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Making Gun Offender Registries Available to the Public: A Safety Practice or Target Practice

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NOTE

MAKING GUN OFFENDER REGISTRIES AVAILABLE TO THE PUBLIC: A SAFETY PRACTICE OR TARGET PRACTICE?

I. INTRODUCTION

Criminal registries, requiring certain felons to register with the police, have existed since 1947.¹ However, criminal registries have become more widely used in the United States since 1994.² With the emergence of new technology, criminal registries were made available to the public in 1996,³ with the purpose shifting from informing police officers of an offender's whereabouts to public awareness and protection.⁴ The criminal registry system itself, along with its information being made available to the public, has been highly criticized for its inefficiencies and negative results.⁵ Nevertheless, the push for stricter gun control and gun offense laws, which date back to the 1920s,⁶ has culminated in the twentieth and twenty-first centuries with events such as the Columbine Massacre⁷ and the Aurora shooting.⁸

1. See Ofer Raban, *Be They Fish or Not Fish: The Fishy Registration of Nonsexual Offenders*, 16 WM. & MARY BILL RTS. J. 497, 500 n.24 (2007) (citing BILL LOCKYER, CA. ATT'Y GEN., 2002 REPORT TO THE CALIFORNIA LEGISLATURE ON CALIFORNIA SEX OFFENDER INFORMATION (2002), available at http://org/ca/gov/megan/pdf/ca_sexoff-0702.pdf) (recognizing that California enacted the nation's first registration law in 1947).

2. See Jacob Wetterling Act, 42 U.S.C. § 14071(a)(1) (1994), repealed by Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16911 (2006) (requiring offenders convicted of a "sexually violent offense" or a "criminal offense against a victim who is a minor" to register with their local police department).

3. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending the Jacob Wetterling Act and making sex offender registries available to the public).

4. Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 327 (2006).

5. E.g., Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 522-28 (2013).

6. David B. Kopel, *The Great Gun Control War of the Twentieth Century—and Its Lessons for Gun Laws Today*, 39 FORDHAM URB. L.J. 1527, 1528 (2012) (recognizing a movement to ban handguns).

7. Tom Kuntz, *Word for Word/Columbine High School; How Carnage in Our Hallways Scarred Us, and Made Us Better People*, N.Y. TIMES, May 23, 1999, at WK7.

Events like these have caused a number of cities and states to pass laws that establish gun offender registries.⁹ These cities and states are now attempting to have these gun offender registries made available to the public, similar to sex offender registries.¹⁰

This Note will begin by providing an overview of the criminal registry model and its development from sex offender registries to various other types of criminal registries.¹¹ Part II will outline the structure and purpose of the gun offender registry, while examining the similarities and differences of the gun offender registries of a few major cities.¹² Next, Part III will describe the inefficiencies of, and the subsequent negative consequences that result from maintaining, a gun offender registry.¹³ This will be followed by an argument that the push for public gun offender registries is inappropriate due to the current weaknesses in the public registry model, and the consequences of an offender's information being made available to the public.¹⁴ This Note will conclude by suggesting that before an offender is placed on a registry, a hearing should be held in order to determine if the gun offender, upon release from prison, presents a danger to the community or is likely to re-offend.¹⁵ This hearing will further the purpose of the gun offender registry,¹⁶ while avoiding the negative consequences that result from being placed on a criminal registry if the criminal has been rehabilitated or is unlikely to re-offend.¹⁷

II. THE CRIMINAL REGISTRY MODEL

This Part will discuss the general criminal registry model.¹⁸ It will begin by describing the framework and development of the sex offender registry—the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (“Jacob Wetterling Act”), Megan’s Law, and the Adam Walsh Child Protection and Safety Act (“Adam

8. Dan Frosch & Kirk Johnson, *Gunman Kills 12 at Colorado Theater; Scores Are Wounded, Reviving Debate*, N.Y. TIMES, July 21, 2012, at A1.

9. See, e.g., N.Y.C., N.Y., ADMIN. CODE § 10-601 (2010).

10. See, e.g., Sarah Matheson, *Online Gun Offender Registry Could Go Public Next Year*, EPOCH TIMES, Aug. 21, 2013, <http://www.theepochtimes.com/n3/257287-online-gun-offender-registry-could-go-public-next-year>.

