notification under the Community Notification Law. [FN73]

The court considered recidivism-risk statistics that the legislature “could have found” [FN74] when determining that the purpose of the laws were protection rather than punishment. The court stated:

Studies report that rapists recidivate at a rate of 7 to 35%; offenders who molest young girls, at a rate of 10 to 29%, and offenders who molest young boys, at a rate of 13 to 40%. Further, of those who recidivate, many commit their second crime after a long interval without offense. In cases of sex offenders, as compared to *365 other criminals, the propensity to commit crimes does not decrease over time …. In one study, 48% of the recidivist sex offenders repeated during the first five years and 52% during the next 17 years … successful treatment of sex offenders appears to be rare … very few offenders sentenced to ADTC [Adult Diagnostic and Treatment Center] ever meet the dual standards required for parole from ADTC. Indeed, according to Department of Correction's statistics between 1980 and 1994 only 182 inmates were paroled from ADTC … the large majority of ADTC inmates leave only after having served their maximum sentences. During the same time frame, 1980 - 1994, 712 inmates were released from ADTC at expiration of term. [FN75]

III. The Use of Websites

The internet has become an important tool for notifying the public of nearby sex offenders. However, not all states maintain internet registries, and those that do vary greatly. [FN76] “In some states where the state is not offering the internet registry, counties, cities and individuals have posted the information on their own sites.” [FN77] In 1996, Florida was one of the first states to go online with this information. Florida's internet registry includes offenders' names, addresses, photographs, aliases, crimes, and physical descriptions, and it can be searched by zip code, city or offender's name. [FN78] The Alaska sex offender website allows visitors to view all entries in the database alphabetically or to search by name, address, zip code, or other methods. [FN79]

These websites are extremely popular. During the first three weeks that the California Sheriff's Department in Riverside County operated its sex offender registry website, the site drew more than five million visitors. [FN80] During the first 96 hours after the launch of the California Attorney General's Megan's Law website on December*366 15, 2004, the website had 14 million hits, out of a total of only 35 million people in California. [FN81] Recently, Florida became the first state to “join forces with the Family Watchdog website” by providing a link to it through the Florida Attorney General website. [FN82] The Family Watchdog sex offender registry information is available for all but six states, and the remaining states will be added soon. [FN83]

Because of the increasing viewership of both state and privately run websites, homeowners are rapidly becoming more cognizant of the presence of sex offenders living or working in close proximity to their homes or to real estate that they are considering purchasing. [FN84] One website, www.scanusa.com, recently launched a free Sexual Predator Movement Alert Service. [FN85] This website allows a user to input up to five zip codes and will alert users when a sex offender moves into or changes addresses within the zip code. [FN86] The user can choose to receive the information via e-mail, PDA, pager, fax, or phone. [FN87] The potential exists that privately run websites such as Scan USA or Family Watchdog may provide more information about the location and characteristics of local sex offenders than state listings, and such sites may be significantly more user-*367 friendly. [FN88] Additionally, when asked
about his recent partnership with the Family Watchdog website, the Attorney General of Florida stated, “Family Watchdog can also serve as a bridge among the states in helping citizens know the locations of these offenders. While [some states] have a database of registered sexual predators and offenders, it is difficult to know when they move to another state. [Using Family Watchdog, s]exual offenders and predators can be tracked by name, no matter the state in which they are registered ….” [FN89]

State and privately run websites could also impact real estate disclosure laws. Laws in most states do not require a seller to disclose information that psychologically impacts the property’s value (e.g., that a person died on the property, that a prior resident had HIV/AIDS, etc.). [FN90] Frequently, this doctrine extends to the presence of sex offenders living or working nearby--most states simply require the purchase contract for real estate to contain information on how to access the sex offender database rather than an affirmative duty to investigate or disclose the presence of a sexual offender. [FN91] Sellers and real estate brokers are under a duty to refrain from *368 fraudulently misrepresenting property to a prospective purchaser, but in Glazer v. LoPreste, [FN92] the court held that statements that the house was a good place to raise children by the seller and realtor of property located across the street from a sex offender were mere expressions of opinion rather than fraudulent misrepresentation or concealment. [FN93]

With the increasing use of state and privately run websites, the issue of whether sellers have a legal or moral obligation to disclose nearby sex offenders may become moot because buyers can now easily do their own research on the topic. Additionally, courts may consider property buyers to have received constructive notice of nearby listed sex offenders, thus negating any potential liability of sellers or real estate agents for failure to disclose known sex offenders living nearby. However, as websites such as these gain publicity and use and buyers become more cognizant of the locations of sex offenders, a different and much greater burden may fall on sellers--the tremendous potential that exists for diminished property values when a sex offender moves into the neighborhood.

IV. Impact on Property Values

According to a study conducted by Wright State University researchers, the presence of registered sex offenders in a neighborhood negatively impacts the sales prices of homes in the neighborhood--sometimes dramatically. [FN94] In 2000, researchers studied approximately 3,200 home transactions in Montgomery County, Ohio. [FN95] In Ohio, sex offenders must register with the county sheriff’s office, and the public can obtain information about their location from the internet. [FN96] The researchers concluded that “[o]nce that information is made available to the public … it has an effect on the price of houses ….” [FN97] On average, houses located within one-tenth of a mile of a sexual offender sold for 17.4 percent less than similar houses located farther away, houses between one-and two-tenths of a mile from an offender sold for 10.2 percent less, and houses between two and three tenths of a mile from an offender sold for 9.3 percent less. [FN98] Additionally, “[i]f 17 percent [was] the average drop in sale price, then there [were] other sellers who took a much larger hit.” [FN99] This decrease could be extremely detrimental to homeowners’ because “[m]ost people’s wealth is in their homes.” [FN100] However, typically, a nearby sex offender will not impact the appreciation*370 or appraisal value of a house, [FN101] which means that proving a loss may be difficult. [FN102] Real estate appraisers and government assessors usually compute the value of a property by comparing similar homes in a similar area that have sold, generally in the past six months, but up to two years or more if necessary. [FN103] “This approach could prove ineffective for determining the values of homes in a neighborhood where no one wants to buy a home [because of the presence of a sex offender].” [FN104]

A. Governmental Recognition of a Decrease in Property Values

There have been instances in which governmental entities have recognized the negative property value impact of a nearby sex offender. In 2003, the Clark County Board of Equalization lowered the property taxes of three Vancouver, Washington, homeowners who lived near sex offenders. [FN105]
no market evidence to suggest that the three Vancouver homes had lost value due to a nearby home where four sex offenders lived, but the Board of Equalization recognized that the assessor's data did not indicate if [other neighborhood] sellers had disclosed to buyers that sex offenders lived nearby … and failed to say if listing prices had dropped or if sales had fallen through because of the sex-offender home. Taking into consideration what the assessor did not, the Clark County Board of Equalization lowered the property tax bills of three homeowners by 10 percent. [FN106] However, in 1999, a King County, Washington, resident attempted to appeal his property tax assessment because a sex offender lived across the street, and his appeal was denied by both King County *371 and the state Board of Tax Appeals because “there was no market evidence to back the appellant’s claim.” [FN107]

Therefore, whether the presence of a sex offender in a residential neighborhood results in a governmentally recognized decrease in property values will vary on a case by case basis. No per se rule exists for determining how much, if any, that property values will be deemed impacted as a result of one or more nearby sex offenders. As more research, such as the Wright State University study, is conducted, homeowners will have better empirical data to demonstrate the potential financial impact of nearby resident sex offenders. Additionally, diminished property value may be evidenced by neighborhood patterns, such as: if a person moves into the neighborhood and, then, upon learning about the presence of a sex offender, immediately attempts to sell his property; or if several homeowners attempt to sell their property after a registered sex offender moves into the neighborhood; or if property in a neighborhood with a sex offender remains on the market for long periods, whereas similar properties do not; or if potential buyers indicate that they will not purchase the property because a sex offender lives in the neighborhood.

