

Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions

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The past several years have seen a number of increasingly severe restrictions imposed on criminal offenders, including initiatives and efforts to increase supervision of offenders and inhibit their opportunities to victimize others. The primary focus of these efforts has been on sex offenders, especially those who victimize children. A Georgia statute, HB 1059, is among the most extreme of these restrictions. Enacted in 2006, the new law makes it a felony punishable by ten to thirty years in prison for a registered sex offender to reside, be employed, or loiter within 1000 feet of a school; child care facility; church; public or private park, recreation facility or playground; skating rink; neighborhood center; gymnasium; community swimming pool; or school bus stop.¹

Legislation like this makes it increasingly important to identify and assess the effects that such laws have on offenders, potential victims, and communities. This Article provides an overview of the impact residential restriction laws have on offenders and communities. It also provides readers with an understanding of how and why unintended consequences of legislation may be seriously detrimental both to public safety and to successful re-entry and reintegration of offenders into communities. This Article discusses the unintended collateral consequences² of sex offender registration, with special attention to the issue of housing difficulties faced by registered sex offenders (“RSOs”). This discussion then turns to the issue of where RSOs tend to reside, with a focus on social science evidence showing a concentration of sex offenders in socially disorganized and economically disadvantaged communities. Next, the effects of residential restriction laws are examined, and the ability of such laws to prevent sexual offenses is discussed. Finally, the data from this emerging body of literature is applied to HB 1059, with a prediction of what may result from this statute.

The full impact of statutes such as HB 1059 is frequently overlooked; laws like this affect not only sex offenders themselves, but also their families and communities. As discussed below, research regarding these new laws clearly illustrates that RSOs experience difficulties finding housing,

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¹ GA. CODE ANN. § 42-1-15 (Supp. 2006).

² Collateral consequences are those effects, both intended and unintended, arising from the restrictions.

frequently move, and suffer numerous additional collateral consequences as a result of registration and legal restrictions on where they may reside.

Collateral consequences arising from legal sanctions are not unique to sex offenders. Scholars have documented a number of collateral consequences associated with many types of felony convictions. These include restrictions and experiences that arise from both legal requirements and social interactions. Examples of legal collateral consequences include employment restrictions and the loss of constitutionally guaranteed rights, such as the right to possess a firearm or to participate in political elections.³ On the other hand, social collateral consequences typically vary in intensity, frequency, and certainty; these include relationship and parenting problems, employment difficulties, harassment, ostracism, and feelings of shame and diminished self-worth.⁴

Collateral Consequences of Sex Offender Registration

Social science research has documented that, as a result of their registered status, RSOs experience a range of unintended negative consequences that typically have stronger impacts upon sex offenders than other felons.⁵ Although these collateral consequences are not universal and may vary in intensity and the degree to which they affect the short- and long-term experiences of offenders, they nonetheless do have serious implications for individual offenders, their families, communities, and society in general.

Several recent studies used surveys to document the experiences of RSOs in general⁶ and female RSOs specifically.⁷ More than one-half (54.7%) of a general sample of RSOs in Kentucky reported losing a friend who found out about their registration, 47% were harassed in person, 45.3% lost or were denied a place to live, and 42% lost a job as a result of regis-

³ See Velmer S. Burton, Jr., Francis T. Cullen & Kathleen M. Olivares, *The Collateral Consequences of a Felony Conviction: A National Study of State Legal Codes 10 Years Later*, 60 *FED. PROBATION* 10, 11–14 (1996); Velmer S. Burton, Jr., Francis T. Cullen & Lawrence F. Travis III, *The Collateral Consequences of a Felony Conviction: A National Study of State Statutes*, 51 *FED. PROBATION* 52, 54–58 (1987).

⁴ See Erving Goffman, *STIGMA: NOTES ON THE MANAGEMENT OF A SPOILED IDENTITY* (1963); Mary Dodge, Paul Katsampes & Mark Pogrebin, *The Collateral Costs of Short-Term Jail Incarceration: The Long-Term Social and Economic Disruptions*, 5 *CORRECTIONS MGMT. Q.* 64, 65–66 (2001); Mary Dodge & Mark R. Pogrebin, *Collateral Costs of Imprisonment for Women: Complications of Reintegration*, 81 *PRISON J.* 42, 42–43 (2001).