11. See *infra* Part II.

12. See *infra* Part II.

13. See *infra* Part III.A–B.

14. See *infra* Part III.C–D.

15. See *infra* Part IV.

16. See *infra* Part III.A, C.

17. See *infra* Part IV.B.

18. See *infra* Part II.A.

Walsh Act”)—which is the most well-known type of registry, and the first criminal registry made available to the public.¹⁹ All criminal registries base their structure, requirements, and penalties for violation on the sex offender registry model.²⁰ This Part will proceed by outlining the emergence of different criminal registries that require offenders to register for various types of crimes, such as: gun offenses; arson offenses; child abuse offenses; animal abuse offenses; elder abuse offenses; and methamphetamine offenses.²¹ Finally, this Part will provide an analysis of various cities with gun offender registries, and the intricacies, nuances, and differences of each one.²²

A. History of Current Criminal Registries

The criminal registry model originated from the Jacob Wetterling Act.²³ In order to extend the criminal registry model, Congress amended the Jacob Wetterling Act and enacted Megan’s Law, thus expanding the versatility of the criminal registry model by making sex offenders’ personal information available to the public.²⁴ After Megan’s Law, Congress extended the reach of criminal registries even further by creating a federal sex offender registry.²⁵

1. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration

In October of 1989, eleven-year-old Jacob Wetterling was riding his bike with his brother and friend.²⁶ As the boys were riding their bikes, a masked gunman grabbed Jacob and told the other two boys to “run as fast as [they] could into the woods or else he would shoot.”²⁷ Jacob was never seen again and his kidnapper was never caught.²⁸ The police continue to receive tips today regarding Jacob, and the investigation remains open.²⁹

19. See *infra* Part II.A.

20. See *infra* Part II.B.

21. See *infra* Part II.B–C.

22. See *infra* Part II.C.

23. See *infra* Part II.A.1.

24. See *infra* Part II.A.2.

25. See *infra* Part II.A.3.

26. Esme Murphy, *For 1st Time, ‘Person of Interest’ Goes Through Day of Wetterling Abduction*, CBS (May 14, 2013, 10:41 PM), <http://minnesota.cbslocal.com/2013/05/14/for-1st-time-person-of-interest-goes-through-day-of-wetterling-abduction>.

27. *Id.*

28. Beth Hawkins, *Without a Trace*, MINN. MONTHLY (Oct. 2009), <http://www.minnesotamonthly.com/media/Minnesota-Monthly/October-2009/Without-a-Trace>.

29. *Id.*

In response to Jacob's disappearance, Congress passed the Jacob Wetterling Act in 1994.³⁰ The Jacob Wetterling Act required offenders convicted of specific crimes³¹ to register in accordance with their state's version of the law.³² By 1996, all fifty states complied with the Jacob Wetterling Act, and established sex offender registries.³³ The original purpose of the registry was to help the police monitor the "whereabouts" of sex offenders.³⁴ But, in 1996, the Jacob Wetterling Act was amended and replaced by a new act, known as "Megan's Law."³⁵

2. Megan's Law

In 1996, Congress expanded the criminal registry model through the passage of Megan's Law.³⁶ Megan's Law makes the offender's personal information available to the public.³⁷ Congress expanded the Jacob Wetterling Act in response to the rape and murder of seven-year-old Megan Kanka.³⁸ On July 29, 1994, Megan Kanka was riding her bike outside of her home in West Windsor Township, New Jersey.³⁹ Jesse Timmendequas approached Megan, and lured her into his house by asking her if she wanted to see his puppy.⁴⁰ Timmendequas proceeded to rape and strangle Megan, resulting in her death.⁴¹ On the following day, Megan's body was found in a park near her home.⁴² In 1997,

30. See 42 U.S.C. § 14071 (1994).

31. § 14071(a)(3)(A)–(B).

32. § 14071(b).

33. See *People v. Ross*, 646 N.Y.S.2d 249, 250 n.1 (Sup. Ct. 1996) (listing every state that adopted the Jacob Wetterling Act and the year that it did so).

34. Wilson, *supra* note 5, at 515.

35. See 42 U.S.C. § 14071(e)(2) (2006).

36. See *id.*

37. *Id.* The law states:

The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released. The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public

Id.

38. See *State v. Timmendequas*, 737 A.2d 55, 66–70 (N.J. 1999) (describing the trial phase of Timmendequas's charge for murdering Megan Kanka).

39. *Man Charged in Murder of Megan Kanka*, HISTORY, <http://www.history.com/this-day-in-history/man-charged-in-murder-of-megan-kanka> (last visited July 20, 2014).