Conversely, as the use of state and privately run websites increases the public’s awareness of the per-

B. Sex Offender Bans

The general public’s increasing awareness of nearby sex offenders through the use of state and privately run websites may explain why some planned subdivisions have recently begun advertising that background checks will be performed before anyone will be allowed to move into the neighborhood and that no convicted sex offenders will be permitted to reside there. [FN110] In these subdivisions, “[p]enalties may be enforced if owners sell or allow a convicted sex offender to live in their homes[,]” and “[o]wners will be required to do background checks.” [FN111] The purported reason for these bans is to protect children, but protecting property values may be an unstated additional reason. [FN112]

The legality of such sex offender bans has yet to be tested in court, and homeowners’ associations may not have the power to impose such restrictions. Doug McCloud, the 2005 president of the Columbus Board of Realtors, expressed his opinion that these types of neighborhood provisions would probably not be enforceable: “As long as you follow the law by registering, then [the] homeowners’ association … doesn’t have anything to say about it ….” [FN113] However,
in Ohio, “[m]ore than 100 associations in Cuyahoga County restrict sexual predators from moving in, and the city councils in two Cleveland suburbs have encouraged others to do so.” [FN114] In response to a claim that the sex offender bans are discriminatory, David Kaman, a lawyer representing a homeowner association in Ohio, says the bans are not discriminatory because sex offenders are treated differently under the law. [FN115] “These are self-governed communities …. You agree to abide by the rules when you move in. It’s not an attempt to discriminate against anybody[.]” [FN116] If laws created by neighborhood associations to prevent sex offenders from moving in are not upheld, then, “[i]ronically, it could become commonplace to pay offenders to relocate. Why not pay a convicted felon $5000 to move to the other side of town when it will result in a $25,000 - $50,000 increase in equity? … [O]ffenders could … profit from the negative exposure on the Internet.” [FN117]

Additionally, many states have passed laws banning sex offenders from living, working, or loitering within a certain distance from a school, daycare facility, or public park. [FN118] These bans effectively prohibit sex offenders from living in cities such as Miami Beach, Florida, because “most of the city consists of beach front public property[, so] a sex offender would violate the law no matter where they live.” [FN119] Other cities, such as Fairhope, Alabama, are considering outright bans against sex offenders living in the city, but many experts agree that this type of law would likely be struck down on constitutional grounds if challenged in court. [FN120]

Regardless of whether neighborhood associations or even whole cities are ultimately permitted by the courts to ban sex offenders, these attempts are clear evidence that the presence of a sex offender living nearby decreases property value. Society has determined that living near sex offenders is dangerous (as evidenced by the ban against sex offenders living near schools or parks) and undesirable (as evidenced by the growing popularity of subdivisions which prohibit sex offenders from living there), and any known dangerous or undesirable condition lowers property values. This decrease in property values may, in turn, implicate the Takings Clause of either federal or state constitutions.

V. Does This Decrease in Property Value Implicate the Takings Clause?

One remedy which may be available to homeowners is a Takings Clause claim against the government for diminished property value. The Takings Clause provides that “private property [shall not] be taken for public use, without just compensation.” [FN121] Prior to the case of Pennsylvania Coal Co. v. Mahon, [FN122] the Takings Clause was generally thought to reach “only a ‘direct appropriation’ of property, … or the functional equivalent of a ‘practical ouster of [the owner’s] possession ....’” [FN123] However, in Mahon, the United States Supreme Court held that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” [FN124] Later, in Lucas v. South Carolina Coastal Council, [FN125] the United States Supreme Court recognized that a taking would occur if regulation deprives land of all economically beneficial use. [FN126]

Some federal and state cases suggest that partially diminished property value resulting from governmental regulation may be enough to trigger a Takings Clause violation if the government does not compensate the landowner for that decrease in property value. In Penn Central Transportation Co. v. New York, [FN127] the court recognized that evaluation of whether a particular regulation results in a taking is essentially an “ad hoc, factual inquiry” and set forth a three-factor balancing test for evaluating whether a taking occurred: 1) the economic impact of the regulation on the claimant, 2) the extent to which the regulation has interfered with distinct investment-backed expectations, and 3) the character of the governmental action. [FN128] Similarly, in Mann v. State, [FN129] the Georgia Supreme Court held that:

[r]egulations that fall short of eliminating property’s beneficial economic use may still effect a taking, depending upon the *375 regulation’s economic impact on the landowner, the extent to which it interferes with reasonable investment-backed expectations, and the interests promoted by the government action. When considering these factors, courts must
remain mindful that the Takings Clause is intended to prevent the government from “forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” [FN130] The recognition that partially diminished value resulting from a governmental regulation could constitute a taking poses an issue that courts have yet to address: could a landowner potentially be entitled to governmental compensation pursuant to the Takings Clause if the government’s policies regarding sex offender registration and notification result in diminished property value? As discussed above, the Wright State study found that the presence of a registered sexual offender negatively impacts the sale price of homes in the neighborhoods where the offender lives by an average of 9 to 17 percent, depending upon the proximity of the property to the sex offender’s residence, and future studies may show that homeowners are affected significantly more. [FN131] As the Wright State study indicated, once information about the location of sex offenders is made available and readily obtainable to the public, property values will be impacted. [FN132]

Applying the three-factor balancing test, whether or not the Takings Clause is implicated in a diminished property value case depends upon “the regulation’s economic impact on the landowner, the extent to which it interferes with reasonable investment-backed expectations, and the interests promoted by the government action.” [FN133] Thus, in order to succeed on a Takings Clause claim, a landowner would likely have to show that: 1) government enactment of the sex offender notification statute significantly diminished his property value; 2) this decrease in property value interfered with his reasonable investment-backed expectations; and 3) balanced against the interests of public safety promoted by the notification statute, the landowner alone should not be forced to bear the public burden, which, in all fairness and justice, should be borne by the public as a whole. [FN134]

A. Economic Impact Prong

As discussed above, a variety of methods exists for demonstrating that the presence of a nearby registered sex offender significantly impacts a landowner’s property value. However, current case law indicates that the average impact to homeowners, as according to the Wright State study, [FN135] of diminished value of 9 to 17 percent would probably not be enough to qualify as a taking and that a homeowner would probably need to show diminished value of 85-100 percent or an inability to sell the property to recover under the *377 Takings Clause. [FN136] This is a high burden for homeowners to meet, *378 particularly without more empirical data than is currently available. Additionally, a landowner would still have to show that the reason for this decrease is not merely the presence of the sex offender but because of the enactment of the sex offender notification statute.

A potential hurdle in demonstrating that the notification statute was the cause of the property value decrease is that the information regarding sex offenders was always public record. However, this argument is flawed because, despite the fact that the information was always public record, before the Megan’s Law disclosure laws were enacted and websites were employed, the information was not easy to access and was not accessed by very many people. The widespread dissemination of this information is why the potential exists that landowners who live near sex offenders may have difficulty finding a buyer and, thus, for property values to be influenced. [FN137]

Nonetheless, a homeowner may have difficulty proving that the diminution in value was caused by the government action, particularly if websites owned and run by private individuals and not affiliated with the government release the same information about sex offenders. If potential home buyers can access the same information via privately-run websites, homeowners will be unable to prove that the value of their property diminished due to enactment of sex offender notification statutes, particularly if the privately run websites are accessed more often than the government-run websites. Rather, their property value would have diminished regardless because potential homeowners interested in discovering the loc-
ation of nearby sex offenders could access the private websites even if government websites were not available. The argument that these private websites would not have come into existence if the government had not enacted the sex offender notification statutes is probably too attenuated to succeed. Thus, due to the widespread dissemination of information about the location of sex offenders via privately-run websites, the likelihood of a Takings Clause violation applying to Megan’s Law is probably quite remote.