⁵ See generally Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 *J. CONTEMP. CRIM. JUST.* 67, 67–79 (2005) (canvassing negative consequences particular to RSOs); Richard Tewksbury & Matthew Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 *SOC. SPECTRUM* 309, 330–33 (2006).

⁶ See Jill S. Levenson & Leo P. Cotter, *The Effects of Megan's Law on Sex Offender Reintegration*, *J. CONTEMP. CRIM. JUST.* 49, 54 (2005); Tewksbury, *supra* note 5, at 72.

⁷ Richard Tewksbury, *Experiences and Attitudes of Registered Female Sex Offenders*, 68 *FED. PROBATION* 30, 31 (2004).

tration.⁸ Rural RSOs generally experienced more negative consequences than those living in metropolitan areas.⁹ Focusing on the experiences of forty female RSOs in Kentucky and Indiana, another study found that “a number of negative experiences stem from sex offender registration.” The most significant collateral consequences identified by women in the sample were loss of a job (42.1%), loss of a friend who found out about registration (39.5%), in-person harassment (34.2%), loss or denial of a place to live (31.6%), and rude treatment in public (31.6%).¹⁰

Levenson and Cotter examined the collateral consequences of 183 RSOs in Florida.¹¹ They reported that the majority of the respondents in their study experienced negative psychological feelings that were directly related to sex offender registration.¹² Using a methodology similar to that of earlier studies,¹³ the authors reported that 35% of their sample was “forced” to move because of their registration on the Florida sex offender registry.¹⁴ Additionally, 27% said that they had lost their jobs because of their status as RSOs,¹⁵ and 19% reported harassment of some form.¹⁶

A similar study conducted in Kentucky provides an in-depth analysis of the experiences and perceptions of RSOs through the use of qualitative, in-person interviews.¹⁷ Lees and I interviewed twenty-two RSOs listed on the Kentucky sex offender registry and reported several primary types of collateral consequences,¹⁸ including employment difficulties, relationship problems, harassment, stigmatization, and persistent feelings of vulnerability.¹⁹ As one respondent in the study explained, “I know [the registry] is there to remind and punish, but it will always be like a roadblock in the way for those of us who wish to truly rehabilitate and change their lives.”²⁰ Our research found that these issues were experienced more intensely by RSOs than has been found among other felons.²¹ The study concluded that re-integration into society may be more difficult for RSOs as a result of

⁸ Tewksbury, *supra* note 5, at 75.

⁹ *Id.*

¹⁰ Tewksbury, *supra* note 7, at 32. Less commonly, women experienced threatening or harassing phone calls and mail, assault, and requests to leave a business. *Id.*

¹¹ Levenson & Cotter, *supra* note 6, at 54.

¹² *Id.* at 62.

¹³ *See, e.g.*, Tewksbury, *supra* note 5, at 72–74; Tewksbury, *supra* note 7, at 31.

¹⁴ Levenson & Cotter, *supra* note 6, at 58.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* Tewksbury & Lees, *supra* note 5, at 316.

¹⁸ *Id.*

¹⁹ *Id.* at 319; *see also* Richard G. Zevitz & Mary A. Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, RES. BRIEF (Nat’l Inst. Of Justice), Dec. 2000, at 9–10 (interview of 30 RSOs in Wisconsin found that 83% reported difficulties finding or maintaining a residence; 77% reported harassment or threats; 77% were ostracized by neighbors or acquaintances; 67% reported emotional harm to family members as a result of their registration; and 57% reported loss of employment).

²⁰ Tewksbury & Lees, *supra* note 5, at 329.