40. *Repeat Sex Offender Guilty in 'Megan's Law' Case*, CNN (May 30, 1997, 6:54 PM), <http://www.cnn.com/US/9705/30/megan.kanka>. The Kankas were unaware that Timmendequas—who was previously convicted of sexually assaulting young girls on two separate occasions—along with four other sex offenders, were living across the street from their home because communities were not informed of sex offenders living in their neighborhoods. Wilson, *supra* note 5, at 516.

41. *Repeat Sex Offender Guilty in 'Megan's Law' Case*, *supra* note 40.

42. *Timmendequas*, 737 A.2d at 106.

Timmendequas was found guilty of kidnapping, sexual assault, and murder, and was sentenced to death.⁴³

The type of information released to the public via Megan's Law is determined individually by each state, but can include almost any aspect of the offender's personal information, including the offender's name, address, and job location.⁴⁴ Megan's Law requires the information collected in each state's sex offender registry to be disclosed to the public.⁴⁵ The state has the option of whether to release the information to the public via the Internet or through some other channel.⁴⁶ Some of the other channels used include: knocking on doors and providing personal notice; publishing the offender's name in a newspaper; distributing fliers; and requiring the offender to send postcards to his neighbors within one mile of his home.⁴⁷

In order to determine the extent of the information that each offender must provide, a tier system has been adopted in order to illustrate how likely each offender is to re-offend.⁴⁸ In addition to the offender's personal information, the offender's tier level is also made available to the public.⁴⁹ The tier system is separated into three tiers: Tier 1 offenders that pose a low risk of recidivism; Tier 2 offenders that pose a moderate risk of recidivism; and Tier 3 offenders that pose a high risk of recidivism.⁵⁰ The amount of personal information that is provided to the public is based on the offender's tier level.⁵¹ Professionals that are familiar with sex offenders and their behavior patterns, such as prosecutors, boards, and mental health counselors, determine the

43. *Id.* at 64.

44. See N.M. STAT. ANN. § 29-11A-4(B)-(C) (West 2011) (requiring the following information to be made available: name; date of birth; social security number; current address; place of employment or school currently attending; the offense the offender is convicted of; and the date and place of the conviction); N.Y. CORRECT. LAW § 168-b(1)(a)-(f) (McKinney 2003) (requiring the following information to be made available to the public: name; date of birth; sex; race; height; weight; eye color; driver's license number; home address; Internet accounts; a photograph and set of fingerprints; description of the offense for which the sex offender is convicted; employment address or name and address of any school attending or expecting to attend; and any other information deemed pertinent).

45. 42 U.S.C. § 14071(e) (2006).

46. *Id.*; Wilson, *supra* note 5, at 516 (stating that a sex offender's information could be made available to the public passively by "having registry lists available at local police stations, or actively, such as by holding community meetings, posting flyers, or alerting management at high-risk enterprises like day cares and schools").

47. Susan Oakes, Comment, *Megan's Law: Analysis on Whether It Is Constitutional to Notify the Public of Sex Offenders Via the Internet*, 17 J. MARSHALL J. COMPUTER & INFO. L. 1133, 1142-43 (1999).

48. E.B. v. Verniero, 119 F.3d 1077, 1082-83 (3d. Cir. 1997).

49. *Id.* at 1083 (requiring only Tier 2 and Tier 3 offenders to register).

50. See N.J. STAT. ANN. § 2C:7-8a (West 2005); Verniero, 119 F.3d at 1083.

51. Oakes, *supra* note 47, at 1140.

offender's tier level.⁵² Once the offender's tier level is determined, the offender has the opportunity to appeal his classification.⁵³

The decision to release the offender's information to the public helps to expand on the purpose of the Jacob Wetterling Act—to allow the police to monitor and protect the community from sex offenders—by allowing the members of the community to know the whereabouts of convicted sex offenders, in order to avoid the areas where they may live or tend to be found.⁵⁴ However, the law was again expanded, encompassing more crimes that would require a person to submit their personal information into a registry.⁵⁵ This expansion provided uniform requirements for what information must be provided by each offender.⁵⁶

3. The Adam Walsh Child Protection and Safety Act

In 2006, the Adam Walsh Act repealed and replaced the Jacob Wetterling Act, establishing a comprehensive national sex offender registry.⁵⁷ The Adam Walsh Act was named after Adam Walsh, a six-year-old boy who was murdered in 1981.⁵⁸ The death of Adam Walsh

52. *Id.*; see *Verniero*, 119 F.3d at 1083 (“The prosecutor of the county where the sex offender intends to reside and the prosecutor from the county of conviction use the registration information and other data to jointly assess the risk of reoffense by the registered individual.”); *Roe v. Office of Adult Prob.*, 125 F.3d 47, 51 (2d Cir. 1997) (recognizing that professionals in a clinic determine the risk level of a sex offender); *Roe v. Farwell*, 999 F. Supp. 174, 178 (D. Mass. 1998) (recognizing that a sex offender registry board determines the risk level of a sex offender).