B. Reasonable Investment-Backed Expectations Prong

Arguing that a drop in property value because of enactment of sex offender notification statutes, even a dramatic drop, interferes with the “reasonable investment-backed expectations” of owning a home may also prove difficult. [FN138] Despite the fact that most people probably do not consider the potential future impact of a sex offender moving onto their street when they purchase their homes, this fact alone may not be enough. The interference with reasonable investment-backed expectations prong is a “way of limiting takings recoveries to owners who [can] demonstrate that they bought their property in reliance on a state of affairs that did not include the challenged regulatory regime.” [FN139] “This factor encompasses two related elements: first, the extent of the plaintiffs’ investment in reliance on the regulatory scheme in place at the time of the purchase; and second, the extent to which the regulation of their property was foreseeable.” [FN140] A homeowner who bought with knowledge of the restraint on the property “could be said to have no reliance interest, or to have assumed the risk of any economic loss. In economic terms, it could be said that the market had already discounted for the restraint, so that a purchaser could not show a loss in his investment attributable to it.” [FN141]

Accordingly, homeowners who purchase property today would probably not be able to recover under a Takings Clause theory because they would be deemed to have knowledge of the sex offender notification statutes, they would not have bought the property in reliance on an existing regulatory scheme that did not involve the sex offender notification statutes, and it may be assumed by the court that the market already discounted for the potential of the economic loss if a sex offender moves in nearby. In order to recover under the Takings Clause, a homeowner who owned property prior to the enactment of the sex offender notification statutes would need to prove that he or she bought the property in reliance on the lack of sex offender notification statutes at the time of purchase and that this regulation was not foreseeable. Thus, although proving these elements may be problematic, the longer a homeowner has owned the property, the more likely he or she would be able to recover under a takings theory.

C. Interests Promoted by the Government Action Prong

The government has a strong interest in protecting the public, particularly children, from sex offenders. In Mann v. State, [FN142] the court addressed the State’s “considerable” interests underlying the sex offender residency statute:

> The Statute is designed to safeguard against encounters between minors and a convicted sex offender by requiring at least a 1,000 foot distance between places where the former congregate and the latter resides. While not every convicted sex offender will be a recidivist, the statute aims to lessen the potential for those offenders inclined toward recidivism to have contact with, and possibly victimize, the youngest members of society. As such, the State’s interests underlying the Residency Statute are entitled to substantial weight. [FN143] In Mann, a sex offender was forced to move out of his parents’ house because it was within 1,000 feet of a child care facility. The court held that whatever minimal interest the sex offender had in his parents’ house was substantially outweighed by the state’s interest and was, therefore, not an unconstitutional violation of the Takings Clause. The court held that the statute was designed to protect the public welfare, health, and safety, and that “obedience to regulations that are enacted under the State’s police power for purposes of public safety and that affect the use of property are generally not treated as a governmental taking.” [FN144]
In the situation where an innocent homeowner's property value decreases because a nearby sex offender's presence is made public through State-run websites, the interests of the State may not weigh as strongly against the interests of the homeowner. In *Mann*, the person filing the lawsuit was not the homeowner—he was residing at his parents' house—and was only affected by the statute because he had committed a sex crime, whereas if an unoffending homeowner's property value is decreased because the enactment of a notification statute reveals a nearby sex offender, then the complainant would have a substantial property interest and would not have contributed to the property value's decrease. Arguably, a landowner should not alone be forced to bear the public burden of enactment of sex offender notification statutes, which, in all fairness and justice, should be borne by the public as a whole. However, the enactment of the notification statute is within the State's police power to protect public safety, which substantially weighs against the finding of a governmental taking.

Ultimately, the court would probably reject a Takings Clause argument pertaining to sex offender notification statutes for public policy reasons. The public, the government, and the courts have recognized the substantial need to protect children from sex offenders. The high sex offender recidivism rate and the lack of alternatives for protecting the public from repeat sexual offenders makes internet notification of nearby sex offenders an important step toward protecting the public in the minds of most policymakers. Any type of notification to the public of nearby sex offenders would be cost prohibitive to the government if the government had to then compensate every property owner who consequently suffered a diminished property value. The courts are not likely to favor this option since protecting the public from sex offenders is such a vital interest and no alternatives better than internet notification currently exist. Therefore, when balancing the interests of the affected landowner and the state, the court is likely to find in favor of the state. This may change if other alternatives become available in the future.

Thus, it is unlikely that a Takings Clause argument would succeed because: 1) it would be difficult for the homeowner to demonstrate a sufficient economic impact that resulted from enactment of the sex offender notification statutes, as opposed to from the sex offender moving in or the dissemination of the sex offender's location via private websites; 2) it would be difficult for the homeowner to demonstrate interference with reasonable investment-backed expectations; and 3) the government's interest in protecting the public against nearby sex offenders probably outweighs the interest of the homeowner. The unlikelihood of success of a Takings Clause argument may make other potential arguments, such as a nuisance claim, more important for homeowners.

VI. Can a Neighboring Sex Offender be Considered a Nuisance?

Another issue that has not yet been addressed by the courts is whether homeowners could prevent sex offenders from moving into their neighborhood through the use of state nuisance laws. This argument has two components: 1) the nearby sex offender is a nuisance because he or she endangers the comfort, repose, health, or safety of others, and 2) the nearby sex offender is a nuisance due to the diminution in property values that results from his or her presence. If a sex offender does qualify as a nuisance, the homeowner would be able to either seek money damages (however, the offender may effectively be judgment proof since he or she is likely to have few assets) or enjoin the offender from moving into the neighborhood (this would frequently be a more desirable remedy).

“Nuisance law is divided into private nuisances and public nuisances.” Public nuisance is the invasion of “rights common to all members of the public, such as for example the right to the free and safe use of the public highway.” A public nuisance is … normally a criminal offense and recovery of damages is … limited to those who can show particular harm, of a kind different from that suffered by other members of the public exercising the public right.” The interference can be to public health, safety, peace, morals, comfort, or convenience.”

Private nuisance is the “invasion of the private in-
One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another’s interest in the private use and enjoyment of land. [FN154] “In most instances, the determination of whether an activity constitutes a nuisance depends upon the circumstances of the case, but there are a small number of activities which are nuisances per se.” [FN157] “[N]uisance law has never adequately explained which harms can be remedied and which cannot, but the best evidence of the kinds of harms addressed by nuisance law lies in the results of the decided cases.” [FN158]

In a recent opinion, W. A. Drew Edmondson, the Attorney General of Oklahoma, addressed the issue of how state nuisance laws could potentially be used for enforcement of the Oklahoma residency restriction for sex offenders:

State nuisance laws [FN159] may provide an avenue of enforcement. Those laws provide, “[a] nuisance consists in unlawfully doing an act . . . which injures or endangers the comfort, repose, health, or safety of others; or . . . [i]n any way renders other persons insecure in life.” [FN160] The statutes identify two classes of nuisances: public and private. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.” [FN161] All other nuisances are deemed to be private. [FN162] A district attorney has the discretionary authority to seek an injunction to enforce the civil provisions of the Oklahoma sex offender residency restriction statute [FN164] if the violation of such constitutes a public nuisance. [FN165] This suggests that a sex offender who lives too close to a school or is violating other state residency restrictions could be deemed to be endangering the comfort, repose, healthy, or safety of others. Additionally, courts have analyzed nuisance in the context of diminution in property values and in the context of health, safety, and repose for other types of offenders.

