The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act\(^1\) (the Act) was signed into law by President Bill Clinton in 1994. It encouraged states to create registries of offenders convicted of crimes against children or other sexually violent offenses.\(^2\) The Wetterling Act was followed several years later by the passage of the federal Megan’s Law amendment, which nationalized community notification of missing and abducted children\(^3\) as well as passage of the Adam Walsh Child Safety and Protection Act in July of 2006 (the “Adam Walsh Act”).\(^4\) The Adam Walsh Act standardizes the required information to be posted on the Internet regarding a sexual offender as well as registration requirements.

Texas requires registration of sex offenders pursuant to the Texas Code of Criminal Procedure\(^5\) and allows for the creation of “child safety zones.”\(^6\) In this author’s opinion, these zones are not sufficient to properly protect the children of Texas. Additionally, there are no statewide statutory sex offender residency restriction laws in Texas. This is a gaping loophole in the law. As a result of the estimated 100,000 – 200,000 children who are sexually abused each year,\(^7\) and the estimated 550,000 registered sex offenders throughout the nation,\(^8\) numerous cities around Texas and the nation have begun to pass city ordinances as a way to restrict where sex offenders can live and to provide local law enforcement with more authority.

This national call to action will hopefully push Texas to codify the typical practices of the state’s parole board by including more restrictions and protections into “child safety zones.” This will undoubtedly be a good thing for the safety of Texas citizens.

**Federal and State Statutory Background**

Prior to the 1991 abduction of Jacob Wetterling in St. Joseph, Minnesota, law enforcement agencies did not maintain organized and compiled lists of sex offenders.\(^9\) This hampered the ability of police to conduct their investigation into Jacob’s disappearance. The leads compiled in that case became the foundation of a massive

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\(^5\) TEX. CODE CRIM. PRO. ANN. § 62.02 (Vernon 2009).

\(^6\) TEX. GOVT. CODE ANN. § 508.187 (Vernon 2009).


statewide database that instigated the development of a sex offender list in Minnesota. On May 17, 1996, Megan’s Law\textsuperscript{10} amended the Wetterling Act to require states to establish community notification systems to broadcast information regarding children believed to be abducted or missing.\textsuperscript{11}

That same year another Wetterling Act amendment entitled The Pam Lychnner Sexual Offender Tracking and Identification Act of 1996 (the Lychner Law),\textsuperscript{12} established a national database of released sex offenders at the FBI to track their whereabouts and movement. The provisions of the Lynchner Law mandate that persons convicted of sexual offenses in states that do not have a "minimally sufficient" registration program must register with the FBI. The FBI database includes a current address, fingerprints, and a current photograph. This process helps keep the database current as well as making it a valuable resource for law enforcement.

Finally, the Adam Walsh Act, signed into law on July 27, 2006, by President George W. Bush, contains a provision creating the Sex Offender Registration and Notification Program (SORNA). This section of the Act requires sex offenders to register in the locations where they reside, are employed, or attend school.\textsuperscript{13} Registered sex offenders are also required to appear for a current photograph and provide their name [including aliases], residence information, social security number, employment and school information, motor vehicle and drivers license information, physical description, text of the registration offense, criminal history information, fingerprints, palm prints, and DNA.\textsuperscript{14} All of this information is on the Internet and is available for free to anyone to review and download.

**Nationwide Initiatives to Restrict Residency**

There are no statewide statutory sex offender residency restriction laws in Texas. In \textit{Velez v. State},\textsuperscript{15} however, the Texas Court of Appeals held that the states’ statutory sex offender registration requirements, which placed restrictions on a convicted defendant's ability to locate his place of residence and required the defendant to keep in contact with law enforcement, did not violate his due process nor did the registration laws violate the state constitutional prohibition against outlawry.\textsuperscript{16}

In recent years, a number of state and local municipal laws imposing residency restrictions on registered sex offenders have been enacted in other states. For example, in \textit{Doe v. Miller}, an Iowa court of appeals held that a statute prohibiting persons who had

\begin{itemize}
  \item \textsuperscript{10} Pub. Law No. 104-145, 104th Cong. (2006).
  \item \textsuperscript{13} Adam Walsh Child Protection and Safety Act, supra note 4.
  \item \textsuperscript{14} Id. at sec. 114 (a) and (b).
  \item \textsuperscript{15} Velez v. State, 2002 WL 220572 (Tex. App. Houston 14th Dist. 2002).
  \item \textsuperscript{16} Id. at p. 4 referencing TEX. CODE CRIM. PRO. ANN. Art. 62.01(5)(A) & (6)(A) (Vernon Supp. 2002).
\end{itemize}
committed a criminal sex offense against a minor from residing within 2,000 feet of a
school or child care facility, did not violate the Due Process Clause of the Fourteenth
Amendment, was not retroactive criminal punishment in violation of the Ex Post Facto
Clause, did not interfere with the right of sex offenders to travel, and did not violate the
right against self-incrimination under the Fifth Amendment.17

Efforts of state and local authorities to limit the residences of sex offenders has increased
in recent years. As of August 2006, at least 21 states and over 400 local governments had
adopted sex offender residency restriction laws and ordinances.18 These laws are
modeled after nuisance codes, creating sex offender-free zones similar to drug-free zones.
They typically prohibit sex offenders from living, and sometimes working or loitering,
within a specified distance of designated places where children congregate.