53. *Oakes*, *supra* note 47, at 1141; see *Verniero*, 119 F.3d at 1086 (discussing that states must provide sex offenders with a pre-notification judicial review to contest their classification, where they bear the burden of persuasion to show that they were improperly classified); see also *Farwell*, 999 F. Supp. at 196 (citations omitted) (recognizing that a sex offender “has a protectable liberty under the Massachusetts Constitution,” affording him a hearing to determine if public notification is necessary).

54. See 42 U.S.C. § 14071(e)(2) (2006); *Oakes*, *supra* note 47, at 1147 (“In passing Megan’s Law, Congress intended to identify potential recidivists, alert the public when necessary, and thus prevent future sex offenses.”).

55. See Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16911 (2006).

56. See 42 U.S.C. § 16914 (2006).

57. See 42 U.S.C. §§ 16901–02 (2006).

58. *The Murder of Adam Walsh: A 27-Year Mystery Solved*, FOX NEWS (Dec. 16, 2008), <http://www.foxnews.com/story/2008/12/16/murder-adam-walsh-27-year-mystery-solved>. On July 27, 1981, Adam Walsh and his mother were at a department store in Hollywood, Florida. *Id.* Adam was in the video game aisle when a fight broke out, and, as a result, Adam was instructed to vacate the store and go to the parking lot. *Id.* After Adam went to the parking lot, he vanished, while his mom was inside shopping for lamps. *Id.* The search for Adam was deemed “the largest manhunt for a missing child in the state of Florida.” *Id.* Unfortunately, the Walsh’s hopes of finding their son came to an end when Adam’s head was found 100 miles away in Vero Beach, Florida. *Id.* The primary suspect was serial killer Ottis Elwood Toole. *Id.* Toole died in prison in 1996, leaving the investigation open, without any suspects. *Id.* In 2008, the police reviewed their entire investigation, including Toole’s deathbed confession, determined that the case was officially closed, and that Toole was the killer. *Police: 1981 Killing of Adam Walsh Solved*, NBC (Dec. 16, 2008, 8:29 PM), <http://www.nbcnews.com/id/28257294/#.UmQL4RaTBFI>.

highlighted the need to protect the public from sex offenders.⁵⁹ Thus, the Adam Walsh Act requires that every jurisdiction maintain a sex offender registry.⁶⁰ Under this act, the sex offenders are split into the three tiers.⁶¹

Once an offender is categorized under the tier system, the offender is required to register prior to completing his required sentence of imprisonment, or, if the sentence does not require a term of imprisonment, the offender must register no later than three days after being sentenced.⁶² Unlike Megan's Law, the amount of information that each offender must provide is not determined by his tier ranking.⁶³ The Adam Walsh Act requires that every sex offender provide the following information: the offender's name; social security number; address of residence; name and address of employer; name and address of where the offender is a student; license plate number; and any other information deemed necessary by the Attorney General.⁶⁴ The tier levels are relevant for determining how long each sex offender must update and maintain their information with the registry.⁶⁵ A Tier I sex offender must register for fifteen years, a Tier II sex offender must register for twenty-five years, and a Tier III sex offender must register for life.⁶⁶ While Megan's Law allowed the sex offender to appeal their tier level classification,⁶⁷ the Adam Walsh Act allows a sex offender to reduce the amount of time that he is required to register.⁶⁸ A Tier I sex offender who keeps a clean record for ten years receives a five-year reduction in their registration period, and a Tier III offender who keeps a clean record for twenty-five years receives a reduction from life to the period for which the clean record is maintained.⁶⁹

59. § 16901 (listing seventeen different children that were murdered or sexually abused by sexual offenders, thus furthering the need for a national sex offender registry).

60. 42 U.S.C. § 16912(a) (2006).

61. § 16911(2)–(4).

62. 42 U.S.C. § 16913 (2006) (recognizing that the failure to comply will result in a criminal penalty).