*386 In Newport v. Emery, [FN166] landowners complained that a nearby site slated to become a landfill constituted a nuisance because the landfill would cause a diminution in property values. The court held that the evidence presented by the landowners was not sufficient to establish diminution in values and that “more is required to establish a nuisance than a bare assertion of a depreciation in property values . . . [A] prohibition [of construction] is permissible only when the preponderance of the testimony shows that the activity is certain to be a nuisance.” [FN167] The court added that “the construction of a jailhouse or a service station in an essentially residential area may cause a depreciation in property values, but not a nuisance” [FN168] and that “[p]erhaps, the landfill may . . . prove to be a serious annoyance to the residents in the vicinity, but on the other hand, it may turn out to be harmless.” [FN169]

The court distinguished the case of Arkansas Release Guidance Foundation v. Needler, [FN170] in which it held that the operation of a halfway house for parolees and prisoners constituted a private nuisance. In Needler, the court stated that conduct would be enjoined as a private nuisance if “the resultant injury to the nearby property and residents is certain, substantial, and beyond speculation and conjecture” [FN171] and held that the evidence supported the finding of diminution of property values due to the operation of the halfway house, including “the real and reasonable fear and apprehension for the homeowners’ safety, coupled with the inclusion of a sex offender as a resident . . .” [FN172] This suggests that the distinction between Emery and Needler is the sufficiency of the evidence of the diminution in property value which may result in the future, with an emphasis on fears for safety as indicative of diminution.
Furthermore, in *Howard v. Ethieson*, [FN173] the court enjoined the erection of a funeral home in a residential area because it decreased *387* property values, was depressive and a constant reminder of death, restricted the play and activity of children, and had an adverse effect upon the comfort and health of its residents. [FN174] However, a differing result occurred in *Nicholson v. Connecticut Half-Way House*, [FN175] where the property owners intended to use their property to house prison parolees and the neighboring residents alleged that the peaceful use and enjoyment of the surrounding properties was threatened. The court held that to meet the test of whether a proposed use constituted a nuisance, “the evidence must show the proposed use of the property under the circumstances was unreasonable[,]” and, in this case, the property owner’s proposed use was lawful and the parties suing did not offer evidence to prove any specific acts or pattern of behavior that would cause them harm. [FN176] Further, their fears and apprehensions based on speculation and the claim of depreciated property values did not warrant the granting of injunctive relief. [FN177] Thus, there was an insufficient factual showing that the proposed use of the property was unreasonable or that the prospective residents of the halfway house would engage in unlawful activities in the neighborhood, and the court did not grant the injunction. [FN178] The court stated that:

> [the plaintiff’s argument rests on] the fears … that the residents of the … halfway house will commit criminal acts in the neighborhood and the finding that the proposed use has had a depreciative effect on land values in this area … The real objection of the plaintiffs is to the presence in the neighborhood of persons with a demonstrated capacity for criminal activity. They fear future manifestations of such activity in their neighborhood. This present fear of what may happen in the future, although genuinely felt, rests completely on supposition. The anticipation by the plaintiffs of the possible consequences of the defendant’s proposed use of the property can be characterized as a speculative and intangible fear. They have neither alleged nor offered evidence to prove any specific acts or pattern of behavior which would cause them harm so as to warrant … injunctive relief … No court … should ever grant an injunction merely because of the fears or apprehensions of the party applying for it. Those fears or apprehensions may exist without any substantial *388* reason. Indeed they may be absolutely groundless … [Furthermore, t]he mere depreciation of land values, caused in this case by the subjective apprehensions of neighboring property owners and their potential buyers, cannot sustain an injunction sought on the ground of nuisance. [FN179] Neither the Oklahoma Attorney General’s opinion nor these cases conclusively provide how the court would rule on a nuisance action against a sex offender moving into a neighborhood. State residency statutes were enacted to protect children from becoming victims of sex offenders. If a sexual offender is considered to be “injur[ing] or endaner[ing] the comfort, repose, health, or safety of others” [FN180] when he or she lives too close to a school, as suggested by the Oklahoma Attorney General’s opinion, then it follows that a sex offender would also be “injur[ing] or endaner[ing] the comfort, repose, health, or safety of others” when he or she is living next door or down the street from a family with children. However, that may not be enough to qualify as a nuisance because the legislature has not made the act of living in a residential neighborhood illegal and because imposition of a ban against sex offenders living in residential neighborhoods would significantly restrict the ability of sex offenders, who have theoretically paid their debt to society, to find housing. A sex offender who lives in a residential neighborhood and happens to cause a diminution in property values is a different situation than a sex offender who lives in a residential neighborhood and is violating a state residency statute (as addressed in Edmondson’s opinion). By violating a state residency statute, the sex offender is specifically committing an unlawful act, whereas an offender who is living in a neigh-
hood without violating the residency statute is not committing an unlawful act.

Newport and Needler suggest that the success of a nuisance action against a sex offender depends upon the sufficiency of the evidence proving the diminution and the risk to nearby homeowners. In Newport, the court denied the nuisance action because the plaintiffs did not present enough evidence to show that their property value would actually be reduced. In Needler, the operation of a halfway house was enjoined because injury to nearby property owners was certain, including diminution in property value and the fear homeowners would have as a result of parolees, prisoners, and a sex offender residing at the halfway house. The situation addressed in this paper is similar to Needler because, as discussed above in the section entitled “Impact on Property Values,” there may be a great deal of evidence proving diminution in property values and increased risk to residents, including statistical evidence regarding the rate of sex offender recidivism and statements made by the legislature and policy makers regarding the risk posed to the public by previous offenders. Therefore, according to the approaches taken in those cases, the nuisance action could be successful against a sex offender if enough evidence is presented that property value was diminished and the neighborhood was at risk.

Similarly, Howard indicates that the nuisance action would be successful. In Howard, the court enjoined the erection of a funeral home because it decreased property values, was depressive and a constant reminder of death, restricted the play and activity of children, and had an adverse effect upon the comfort and health of its residents. [FN181] In the situation addressed in this paper, property value will be decreased, the play and activity of children in a neighborhood would likely be restricted because parents may not feel comfortable with their children playing outside with a sex offender living in the neighborhood, and it may have an adverse effect upon the comfort of its residents because they will be fearful and apprehensive of the sex offender.

Conversely, the approach the court took in Nicholson tends to indicate that a nuisance claim against a sex offender living in a neighborhood would be denied. In Nicholson, the court denied an injunction against the construction of a halfway house because that was not an unreasonable or unlawful use of the property, the nearby landowners could not prove harm because their fears were merely speculative, and depreciated property value does not warrant injunctive relief. [FN182] Similarly, in this situation the sex offender would be engaging in a lawful and reasonable activity by merely living in a neighborhood, some of the landowners’ fears may be speculative, and the claim is largely based on depreciated property value.

The situation addressed in this paper may differ from the facts in Nicholson if the landowners can substantiate the property value harm they have suffered or will suffer and can show a risk of physical danger. However, substantiated diminished property value and a fear of physical harm in the future would probably still not be enough to justify a nuisance claim according to the Nicholson approach because the claim still largely involves diminished property value, which the court does not view as sufficient damages for recovery under the nuisance theory. The only other type of available damage--risk of future criminal activity--would be difficult to prove because society deemed the offender harmless enough to release him or her from confinement, and preventing a sex offender from moving into a residential neighborhood does not necessarily prevent the offender from harming someone in the neighborhood if he or she was so inclined. Additionally, the Nicholson court stated that fear derived from someone’s past capacity for criminal activity is based on supposition and that an injunction should not be granted merely because of fears. [FN183] Therefore, it is unlikely that a nuisance claim would be granted against a sex offender moving into a residential neighborhood under the Nicholson approach.