²¹ *Id.* at 330–33.

sex offender registration and found little evidence supporting the effectiveness of current registration practices.²²

Similarly, Burchfield and Mingus reported on interviews with twenty-three RSOs in Illinois.²³ They found that RSOs have less access to local social capital because of their status as RSOs.²⁴ More than one-third of their sample reported voluntary withdrawal from the community and a decrease in social interaction.²⁵ RSOs were also found to be generally fearful of community members learning of their registration and experienced feelings of stigmatization due to their registry listing.²⁶ Most respondents (78%) reported that policy requirements for sex offender parolees “impeded their ability to reintegrate into community life.”²⁷

Difficulties with Housing

One of the most serious and far-reaching collateral consequences associated with sex offender registration is the difficulty RSOs experience in locating and maintaining safe, affordable, and legal housing. Even before the advent of state and local laws restricting where sex offenders may live, self-reports from RSOs indicated that this was among the most problematic collateral consequences.²⁸ My study of 121 RSOs in Kentucky revealed that 45.3% lost or were denied a place to live.²⁹ For female RSOs, the rate of offenders reporting such problems was lower but still significant (31.6%).³⁰

Once again, qualitative interviews with RSOs support the results of the survey-based studies. Zevitz and Farkas’s interviews in Wisconsin showed a substantially higher rate of housing difficulties: 83% of RSOs reported difficulties in finding or maintaining a residence.³¹ More recent interview-based studies highlight the difficulties RSOs experience with housing in communities with and without residential restriction laws. In Kentucky, where there were no restrictions at the time of data collection, Lees and I reported that housing difficulties were among the problems most

²² *Id.*; see also Richard Zevitz & Mary A. Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?*, 18 BEHAV. SCI. & L. 371, 375–91 (2000) (data collected from citizens at community notification meetings in Wisconsin showing strong community resistance to the presence of RSOs).

²³ See Keri B. Burchfield & William Mingus, *Not In My Neighborhood: Assessing Registered Sex Offenders’ Experiences with Local Social Capital and Social Control* (Nov. 1, 2006) (unpublished manuscript, presented at annual meeting of the American Society of Criminology, on file with the Harvard Civil Rights-Civil Liberties Law Review).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Tewksbury, *supra* note 5, at 68–69; Zevitz & Farkas, *supra* note 19, at 9–10.

²⁹ Tewksbury, *supra* note 5, at 75.

³⁰ Tewksbury, *supra* note 7, at 32.

³¹ Zevitz & Farkas, *supra* note 19, at 9–10.

frequently experienced by RSOs.³² Challenges with housing were directly tied to difficulties with employment and maintaining familial and social networks.³³ Illinois's residential restriction statute requires that RSOs live more than 1000 feet away from designated places.³⁴ In that state, Burchfield and Mingus found that RSOs typically identified finding housing to be a major stress and a distraction from full engagement in law-abiding lifestyles.³⁵

Where Registered Sex Offenders Reside

An emerging body of literature has focused on the characteristics of neighborhoods where RSOs reside, with special attention to the characteristics of communities with high concentrations of sex offenders. Generally, although RSOs are found in all varieties of neighborhoods, they are particularly likely to reside in areas characterized by economic disadvantage, lack of physical resources, relatively little social capital, and high levels of social disorganization. Mustaine, Stengel, and I examined data on the residential locations of 1504 RSOs in four urban counties in Kentucky and Florida.³⁶ When RSO-dense census tracts³⁷ were compared with both those counties studied and the nation as a whole, we found significant problems in the RSO-dense census tracts: unemployment rates were higher, fewer residents had high school or college educations, greater proportions of families lived below the poverty line, fewer residents owned their homes, and household incomes and home values were lower.³⁸ Further analysis of this data suggests that RSOs are more likely to be relegated to such areas rather than to live there by choice.³⁹

Building on this research, Mustaine and I extended this analysis to assess whether and how race related to the types of communities where RSOs reside.⁴⁰ Drawing on data from 2290 RSOs in five urban U.S. counties, we found that RSOs were more likely to live in areas with high levels of social disorganization, and black RSOs were especially likely to live in such "undesirable" communities.⁴¹ White RSOs, on the other hand, were

³² Tewksbury & Lees, *supra* note 5, at 313–14.