63. See 42 U.S.C. § 16914 (2006) (listing the information that every registered sex offender must provide); see also *supra* Part II.A.2.

64. § 16914(a).

65. See 42 U.S.C. § 16915(a) (2006).

66. *Id.*

67. See *supra* Part II.A.2.

68. See § 16915(b).

69. *Id.*

B. *The Emergence of New Criminal Registries*

Based on the acceptance and increasing popularity of using sex offender registries to provide the public with the whereabouts of convicted sex offenders, numerous cities and states have implemented the criminal registry model to provide police departments with information regarding offenders convicted of other types of crimes.⁷⁰ Not only has the registry model gained popularity, but the concept of making the information available to the public via the Internet has also gained widespread approval.⁷¹ However, making these criminal registries available to the public is unlikely to create safer neighborhoods and will be more detrimental than beneficial to society and the offender.⁷²

C. *An Overview of Gun Offender Registries*

This Subpart will provide an outline of the cities that currently maintain a gun offender registry.⁷³ After outlining the current gun offender registries, a description of the cities that are currently attempting to pass legislation in order to create a gun offender registry will follow.⁷⁴ Due to the fact that the gun offender registry is a relatively new type of registry, all of the cities maintain very similar registries,

70. See WAYNE A. LOGAN, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA 73-74 (2009). There are currently numerous states maintaining arsonist registries, which operate in a similar fashion to sex offender registries. OHIO REV. CODE ANN. § 2909.14 (West 2006 & Supp. 2013); LA. REV. STAT. ANN. § 15:562.3 (2012); 730 ILL. COMP. STAT. ANN. 148/1 (West 2007). The difference between arsonist registries and sex offender registries is that arsonist registries are not made available to the public. *E.g.*, § 2909.15(E) ("The registry of arson offenders and out-of-state arson offenders maintained by the bureau is not a public record . . ."). There are also numerous registries devoted to various types of abuse, such as child abuse, animal abuse, and elder abuse. See CONN. GEN. STAT. ANN. § 17a-101k (West 2013); IOWA CODE ANN. § 235A.14 (West 2008); ARIZ. REV. STAT. ANN. § 46-457 (2005); Suffolk County, N.Y., Local Law No. 55-2010, sec. 3 (Oct. 12, 2010). Once again, these registries are not made available to the public, with the sole exception being the animal abuse registry, which is only maintained on Long Island, New York. See § 17a-101k(a); Suffolk County, N.Y., Local Law No. 55-2010, sec. 1 (Oct. 12, 2010). In addition to the aforementioned registries, all of which involve inflicting physical harm, there are also a vast amount of states that maintain a methamphetamine offense registry. TENN. CODE ANN. § 39-17-436 (2010); 730 ILL. COMP. STAT. 180/10 (West 2007). Moreover, in addition to the criminal registries that already exist, numerous states are pushing to enact registries for additional crimes, such as: violence against a peace officer; hate crimes; dangerous animal crimes; and drug crimes. LOGAN, *supra*, at 73-74.

71. See *infra* Part II.C.

72. See *infra* Part III.

73. See *infra* Part II.C.1.

74. See *infra* Part II.C.2.

with Chicago being the anomaly by making its registry available to the public.⁷⁵

1. Current Gun Offender Registries

There are currently four cities that maintain gun offender registries.⁷⁶ This Note will outline the model of each city's registry and how it is maintained.⁷⁷ It is important to recognize that Chicago is the only city that currently maintains a public gun offender registry, and New York City is currently attempting to make its gun offender registry available to the public.⁷⁸

a. New York City

On July 27, 2006, NYC enacted a gun offender registry that requires all people convicted of specific gun offenses to register with the New York City Police Department ("NYCPD").⁷⁹ The New York Gun Offender Registry Act ("GORA") states that gun offenders pose unique dangers to the people of the city and should "be monitored to prevent them from reoffending, and to ensure their prompt apprehension if they do commit further crimes."⁸⁰ It is important to note that the passage of GORA was not fully supported and received substantial criticism and opposition.⁸¹