Because the courts have never addressed this type of nuisance claim, it is unknown how they would rule. However, public policy considerations may also affect their decision. Enjoining sex offenders from residing in residential neighborhoods significantly limits their ability to obtain housing, which may raise constitutional issues. [FN184] Even, if the court
found that permitting sex offenders to be banned from living in residential neighborhoods was constitutional, the court would likely leave the decision to actually ban the offenders up to the legislatures because this type of action raises so many problems that the courts are not equipped to solve, such as where to place the substantial number of former sex offenders who would then be ejected from their homes, how to integrate the offenders back into the community, where to draw the distinction between sex offenders who committed more serious offenses versus less serious offenses and the recidivism rates of those offenses, and whether the imprisonment terms of sex offenders should be increased if they are deemed to be of such a great continuing risk to society. The legislature may be better equipped to solve these dilemmas, and, in fact, new technology, such as ankle bracelets, is being considered as a way to promote public safety without banning sex offenders from residential areas.

VII. Ankle Bracelet Monitoring of Sex Offenders

One type of legislation that could help to mitigate the negative impact of nearby sex offenders on property values is the use of ankle bracelets to monitor sex offenders. A national survey conducted in 2003 by Parents for Megan’s Law found that 24 percent of the more than 500,000 sex offenders in the country were not complying with the registration requirements. The group executive director stated, “We have a system where we expect the most cunning and devious of our criminals to register themselves … What we’d like to see is lifetime supervision.” This type of perspective has led policy makers to consider the use of GPS ankle bracelets to monitor serious sex offenders. These bracelets could notify authorities if an offender has gone into a prohibited area, such as a school or the neighborhood of a victim, or if someone attempts to remove the bracelet. Officials can “pinpoint the exact location of an offender at any point during a day, which can be used not only to discourage crime but help solve a crime if a GPS wearer is a suspect.” The units cost approximately $10 per day per offender, and monitoring costs add $16 to $30 per day. In 2005, at least four states (Florida, Missouri, Ohio and Oklahoma) passed laws “requiring lifetime electronic monitoring for some sex offenders, even if their sentences would normally have expired. Similar bills have been proposed in Congress and other states, including North Dakota and Alabama.” The California Department of Corrections recently announced plans for a pilot program that will lock GPS ankle bracelets on 180 highrisk sex offenders in southern California. The pilot program is scheduled to last two and a half years and will cost the Department of Corrections $8.75 a day per offender. If the offender enters a prohibited area or attempts to remove his bracelet, a parole officer would receive a cell phone call, page, email, or fax, and police officers could respond. “As part of the pilot program, crime data from local law-enforcement agencies will be compared with data about offenders’ movements. Police can then easily identify which offenders were near the scene of a crime and which ones were out of the area …” Other counties are using different systems. “The system used by San Bernardino County uses an ankle bracelet and a cellular phone, through which an offender and a supervising probation officer on duty 24 hours a day can communicate. If an offender strays into a restricted area, the supervising probation officer is notified, and the officer then can get in touch with the offender and decide whether the police need to respond.”

GPS tracking is not infallible. “Signal transmission can be blocked in large buildings or in wooded areas,” distance and traveling time required may prevent authorities from intervening in a crime before it is committed, and the bracelets are expensive to replace if they are tampered with or destroyed. Despite the drawbacks, the “‘active’ GPS systems used to track offenders provide quick results and improve monitoring.”

*393 The GPS ankle bracelets that are currently being employed are not likely to be considered an unreasonable invasion of privacy or cruel and unusual punishment if challenged in court because the methodology is similar to house arrest, which has been held to be constitutional, and because the government’s interest in protecting the public from future sex crimes is substantial.
Whereas house arrest is punishment, the GPS ankle bracelets for monitoring sex offenders are not designed to punish and are instead intended to protect the public—a goal which courts tend to view favorably. [FN202]

*394 However, if public fear that sex offenders will commit repeat offenses continues to increase, lawmakers may attempt to take this technology one step further: the public may be able to monitor the location of the most egregious sex offenders in real time via the internet. The availability of real time monitoring of sex offenders by the public would raise both constitutional and invasion of privacy concerns, but courts would have to weigh the privacy interests of the offenders against the public safety interest. Although real time public monitoring may currently seem like an impermissible idea, it may become viable as privacy decreases for the public at large. Websites such as Google Earth [FN203] currently offer detailed aerial photographs of individual houses taken via satellite. Currently, this website is not available for real time viewing, but if websites such as this emerge in real time, then the general public would be able to view any individual’s house at their leisure. In such a scenario, GPS bracelets showing sex offenders’ locations via the internet would not be much more of a privacy invasion than most citizens would already face. Foreseeably, a watchdog-type of website could easily then emerge with moving GPS targets linked with serious sex offenders’ ankle bracelets. If this type of real time monitoring is permitted and homeowners feel more secure, the impact that nearby sex offenders have on property values may decrease. Nonetheless, even that type of monitoring will probably not make the public feel entirely at ease living next door to a sex offender.

VIII. Continued Involuntary Commitment of Sex Offenders

Some states have used another method of preventing future crimes and protecting the public, which in turn prevents property values from being decreased: involuntary commitment of sex offenders in the public mental health system even after prison time has been completed. By 1997, eleven states had passed this type of law. [FN204] “Five states specifically allow for the indefinite involuntary commitment of sexually violent predators upon completion of their *395 prison sentence[,]” and two states require the commitment of offenders to occur during sentencing in order for them to be involuntarily committed after serving their prison time. [FN205] “One state has repealed its law for new offenders but permits the continued involuntary commitment of previously committed offenders.” [FN206]

In Kansas v. Hendricks, [FN207] the U.S. Supreme Court held that involuntary civil commitment after incarceration of a sexually violent predator based on past sexually violent behavior and present dangerous mental condition is constitutional because it did not violate due process and did not constitute double jeopardy. The Court held that the Kansas Act permitting involuntary commitment [FN208] satisfied due process concerns because it unambiguously required a finding of dangerousness either to one’s self or to others as a prerequisite. [FN209] Commitment proceedings were initiated only when a person had been convicted of or charged with a sexually violent offense and suffered from a mental abnormality or personality disorder that made the person likely to engage in the predatory acts of sexual violence. [FN210] Additionally, the Court held that since the Act did not establish criminal proceedings and because the involuntary confinement pursuant to the Act was not punitive, an inmate’s involuntary detention did not violate the Double Jeopardy Clause, even though the confinement followed a prison term. [FN211] Because the Act did not impose punishment, did not criminalize conduct legal before its enactment, or deprive the inmate of any defense that was available to him at the time of his crimes, the Court held that the Act was not impermissible under the Ex Post Facto Clause. [FN212]

The aforementioned case, indicating favorable treatment of involuntary commitment of sex offenders who are still considered a threat, provides states with another alternative for dealing with sex offenders. However, this approach has been criticized by the National Mental Health Association (“NMHA”). First, whereas the *396 NMHA recognizes the importance of protecting the community from sex offenders, the organization
is concerned that the mental health system is not the appropriate place for such incarceration. Sexual predator statutes state that the continued confinement of sex offenders in mental health systems is for the safety of the public not treatment of the offender. While public safety is an appropriate societal goal, the historic purpose of the mental health system has been treatment, even when that treatment is involuntary. If the societal goal here is incapacitation and incarceration of a potentially dangerous offender, the criminal justice system is the appropriate place. If current criminal justice statutes do not allow for sufficient incarceration, then those statutes need to be addressed. [FN213] Second, the NMHA is concerned about the ambiguous and sometimes inaccurate language in state statutes suggesting that sex offenders are afflicted with a diagnosable and treatable mental illness. [FN214] The NMHA states that “sex offenses are [typically] a manifestation of personality disorders that are not amenable to most kinds of treatment available in public mental health systems [,]” and that public perception of mental illness and treatment in the mental health system could become more stigmatized than it already is if sex offenders are viewed as mentally ill. [FN215] Finally, the NMHA fears for both the safety of the other residents in the treatment facilities and the financial stress that already poorly funded public health facilities may have to endure. [FN216]

IX. Conclusion

The impact that sex offender notification laws potentially have on property values was probably not considered by policy makers when Megan’s Laws were enacted. As more people become aware of state and privately run websites identifying the whereabouts of sex offenders, this impact is likely to increase. As homeowners have increasing difficulty selling their properties because of nearby offenders, litigation is likely to result. The court has never addressed whether a homeowner may have a Takings Clause claim for this diminished property value or whether the presence of a sex offender could be considered a nuisance, and these theories provide novel arguments, but, ultimately, the court is likely to leave decisions with such drastic policy implications up to the legislature. Regardless of whether a homeowner could successfully achieve redress for his or her diminished property value, policymakers should consider the impact that the dissemination of sex offender information is having on property values and take steps to mitigate it. The use of lifetime GPS ankle bracelets or continued involuntary commitment in the mental health system are two steps currently being considered by legislatures, but both options have limitations. As technology and awareness of nearby sex offenders increases among the general public, the public and the legislature will continue to search for new and different solutions.