The term “child safety zone” has various definitions in different states. In some states,
the sex offender is prohibited from living within 1,000 feet of the property comprising an
elementary or secondary school or a licensed center or home-based child day-care
facility.19 In other locations, ordinances restrict sex offenders' residency as well as
prohibiting them from entering a public park, playground, recreation center, public or
private youth center, bathing beach, swimming or wading pool, school bus stop, sports
field or other sports facility and surrounding land, or video arcade.20

Role of the Texas Board of Pardons and Paroles

The Texas Board of Pardons and Paroles decides how close to a “child safety zone” a
paroled sex offender can live or visit.21 The current distance is only five hundred (500)
feet. Clearly, this distance is insufficient given the high recidivism risks of sex
offenders.

Sex offenders can also be prohibited from going in, on, or within a specific distance of a
premises where children commonly gather, including a school, day-care facility,
playground, public or private youth center, public swimming pool, or video arcade
facility.22 This writer does not believe Texas’ definition of “child safety zones” is not
broad enough.

In general, people do not want to live near sex offenders. A study conducted in May
2006 by the National Bureau of Economic Research found that when a sex offender
moves into a neighborhood, values of homes within a tenth of a mile drop an average of

17 Doe v. Miller, 405 F.3d 700, 25 A.L.R.6th 695 (8th Cir. 2005), cert. denied, 126 S. Ct. 757, 163 L. Ed.
2d 574 (2005) (applying Iowa law).
18 Marcus Nieto and David Jung, The Impact of Residency Restrictions on Sex Offenders and Correctional
06/08/06-008.pdf.
19 OHIO CODE CRIM. PRO. § 2950 (2009).
21 TEX. GOV. CODE ANN. § 508.187(b) (Vernon 2009).
four percent.\textsuperscript{23} It is common knowledge that once an individual learns about the ability to search online databases for registered sex offenders, one will no doubt check his or her surrounding neighborhood.

**Recent Texas Legislation Action**

In the last eight years, Texas has moved forward towards enacting wide-ranging legislation involving sex offenders. However, in a glaring failure to protect its citizens, it failed to codify the child safety zone issue when it had the chance. Senate Bill 88 filed by State Senator Harris in the 80th Regular Session failed to make it out of committee.\textsuperscript{24} It would have added Article 62.065 to the Texas Code of Criminal Procedure establishing a prohibited 1,000-foot residency restriction for sex offenders from those premises described in the statute.\textsuperscript{25}

While the lack of progress on the above Senate Bill is disappointing, several other amendments to the Texas Code of Criminal Procedure were enacted leading to important advances in this regard:

- Senate Bill 2048, effective June 19, 2009, amended article 62.0045 to allow for sheriffs, and in some cases a police chief, to serve as the mandatory countywide registration entity for sex offenders in that county;\textsuperscript{26}

- Article 62.0061 was created to allow commercial social networking sites to request from DPS all public and confidential information;\textsuperscript{27} and

- Senate Bill 689 allows for online identifiers relating to registered sex offenders to be given to social networking sites for prescreening purposes only, and to stop them from using their site. Additionally, effective January 1, 2010, all sex offenders must give any online identifiers, as well as any changes or additions in their identifiers, as part of their registration process.\textsuperscript{28}

**Conclusion**

Recent state efforts in Texas to improve the safety of children by enacting local sex offender residency restrictions appears to be making an impact.\textsuperscript{29} As of May 29, 2009, there were 57,050 registered sex offenders in the State of Texas, and only 2.5 percent had


\textsuperscript{24} S.B. 88, 80th Reg. Sess. (Tex. 2007).

\textsuperscript{25} Id.

\textsuperscript{26} Id.

\textsuperscript{27} Id.

\textsuperscript{28} Id.

\textsuperscript{29} Klaas Kids Found., http://www.klaaskids.org/st-tex.htm (last accessed Mar. 22, 2010).
absconded.  While the Parole Board could previously only enforce the restrictions, local ordinances now allow for law enforcement officials to enforce these laws. As Alvin, Texas, Police Chief Mike Merkel stated, “we have one more tool in our toolbox to protect our children.” 

Finally, while Texas’ legislative action in the last few years shows the State’s strong interest in protecting the safety of its citizens, more needs to be done in the upcoming legislative session to continue this positive trend. A statutory codification of the practices of the Parole Board, as well as an expansion of the areas covered by the definition of “child safety zones” to include potentially sensitive areas such as pediatric hospitals, facilities and clinics, would be a giant step towards closing the loopholes in the laws that govern registered sex offenders.

Health Law Perspectives (April 2010)
Health Law & Policy Institute
University of Houston Law Center
http://www.law.uh.edu/healthlaw/perspectives/homepage.asp

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30 Id.