³³ *Id.* at 322–25.

³⁴ 720 ILL. COMP. STAT. § 5/11-9.3(b-5) (2004).

³⁵ Burchfield & Mingus, *supra* note 23.

³⁶ Elizabeth E. Mustaine, Richard Tewksbury & Kenneth M. Stengel, *Social Disorganization and Residential Locations of Registered Sex Offenders: Is this a Collateral Consequence?*, 27 *DEVIAN'T BEHAV.* 329, 336 (2006).

³⁷ RSO-dense census tracts have ten or more RSOs.

³⁸ Mustaine, Tewksbury & Stengel, *supra* note 44, at 342.

³⁹ *Id.* at 344.

⁴⁰ Elizabeth E. Mustaine & Richard Tewksbury, *Registered Sex Offenders, Residence, and the Influence of Race*, 5 *J. ETHNICITY CRIM. JUST.* (forthcoming 2007) (on file with authors).

⁴¹ *Id.* (manuscript at 17).

more likely than black RSOs to live in census tracts with high concentrations of RSOs.⁴²

In further research, we compared the neighborhood characteristics of child-abusing RSOs with other RSOs.⁴³ Surprisingly, our findings showed that RSOs with child victims did not experience greater residential disadvantage than those convicted of victimizing adults.⁴⁴ It appears that the status of “sex offender” determines the collateral consequences experienced, without regard to the age of the victim. Victimizing a child does not appear to be related to relegation to less desirable residential locations.

Residential Mobility of Registered Sex Offenders

Two studies have shown a high rate of residential mobility for registered sex offenders. One study showed that two-thirds (64%) of RSOs reported a different address at the time of registration than at the time they were arrested for their sex offenses.⁴⁵ Drawing on social disorganization variables commonly used in assessing the characteristics of where sex offenders reside, Mustaine and colleagues demonstrated that mobility is common, and one-half of those who changed residences moved to less desirable (i.e., more socially disorganized) neighborhoods than those in which they lived at the time of their offenses.⁴⁶ Interestingly, white RSOs were the most likely to move to less socially disorganized (“better”) neighborhoods.⁴⁷ Those RSOs who did not change addresses were most often in neighborhoods with the highest degree of social disorganization to begin with.⁴⁸

In a second study, Turley and Hutzell reviewed residential locations of all 1458 RSOs registered in West Virginia as of May 2001.⁴⁹ They found that 59.7% of the population had been at their current address for less than two years, and that RSOs had reported an average of 1.7 addresses to state police since being on the registry.⁵⁰ Additionally, they showed movement by RSOs between rural and suburban communities.⁵¹ Laws restricting where RSOs can live have had a significant impact on RSOs’ resi-

⁴² *Id.*

⁴³ Richard Tewksbury & Elizabeth E. Mustaine, *Collateral Consequences and Community Re-entry for Registered Sex Offenders with Child Victims: Are the Challenges Even Greater?* (Mar. 2007) (unpublished manuscript, presented at the annual meeting of the Academy of Criminal Justice Sciences, on file with author).

⁴⁴ *Id.* (manuscript at 19–20).

⁴⁵ Elizabeth E. Mustaine, Richard Tewksbury & Kenneth M. Stengel, *Residential Location and Mobility of Registered Sex Offenders*, 30 AM. J. CRIM. JUST. 177, 185–92 (2006).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Erica Turley & Laura Hutzell, W. VA. DIV. CRIMINAL JUSTICE SERVS., WEST VIRGINIA SEX OFFENDER STUDY 7 (2001), available at <http://www.wvdcjs.com/publications>.

⁵⁰ *Id.* at 20.