Exhibit I - Depiction of Location of Sex Offenders in the U.S. [FN217]

There are 211,181 registered sex offenders on this map.

Do you know where they live?

We do.

CLICK HERE to find registered offenders near you.

Exhibit II - Offender Count by State [FN218]

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* Introduce a study resolution requesting that the Virginia Criminal Sentencing Commission, in cooperation with the Department of Corrections, develop a risk assessment instrument for “sexually violent offenses” and report back to 2000 General Assembly; *
* Introduce a memorializing resolution which requests that the Judicial Conference include a section on sex offenses and the high rate of recidivism. The section should provide information on the necessity of providing adequate post incarceration supervision for sex offenders. *
offenders:  * Include 18.2-67.5:1 convictions on the Registry (third misdemeanor sex offense conviction becomes a Class 6 felony);  * 18.20370-Indecent liberties with a child: Increase the second conviction to a Class 5 felony;  * Cross reference the crimes in the two strikes statute (18.2-67.5:3-the second conviction of certain sexually violent crimes carry a life sentence) in 18.2-67.5:2 (Second conviction triggers maximum penalty);  * Include aggravated sexual battery in the two strikes statute: 18.2-67.5:3;  * Require a formalized sex offender assessment and treatment, if indicated, of all convicted sex offenders at some time during their *404 incarceration or probation in the Department of Corrections. Assessment should include evaluation for psychopharmacological sex offender treatment, such as antiandrogens or SSRT’s (specific serotonin reuptake inhibitors) proven to be effective in treating some deviant sexual behaviors;  * Establish intensive prison-based treatment programs with a proven record of success. Resources Needed: $600,000  * Provide resources to community corrections for treatment, including polygraphing, of sex offenders under community supervision. Resources Needed: $655,000  * Provide resources to Department of Juvenile Justice to establish one additional sex offender treatment unit. Resources Needed: $125,000  * Introduce a study recommendation to direct the Department of Mental Health, Mental Retardation and Substance Abuse Services, in collaboration with the Department of Corrections, the Department of Juvenile Justice, the University of Virginia, and Virginia Commonwealth University to explore the development of a Center for Sex Offender Assessment and Treatment including the Professional structure, organizational context, assessment and treatment programming. The study will:  1. Review the availability of facilities and professional staff, and explore the legal issues pertinent to this type of Center, including informed consent, liability, inmate/patient security requirements.

2. Include consultation with other states, state agencies, and academic institutions regarding the multiagency utilization of a Center.

3. A report will be completed to present to the Governor and the 2000 General Assembly. The report will include a proposal for a Commonwealth Center for Assessment and Treatment of Sexual Disorders, to include the needed resources to implement the proposal.

Resources for Planning: $50,000  The Crime Commission will continue to examine the issue of civil commitment of sexual predators.

[FNa1] . J.D. Candidate, 2007, Indiana University School of Law - Indianapolis. Special thanks go to Professors Lloyd T. Wilson, Jr. and Robin K. Craig; Attorneys Susan H. Street, Matthew W. Conner, Kevin M. Quinn, and Robert S. Daniels; and future attorney Will Hartzell-Baird. Their ideas, insight, and assistance were truly invaluable.


[FN2] . Family Watchdog has been featured in news stories in the following local markets: Denver, Colorado; Quad Cities, Iowa; Davenport, Iowa; Detroit, Michigan; Bridgeport, Connecticut; San Diego, California; Indianapolis, Indiana; South Bend, Indiana; Louisville, Kentucky; Fort Wayne, Indiana; Nashville, Tennessee; Boston, Massachusetts; Bluefield, West Virginia; Greenville, North Carolina; Terre Haute, Indiana; Houston, Texas; Dallas, Texas; Orlando, Florida; Colorado Springs, Colorado; Amarillo, Texas; Columbus, Ohio; Youngstown, Ohio; and many more. Family Watchdog in the News and on the Web, http://www.familywatchdog.us/news.asp (last visited Jan. 24, 2006).

[FN3] . Jennifer Regazzi, Indiana Senate, Communications Specialist, Drozda Proposes Changes to the Indiana Child Protection Laws & the Sex Offend-


[FN7] . For a depiction of the locations of sex offenders located in the United States obtained from the Family Watchdog website, see Exhibit I.


[FN9] . Id.


The bill will integrate the information in State sex offender registry systems and ensure that law enforcement has access to the same information across the United States, helping prevent sex offenders from evading detection by moving from State to State. Data
drawn from this comprehensive registry will be made available to the public so parents have the information they need to help protect their children from sex offenders.


The bill imposes tough mandatory minimum penalties for the most serious crimes against children and increases penalties for crimes such as sex trafficking of children and child prostitution. It also provides grants to States to help them institutionalize sex offenders who have shown they cannot change their behavior and are about to be released from prison.


[FN29] H.R. 4472, 109th Cong. § 114 (2006) (enacted). This information includes the name and physical description of the sex offender, social security number, current residence, place of employment, place where the sex offender is a student, a photograph, fingerprints and palm prints, a DNA sample, a photocopy of a valid driver’s license or identification card, and a criminal history. *Id.*


[FN34] *Id.*


[FN41] Southern Californians for Jessica’s Law.


[FN49] . Id.

[FN50] . Id.

[FN51] . Id.

[FN52] . Id.

[FN53] . Id.

[FN54] . Id.


[FN60] . U.S. CONST. art. I, § 10, cl. 1. This Clause “is aimed at laws that retroactively alter the definition of crimes or increase the punishment for criminal acts.” California Dep't of Corrections v. Morales, 514 U.S. 499, 504 (1995).

[FN61] . U.S. CONST. amend. V. “The Double Jeopardy Clause of the United States Constitution provides three different types of protection for a person charged with a crime. Double jeopardy protection shields an accused from: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense.” State v. Mertz, 907 P.2d 847, 851 (Kan. 1995).


[FN66] . Id.

[FN67] . Id.

[FN68] . Id. at 407-409.

[FN69] . Id. at 408-409.
[FN70] . Id. at 411.

[FN71] . Id. at 412.

[FN72] . Id. at 372.

[FN73] . Id. at 420.

[FN74] . Id. at 374.

[FN75] . Id. at 374.


[FN78] . Id.


[FN83] . The six states which the Family Watchdog website has not yet loaded data for are: Nevada, Pennsylvania, Oregon, Rhode Island, South Dakota, and Vermont. According to Family Watchdog, these states “either do not provide address data or do not have a centralized registry.” Family Watchdog Frequently Asked Questions, http://www.familywatchdog.us/faq.asp (last visited Jan. 24, 2006).