75. See *infra* Part II.C.1.

76. See *infra* Part II.C.1.

77. See *infra* Part II.C.1.

78. See *infra* Part II.C.1.

79. N.Y.C., N.Y., ADMIN. CODE § 10-603 (2010).

80. N.Y.C., N.Y., ADMIN. CODE § 10-601 n.* (2010) (noting that "the New York Police Department has shown that information about past offenders can be used to prevent future crimes"). GORA was first introduced to the NYC Council in June 2006. *People v. Minott*, 972 N.Y.S.2d 499, 507 (Crim. Ct. 2013). The sponsors of the legislation stated that its purpose was to address the "unique dangers" that gun offenders present. *Id.* The sponsors continued by stating that "these offenders should be monitored to prevent them from reoffending, and to ensure their prompt apprehension if they commit further crimes." *Id.* (citations omitted) (internal quotation marks omitted). The supporters concluded by stating, "information about past offenders can be used to prevent future crimes." *Id.* at 508 (citations omitted) (internal quotation marks omitted). The benefits of GORA were reiterated at a hearing on June 27, 2006, before NYC Council's Committee on Public Safety. *Id.* (citations omitted). John Feinblatt, NYC's Criminal Justice Coordinator, "testified that gun offenders recidivate more frequently and more violently than other felons . . . [and they are] about four times more likely to be arrested for homicide [than other felons]." *Id.* (citations omitted) (internal quotation marks omitted). At a final hearing on July 19, 2006, it was stated that GORA would allow the police department to "better monitor [gun offenders] and would give us another reason to apprehend [them] and send them back to jail to get them off the streets where they can harm children and harm other New Yorkers." *Id.* (citations omitted).

81. See *id.* (citations omitted) (internal quotation marks omitted). The New York State Rifle and Pistol Association, Inc. expressed concern for GORA because GORA is:

A person is considered a gun offender and is required to register if the person is convicted of “criminal possession of a weapon in the third degree in violation of subdivisions 4, 5, 6, 7, or 8 of section 265.02 of the penal law,⁸² or criminal possession of a weapon in the second degree in violation of subdivision 3 of section 265.03 of the penal law.”⁸³ The defendant must have been convicted of the offense after the enactment of GORA, otherwise he is not required to register.⁸⁴ Once a person is convicted of an offense within the purview of GORA, he must register with the NYCPD at the time of sentencing.⁸⁵

Upon registering, the offender must provide: his name; date of birth; sex; race; height; weight; eye color; driver’s license number; home address; photograph; description of offense; name of educational institutions; place of employment; and any other pertinent information.⁸⁶ Following the offender’s initial registration, he must appear personally at the NYCPD “within forty-eight hours of (i) release, in the event the gun

focused on status offenders rather than persons with demonstrated histories of armed violence and/or otherwise convincing histories of incorrigible anti-social criminal behavior . . . [offenders] will be discriminated against in employment and education, a result plainly counterproductive to society’s strong interest in the legitimate economic success of every free citizen, in addition to being grossly unfair.

Id. (citations omitted) (internal quotation marks omitted).

82. N.Y. PENAL LAW § 265.02(5)–(8) (McKinney 2008). In order to be considered a gun offender, you must be convicted of one of the following crimes:

A person is guilty of criminal possession of a weapon in the third degree when: (5) (i) [s]uch person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor . . . within the five years immediately preceding the commission of the offense and such possession did not take place in the person’s home or place of business; or (6) [s]uch person knowingly possesses any disguised gun; or (7) [s]uch person possesses an assault weapon; or (8) [s]uch person possesses a large capacity ammunition feeding device.

Id.

83. N.Y.C., N.Y., ADMIN. CODE § 10-602(e) (2010) (footnote not in original); N.Y. PENAL LAW § 265.03(3) (McKinney 2008) (“A person is guilty of criminal possession of a weapon in the second degree when: . . . such person possesses any loaded firearm.”); *see* *People v. McCray*, 901 N.Y.S.2d 698, 699 (App. Div. 2010) (holding that a conviction for attempted criminal possession of a weapon in the second degree, pursuant to PENAL LAW § 265.03(3), is not a gun offense under GORA); *People v. Baker*, 877 N.Y.S.2d 913, 913-14 (App. Div. 2009) (holding that a person convicted of criminal possession of a weapon in the second degree, pursuant to PENAL LAW § 265.03(1)(b), is not required to register under GORA).

84. *See, e.g.,* *People v. Ventura*, 872 N.Y.S.2d 191, 192 (App. Div. 2009) (holding that even though the defendant was convicted of a gun offense, falling within the purview of GORA, he did not have to register because he was convicted before the date that GORA went into effect); *People v. Douglas*, 865 N.Y.S.2d 328, 329 (App. Div. 2008) (holding that even though the defendant was convicted of a gun offense, falling within the purview of GORA, he did not have to register because he was convicted before the date that the Act went into effect).