⁵¹ *Id.* at 21.

dential mobility. Although there is no data showing how many RSOs have been forced to relocate, Levenson and Cotter's work showed that 35% of RSOs in Florida changed residences;⁵² the most cited reason for moving, reported by one in four respondents, was Florida's residency restriction requirements.⁵³ Not only must sex offenders move, but when they are forced to do so they often lose significant sources of social support. Levenson and Cotter reported that 44% of the RSOs in their study were forced to move away from family members, and 60% experienced emotional distress as a result of the residency limitations imposed on them.⁵⁴

The Particular Impact of Residential Restriction Laws Related to Child Gathering Places

Across the country, states and local governments are enacting residential restriction laws that prevent RSOs from living near various "child gathering places." As this and the following section show, these statutory restrictions impose serious limitations on the ability of offenders to reintegrate into communities as law-abiding residents. These laws also negatively impact offenders and their communities. Additionally, research has failed to demonstrate that such laws are likely to reduce sex offending; as a result, the corrections community opposes such laws.

Twenty-seven states and perhaps hundreds of local communities now have laws that restrict where RSOs may live.⁵⁵ Typically these laws use vague language to restrict RSOs from living near "places where children congregate," including schools, parks, playgrounds, daycare centers, school bus stops, and recreational facilities. The restricted zones around such sites generally range from 500 to 2000 feet.⁵⁶ Only one study from one Arkansas county suggests that RSOs are likely to live near places such as daycares, parks, and schools.⁵⁷ Another study showed that only approximately one in five RSOs live in close proximity to these places.⁵⁸

Residential restrictions have taken a significant toll on RSOs who are attempting to be law-abiding citizens. With housing restrictions that some-

⁵² Levenson & Cotter, *supra* note 6, at 58; Jill S. Levenson & Leo P. Cotter, *Impact of Sex Offender Residence Restrictions: One Thousand Feet from Danger or One Step from Absurd?*, 49 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168, 173 (2005) [hereinafter Levenson & Cotter, *Impact of Residence Restrictions*].

⁵³ Levenson & Cotter, *Impact of Residence Restrictions*, *supra* note 52, at 172.

⁵⁴ *Id.* at 173.

⁵⁵ See Sarah Geraghty, *Challenging the Banishment of Registered Sex Offenders from the State of Georgia: A Practitioner's Perspective*, 42 HARV. C.R.-C.L. L. REV. 513, 515, n.7 (2007).

⁵⁶ *Id.* at 514.

⁵⁷ Jeffrey T. Walker, James W. Golden & Amy C. VanHouten, *The Geographic Link Between Sex Offenders and Potential Victims: A Routine Activities Approach*, 3 JUST. RES. & POL'Y 15, 30-32 (2001).

⁵⁸ Richard Tewksbury & Elizabeth E. Mustaine, *Where To Find Sex Offenders: An Examination of Residential Locations and Neighborhood Conditions*, 19 CRIM. JUST. STUD. 61, 70-75 (2006).

times bar RSOs from living within 2000 feet of locations as common as schools and even bus stops, offenders are all but forced out of entire neighborhoods and cities. A recent study used Geographic Information System analysis to examine the consequences of the Florida state buffer zone law in Orange County.⁵⁹ The resulting data showed that only 64% of available property is not within 1000 feet of a school or daycare facility.⁶⁰ If school bus stops were included in the restrictions, the situation would become even more dire: a mere 4% of all properties would be available as legal residence options for RSOs.⁶¹ This same study showed that if the restricted zone were expanded to 2500 feet around schools and daycare facilities, RSOs would only have 29% of Orange County land available for residence.⁶² Finally, if the restrictions were to create a 2500-foot zone around school bus stops, RSOs would be able to live in less than 1% of Orange County.⁶³

Residential Restrictions and Prevention of Sexual Offenses

The stated purposes of residential restriction laws are maximizing public safety and deterring sexual offenses. Although these are admirable goals, the research to date does not show that these laws help to achieve that goal. As an initial matter, the proportion of known sexual offenders in a neighborhood is not related in a statistically significant way to the number of sexual offenses that occur in that neighborhood.⁶⁴ Furthermore, a 2004 study by the Colorado Department of Public Safety showed that, if and when registered sex offenders recidivated, they were highly unlikely to commit a sex offense near their places of residence.⁶⁵