[FN84] . Family Watchdog was founded by Steve Roddel of Westfield, Indiana, and in the four months since its launch, it has grown into America’s number one site for the identification and mapping of convicted sexual offenders with more users than the next three sites combined. PR Web, Press Release Newswire, Family Watchdog Starts Foundation to Fight Sexual Predators, http://www.prweb.com/releases/200512/0/prweb316567.htm (last visited Feb. 16, 2006).


[FN86] . Id.

[FN87] . Id.


[FN91] . Phoebe Chongchua, Realty Times, Registered Sex Offender Disclosure Necessary in Home Sales, June 20, 2005, http://realty-
times.com/rtcpages/20050620_registeredoffender.html (last visited Jan. 24, 2006). Some states require sellers, listing agents, and/or buyer's agents to provide any known information about registered sex offenders living in the area to buyers. For example, “[u]nder civil code 1102 and/or 2079 [in California] a seller has a duty to disclose any facts that might materially affect the value or desirability of the property and to disclose those facts to any prospective purchaser.” *Id.* Thus, under that type of law actual knowledge of a registered sex offender living across the street could require disclosure, but there is not a duty to investigate whether a registered sex offender lives nearby. Informing the prospective purchaser how to access the database is sufficient for compliance with the disclosure requirement regarding information under Megan's Law. *Id.* See Tracey A. Van Wickler, Legislative Review H.B. 2564: The Real Estate Disclosure Act Threatens Arizona's Children with Becoming “Megan” Victims, 32 ARIZ. ST. L.J. 367 (2000) (discussing the duty to disclose in Arizona real estate transactions); Lori A. Polonchak, *Surprise! You Just Moved Next to a Sexual Predator: The Duty of Residential Sellers and Real Estate Brokers to Disclose the Presence of Sex Offenders to Prospective Purchasers*, 102 DICK. L. REV. 169 (1997) (discussing the duty to disclose unfavorable information in real estate transactions and sex offender laws); Thomas D. Larson, *To Disclose or Not to Disclose: The Dilemma of Homeowners and Real Estate Brokers Under Wisconsin's “Megan's Law,”* 81 MARQ. L. REV. 1161 (1998) (discussing common law and statutory duties to disclose the presence of sex offenders to prospective homebuyers particularly as it pertains to Wisconsin law); Shelley Ross Saxer, “*Am I My Brother's Keeper?*: *Requiring Landowner Disclosure of the Presence of Sex Offenders and Other Criminal Activity*, 80 NEB. L. REV. 522 (2001) (discussing seller or landlord's duty to disclose nearby sex offenders); Flavio L. Komuves, *For Sale: Two-Bedroom Home with Spacious Kitchen, Walk-In Closet, and Pervert Next Door*, 27 SETON HALL L. REV. 668 (1997) (discussing state real estate disclosure laws).


[FN98] . *Id.*

[FN99] . *Id.*


[Id.] .

[Id.] .

[Id.] .


[Id.] .

[Id.] .

[Id.] .


[Id.] .

[Id.] .

[Id.] .


[Id.] .

[Id.] .


[Id.] .


[Id.] .

[Id.] .

[Id.] .

[Id.] .

U.S. CONST. amend. V.

[Id.] .


[Id.] .


[Id.] .

*Pennsylvania Coal Co.*, 260 U.S. at 416.

[Id.] .


[Id.] .

Id. at 1027.

[Id.] .


[Id.] .

Id. at 124.

[Id.] .


[Id.] .

Id. at 285.

[Id.] .


[Id.] .
The effectiveness or ineffectiveness of the statute in furthering the state's goals has no bearing on the significance of the burden to the landowner. \( \text{Id. at 2084} \). Further, a taking presupposes that the state "acted in pursuit of a valid public purpose[,]" and the underlying validity of the statute itself was a matter of due process rather than a measure of whether a taking occurred. \( \text{Id.} \)


State courts may be more generous than federal courts when evaluating diminished property value Takings Clause claims. For example, the Oregon Supreme Court recently upheld Measure 37, ORS 197.352(8), as constitutional. In general, Measure 37 requires state and local governments to compensate private property owners for the reduction in the fair market value of their real property that results from any land use regulations of those governmental entities that restrict the use of the subject properties. As an alternative to the

\[ \text{FN133] . Mann, 603 S.E.2d at 285. } \]

\[ \text{FN134] . Id. In Lingle v. Chevron U.S.A. Inc., 125 S. Ct. 2074, 2082-2086 (2005), the United States Supreme Court held that whether a statute substantially advanced a legitimate state interest was not a valid method of identifying regulatory takings for which just compensation was required because such a test does not address “the magnitude or character of the burden” imposed upon a landowner, nor does it assist in identifying those regulations whose effects were “functionally comparable to government appropriation or invasion of private property . . . .” Id. at 2084. } \]

\[ \text{FN135] . Wright State University, Communications and Marketing, Sex offenders hurt property values, Wright State University study shows, Apr. 12, 2002, http://www.wright.edu/cgi-bin/news_item.cgi?310 (last visited Jan. 24, 2006). } \]

requirement of compensation, however, Measure 37 allows state and local governments to “modify, remove or not … apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.” Measure 37 limits compensation and relief from land use regulations to property owners who acquired their property prior to the enactment of the land use regulations that provide the basis for their claims.

Macpherson v. Dep’t of Admin. Servs., 340 Ore. 117, 122 (Or. 2006). The Court concluded that: (1) plaintiffs’ claims are justifiable; (2) Measure 37 does not impede the legislative plenary power; (3) Measure 37 does not violate the equal privileges and immunities guarantee of Article I, section 20, of the Oregon Constitution; (4) Measure 37 does not violate the suspension of laws provision contained in Article I, section 22, of the Oregon Constitution; (5) Measure 37 does not violate separation of powers constraints; (6) Measure 37 does not waive impermissibly sovereign immunity; and (7) Measure 37 does not violate the Fourteenth Amendment to the United States Constitution. The trial court's contrary conclusions under the state and federal constitutions were erroneous and must be reversed. The judgment of the circuit court is reversed, and the case is remanded for entry of judgment in favor of defendants and intervenors.

Id. at 141. This decision indicates that Oregon Courts will be more amenable to Takings Clause claims based on diminished property value than Federal Courts have historically been. Thus, states with similar constitutional provisions may be, or may be forced to become, more generous with Takings Clause claims.

[FN137] As one homeowner argued when he was told by local, county, and state officials that he needed to “change his mindset to … acceptance” when he complained of three sex offenders moving onto his street: “[You are] the ones who keep them segregated in the prison population. [You are] the ones who call them violent sexual predators. [You are] the ones using these words. Now that they're in my neighborhood, don't diminish it.” Jamie Swift, Opponents Find Correlation Between Sex-Offender Sites, Lower Land Values, King County Journal, Apr. 29, 2003, http://www.kingcountyjournal.com/sited/story/html/129553 (last visited Jan. 24, 2006).

[FN138] “Most people's wealth is in their homes.” Id.

[FN139] Louledías Harbor v. United States, 28 F.3d 1171, 1177 (Fed. Cir. 1994). See Creppel v. United States, 41 F.3d 627, 632 (Fed. Cir. 1994) (the requirement of investment-backed expectations “limits recovery to owners who can demonstrate that they bought their property in reliance on the nonexistence of the challenged regulation.”)


[FN141] Id.


[FN143] Id. at 286.

[FN144] Id. at 286 n.8.

[FN145] According to Florida Attorney General Charlie Crist, “[n]othing is more important than the protection of our children … We are pleased to alert our citizens to [the Family Watchdog website] this new tool … can help parents keep track of those who are prone to destroy lives. Sexual predators are likely to commit similar crimes again, so parents need to know when these individuals move into the neighborhood.” Office of the Attorney General of Florida Charlie Crist, Crist Announces New Partnership for Child Safety, Dec. 20, 2005, http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D8B85311A459FEB2B852570DD006BEA0 (last visited Feb. 16, 2006).