85. § 10-603(a). The requirement that an offender register pursuant to GORA is not part of the offender’s sentence, and, is therefore, not reviewable on a criminal appeal. *People v. Smith*, 942 N.E.2d 1039, 1042 (N.Y. 2010); *People v. Williams*, 914 N.Y.S.2d 92, 93 (App. Div. 2010).

86. § 10-603(c).

offender receives a sentence of imprisonment, or (ii) the time sentence is imposed, if such sentence does not include imprisonment,” in order to verify his personal information.⁸⁷ If an offender is a resident of NYC, he must go to the NYCPD every six months after his initial registration for the entire duration of his registration period in order to update and verify his personal information.⁸⁸ The duration of a gun offender’s registration period will be four years, either from the date of conviction—if the offender is not imprisoned—or four years after the date of release from imprisonment.⁸⁹ If a gun offender violates any of the terms of GORA—including but not limited to, failing to register, failing to update information, or failing to appear every six months—he will be charged with a misdemeanor, which is “punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year or both.”⁹⁰

In order to further the purpose of the registry—to assist the police department with monitoring gun offenders—it is important that the NYCPD work with other governmental bodies that are responsible for maintaining gun offender registers.⁹¹ Therefore, the NYCPD is authorized to provide and accept information regarding gun offenders to and from any other government-operated registry.⁹² Additionally, the NYCPD is encouraged to cooperate with state agencies, city agencies, and the judiciary, in order to implement and fulfill the purpose of GORA.⁹³

NYC is currently attempting to make the gun offender registry available to the public, and expand the city registry to a statewide registry.⁹⁴ However, in a similar fashion to the original passing of GORA, the expansion of the gun offender registry and making it

87. § 10-603(d).

88. § 10-603(e)(1); *see also* § 10-603(g) (requiring an offender to personally appear at the NYCPD’s office within ten days of establishing residence within NYC).

89. § 10-604.

90. § 10-608; *see People v. Minott*, 972 N.Y.S.2d 499, 501 (Crim. Ct. 2013) (holding that the defendant who failed to re-register for GORA violated § 10-608 of the code, and was charged with a misdemeanor).

91. *See* § 10-605.

92. *Id.* (“The department is also authorized to make the registry available to other City agencies.”).

93. *See* § 10-606.

94. Erik Durkin, *Vallone Pushes for Online Registry of Gun Felons*, N.Y. DAILY NEWS, Aug. 21, 2013, <http://www.nydailynews.com/news/crime/vallone-pushes-online-registry-gun-felons-article-1.1433338>.

available to the public is receiving widespread criticism due to the ineffectiveness of GORA's current structure and the potential negative consequences that a public registry may bring.⁹⁵

b. Washington D.C.

Washington D.C.'s Gun Offender Registry Act ("Washington D.C. Registry") took effect on December 10, 2009.⁹⁶ The law requires the offender to provide the following information: the offender's name; date of birth; sex; race; height; weight; eye color; address of residence; description of the offender's crime; fingerprints; driver's license number; and educational background.⁹⁷ The law requires a gun offender to register with the Chief of Police for a period of two years—unless a longer period is required.⁹⁸ The offender is required to register within forty-eight hours of release (if the offender is imprisoned), within forty-eight hours of the time of sentencing, (if the sentence does not require imprisonment), or within forty-eight hours of receipt of notice of the obligation to register.⁹⁹ Within twenty days from the one-year anniversary of the offender being on the registry, the offender must appear personally at the police department in order to verify his personal information.¹⁰⁰

In a similar fashion to GORA,¹⁰¹ the Washington D.C. registry authorizes the Chief of Police to make the offender's information available to "other local, state, or federal government agencies," in order to make the community safer.¹⁰² However, Washington D.C. makes it clear that releasing the offender's information to the public is prohibited.¹⁰³ If a convicted offender under the law fails to comply, he is subject to criminal charges.¹⁰⁴ If an offender "fail[s] to register, verify,

95. Patrick Wall, *Pols Propose a Public Gun-Offender Registry, but Critics Blast the Plan*, DNAINFO N.Y. (Aug. 22, 2013, 9:51 AM), <http://www.dnainfo.com/new-york/20130822/civic-center/pols-propose-public-gun-offender-registry-but-critics-blast-plan> (recognizing that the public registry would provide excessive stigmatization of offenders and lead to vigilantism). Justine Olderman, the managing attorney for the Bronx Defenders, said "[r]ather than improve public safety, this bill will make it impossible for people who have already taken responsibility for their crime, and served their prison time, to re-enter society in successful and productive ways." *Id.*; see *infra* Part III.D.