More recently, Duwe, Donnay, and I examined data on 224 re-offending RSOs in Minnesota in order to evaluate the potential deterrent effects of a residency restriction law (the legislature has not yet enacted a statewide law).⁶⁶ We concluded that very few, if any, offenses would be prevented by a residential restriction law.⁶⁷ Not a single case involved an

⁵⁹ Paul A. Zandbergen & Timothy C. Hart, *Reducing Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction Laws Using GIS*, 8 JUST. RES. & POL'Y 1, 1–24 (2006).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Kenneth M. Stengel, Richard Tewksbury & Elizabeth E. Mustaine, *Examining Rates of Sexual Offenses from a Routine Activities Perspective*, VICTIMS & OFFENDERS (forthcoming 2007) (manuscript at 12–15, on file with authors).

⁶⁵ DIV. OF CRIMINAL JUSTICE, COLO. DEP'T OF PUB. SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 38–39 (2004).

⁶⁶ GRANT DUWE, WILLIAM DONNAY & RICHARD TEWKSBURY, MINN. DEP'T OF CORR., DOES RESIDENTIAL PROXIMITY MATTER? A SPATIAL ANALYSIS OF SEX OFFENSE RECIDIVISM (2006) (on file with author).

⁶⁷ *Id.*

offender making contact with a victim at a park, school, or other location typically included in such laws. Sixty-three percent of the re-offenses took place within the offender's home, usually against another person residing there,⁶⁸ and in only nine percent of the cases did offenders make contact with victims at a location within one mile of the offender's home.⁶⁹ In sum, research provides little if any support for the effectiveness of residential restriction laws in deterring or preventing sexual offenses.

Noting the ineffectiveness of residential restriction statutes, the American Correctional Association ("ACA")—the world's largest professional organization of corrections practitioners—has recently taken a stance against these laws. At its 2007 winter conference, the ACA passed a resolution that states in part:

WHEREAS, there is no evidence to support the efficacy of broadly-applied residential restrictions on sex offenders; and WHEREAS, statutory prohibitions on where predatory sex offenders may live and go may cause them to become lost to the supervision and surveillance of responsible authorities; and WHEREAS, it is contrary to good public safety policy to create disincentives for predatory sex offenders to cooperate with the responsible community corrections agencies, THEREFORE BE IT RESOLVED that the American Correctional Association calls upon all legislative bodies to take into consideration the unintended consequences of statutes intended to exclude these offenders from neighborhoods or locations.⁷⁰

The professionals charged with enforcing these laws—those who have the most sophisticated experience supervising and interacting with convicted sex offenders—recognize significant problems with residential restrictions and their likely collateral consequences. In conjunction with the lack of evidence of the effectiveness of residential restrictions, the ACA's position forms a strong basis for reconsidering these laws.

What To Expect from the Georgia Statute

The new Georgia statute HB 1059 is the nation's broadest and most restrictive law regarding sex offender registration and residential restrictions for RSOs.⁷¹ With these restrictions in place, there is very little suitable land and housing in most Georgia cities and towns that is not within the prohibited areas.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Am. Corr. Ass'n, Resolution on Neighborhood Exclusion of Predatory Sex Offenders (Jan. 24, 2007).

⁷¹ See Geraghty, *supra* note 55.

What should be expected as a consequence of a law such as the new Georgia statute? It seems likely that RSOs will continue to experience persistent stress from difficulties in meeting one of their most basic needs: decent, safe, and affordable housing. As a result, RSOs may feel they have little choice but to abscond from supervision and fail to register. Even worse, they may seek ways to relieve their increasing levels of stress and frustration, which are among the most powerful factors contributing to sex offense recidivism. Furthermore, laws such as HB 1059 will undoubtedly contribute to increased alcohol and drug use and abuse, which would also increase the likelihood of sexual re-offense. The Georgia law induces stress, distances offenders from their law-abiding and pro-social support systems, likely introduces additional economic and labor stresses, and labels RSOs as the scourge of society. Why would a sex offender *not* violate supervision and disappear? After all, considering all of the restrictions and collateral consequences already experienced, what do they have to lose?