[FN146] Even where the court has held that that it would not consider the “interests promoted by the government action” prong in determining whether a
taking has occurred, such as in *Lingle v. Chevron U.S.A. Inc.*, 125 S. Ct. 2074, 2082-2086 (2005), the court will likely still hold the same result, even if it uses a different rationale, because to do otherwise would be so dramatically against public policy interests.

[FN147] . Such as GPS monitoring of sex offenders, discussed below.


[FN151] . See Restatement (Second) of Torts § 821(b) (1979).

[FN152] . See Restatement (Second) of Torts § 821(c) (1979).


At common law, the diverse activities found to be public nuisances have included keeping diseased animals, storing explosives, obstructing a public highway, and owning a house of prostitution. There are also many statutes that define certain activities as constituting public nuisances, including uninhabitable housing, infected crops, and itinerant carnivals. While governmental authorities are empowered to bring public nuisance claims, private individuals can also bring such claims if they show a special injury distinct from that suffered by the public at large.

*Id.* at 273-274.


The prohibited interference with the use or enjoyment of the land can involve environmental contamination; unwanted sounds, lights, sights, and odors; or immoral activities. The list of activities found to be actionable nuisances includes a salt-mining operation that contaminated the ground-water, a factory emitting pollution into the air, a house that interferes with sun shining on a neighbor's property, a theater hosting a Chinese music performance in a residential neighborhood, the lights of a minor league baseball field, and houses of prostitution. Obviously, though, not all unwanted pollution, sound, light, or other activities qualify as a nuisance.


[FN155] . According to the Restatement (Second) of Torts § 824 (1979):

The conduct necessary to make the actor liable for either a public or a private nuisance may consist of (a) an act; or (b) a failure to act under circumstances in which the actor is under a duty to take positive action to prevent or abate the interference with the public interest or the invasion of the private interest …

In the ordinary case, [nuisance liability] arises because one person's acts set in motion a force or chain of events resulting in the invasion. The acts may be a direct and immediate cause of the invasion, as in the case where the noise from the actor's operation of a riveting machine is the thing complained of, or they may be an indirect cause of the invasion, as in the case where the offensive smells from a garbage pile or other physical condition created by the actor are the thing complained of. So far as the actor's liability is concerned, it is immaterial whether he does the acts solely in the pursuit of his own interests or whether he is acting for another, gratuitously, under contract or as the other's servant or agent. It is enough that his acts are a legal cause of the invasion.

In general, merely living somewhere is not sufficient conduct to constitute a nuisance. Ad-
ditionally, basing a nuisance claim on a person's status (such as race or gender) would generally be unsuccessful. As one law review article explained: Virtually anything could constitute a nuisance because virtually anything could interfere with somebody's use and enjoyment of her land. The reported cases alone contain claims that a church, a group home for those suffering from a contagious disease, and the mere presence of an unmarried couple or an African-American family are viewed as a nuisance through the eyes of some neighbors. It is also conceivable that someone would regard the proximity of Republicans or Democrats, gays or fundamentalists, or Mets fans or Yankees fans, as a nuisance. This is not what nuisance law is about.

John Copeland Nagle, *Moral Nuisances*, 50 EMORY L.J. 265, 271 (2001). However, due to the current stigma of dangerousness attached to nearby sex offenders the court may distinguish the situation of a sex offender living in a residential neighborhood, particularly around young children, from most claims based on the mere presence of a person of a certain status in a neighborhood.


[FN157] Restatement (Second) of Torts § 822 (1979). John Copeland Nagle, *Moral Nuisances*, 50 EMORY L.J. 265, 271 (2001) (citing *Harrison v. Indiana Auto Shredders Co.*, 528 F.2d 1107, 1121-22 (7th Cir. 1975) (explaining that activities that imminently and dangerously threaten the public health are nuisances per se because they are offensive at all times and at all places)). A convicted sex offender living in a residential neighborhood is unlikely to be considered a nuisance per se since the degree of risk posed to the neighborhood will vary greatly on a case by case basis based on characteristics of the individual offender and the composition of the neighborhood.


[FN160] Id. § 1.

[FN161] Id. § 2.

[FN162] Id. § 3

[FN163] Id. § 1397.


[FN167] Id. at 709.

[FN168] Id.

[FN169] Id.


[FN171] Id. at 822.

[FN172] Id.


[FN174] Id. at 474.

[FN175] Id. at 709.

[FN176] Id. at 385.

[FN177] Id. at 385-386.

[FN178] Id.

[FN179] Id.

Howard, 310 S.W.2d at 474.

Nicholson, 218 A.2d at 386-386.

Id. at 385-386.


Id.

Id.


Id.

Id.


Id. “House arrest is defined … as an individualized program in which the freedom of an inmate is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced. House arrest may include electronic monitoring or voice identification-encoder. House arrest sanctions may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver’s license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate’s liberty.” State v. Scherzer, 869 P.2d 729, 736 (Kan. 1994).

See Campbell v. McGruder, 580 F.2d 521 (D.C. Cir. 1978); Fournier v. Reardon, 160 F.3d 754 (1st Cir. 1998).

“Legislative acts … carry with them a strong presumption of constitutionality … a statute will not be declared unconstitutional unless it clearly, palpably and without doubt, infringes the constitution.” Michael J. Duster, Out of Sight, Out of Mind: State Attempts to Banish Sex Offenders, 53 DRAKE L. REV. 711 (2005) (discussing current constitutional issues pertaining to sex offender laws with an emphasis on residency restrictions).

The basic concept which underlies the Eighth Amendment of the United States Constitution, which forbids the infliction of cruel and unusual punishment, is nothing less than the dignity of man.
Consistent with human dignity, the state must exercise its power to punish within the limits of civilized standards. A particular punishment violates the Eighth Amendment if it constitutes one of those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted. The Eighth Amendment's prohibition extends beyond those practices deemed barbarous in the 18th century, however. The Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime. In assessing what standards have so evolved, a court looks to those of modern American society as a whole, relying upon objective factors to the maximum possible extent, rather than the court's own conceptions of decency.

United States v. Gementera, 379 F.3d 596, 608 (9th Cir. 2004). Looking to the standards of decency established by modern society, the Court is likely to hold that lifetime monitoring of individual sex offenders deemed to pose a threat to society is not unconstitutional and is “less onerous” than the alternative of keeping the sex offenders in prison for life. See Id. at 610.


[FN205] . Id. For a table the U.S. Supreme Court provided depicting an analysis of involuntary commitment laws, see Exhibit III.

[FN206] . Id.


[FN210] . Id. at 358.

[FN211] . Id. at 369.

[FN212] . Id. at 371.


[FN214] . Id.

[FN215] . Id.

[FN216] . Id.

The Virginia State Crime Commission adopted a study proposal in 1998 to examine the feasibility of enacting a “sexual predator” statute in Virginia (SJR 69/Howell). This study proposal was passed by the 1998 General Assembly. Senator Howell chaired the subsequently assembled study group, one comprised of individuals from Corrections, Mental Health, Mental Retardation & Substance Abuse Services, Office of the Attorney General's Office, members of the legal community, and private clinicians ... the study group examined a number of complex issues related to enacting “sexual predator” legislation, including: the criteria for commitment; the process for commitment; and the expense of commitment. Using as a foundation other onpoint data and information collected, the study group examined also other strategies for addressing the issue of sex offenders, including: sentencing enhancements; risk assessment, treatment and/or pharmacological controls; and community containment models for supervision of sex offenders.

The study concluded that the Virginia mental health system was not currently equipped for dealing with involuntary commitment of sexual offenders and instead made recommendations for reevaluating and possibly increasing the criminal sentences imposed on sex offenders. *Id.* For a more complete summary of the study's recommendations along with the estimated cost of implementing these recommendations, see Exhibit IV.