96. D.C. CODE § 7-2508.01 (2008 & Supp. 2012).

97. § 7-2508.02(a)(2).

98. § 7-2508.02(a).

99. § 7-2508.02(a)(1).

100. § 7-2508.02(b)(1).

101. See *supra* Part II.C.1.a.

102. § 7-2508.05(b).

103. § 7-2508.05(a).

104. See § 7-2508.07.

or update information,” he shall be charged with a misdemeanor, “punishable by a fine of not more than \$1,000, imprisonment of not more than 12 months, or both.”¹⁰⁵

c. Baltimore

Baltimore’s gun offender registry is similar to NYC’s, except in Baltimore, the offender must register for three years, as opposed to four.¹⁰⁶ Although there has been speculation regarding the law’s vague wording, which may result in infringement on the offender’s right to bear arms, this is unlikely to occur because of a Supreme Court decision holding that a citizen can only be protected by the Second Amendment if they are a law-abiding citizen.¹⁰⁷ Baltimore is attempting to make this registry available to the public.¹⁰⁸ But, this attempt by the legislature has received a vast amount of harsh criticism based on the non-violent crimes that can result in a person being required to register.¹⁰⁹

d. Chicago

Currently, Chicago is the only city with a gun offender registry that is available to the public.¹¹⁰ In Chicago, a person is considered an “offender,” and must register with local law enforcement, if he is convicted of one of the following of crimes: kidnapping; assault; battery; home invasion; robbery and vehicular hijacking; armed violence; aggravated discharge of a firearm; unlawful sale of firearms;

105. § 7-2508.07(a).

106. BALT. CITY, MD., POLICE ORDINANCES art. 19, § 60-7 (2013), available at <https://www.baltimorecity.gov/Portals/0/Charter%20and%20Codes/ChtrPLL/01%20-%20Charter.pdf> (requiring an offender to register for three years); N.Y.C., N.Y., ADMIN. CODE § 10-604 (2010) (requiring an offender to register for four years); see *Gun Offender Registration, MAYORS AGAINST ILLEGAL GUNS*, <http://prtl-site-a-maigs.nyc.gov/html/local/gun-offender.shtml> (last visited July 20, 2014) (comparing New York and Baltimore’s gun offender registries).

107. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (holding that the Second Amendment only applies to “the right of law-abiding, responsible citizens to use arms in defense of hearth and home”).

108. Emily Miller, *A Scarlet Letter for Guns; Prince George’s Public Registry Shows County’s Priorities Are Misdirected*, WASH. TIMES, July 19, 2012, <http://www.washingtontimes.com/blog/guns/2012/jul/30/miller-prince-georges-public-gun-offenders-registry>.

109. *Id.* (“As an example of how ridiculous these registries can be, former Army Specialist Adam Meckler, a veteran of both the wars in Iraq and Afghanistan, is branded a convicted criminal . . . because he absent minded left 14 rounds of 9mm in his bag when [traveling to and from his home].”).

110. Compare CHI. ILL., CODE § 8-26-080 (2013), available at [http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago_il](http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il) (maintaining a public gun offender registry), with D.C. CODE § 7-2508.05(a) (Supp. 2012) (maintaining a non-public gun offender registry), and N.Y.C., N.Y., ADMIN. CODE § 10-605 (2010) (maintaining a non-public gun offender registry).

gunrunning; and other crimes involving the unlawful possession and sales of firearms.¹¹¹ A person convicted of one of the aforementioned crimes must register within five days of being released from prison, or within five days of conviction—if no jail time is required.¹¹² The offender must provide the following information: name; date of birth; address; mobile phone number; driver's license; photograph; list of convictions; name and address of place of work; and any other information deemed necessary.¹¹³ The offender is required to register for four years.¹¹⁴ If an offender provides false information or fails to comply with the requirements of this code, he will be subject to criminal charges.¹¹⁵

What sets Chicago apart from the other cities with gun offender registries is that the offender's information is made available to the public.¹¹⁶ The code reads as follows:

The superintendent shall post the name and address of every registered gun offender on the department's publicly available web site, and shall make the name and address of every registered gun offender in the gun offender registry database searchable with a mapping system which identifies registered gun offenders within 1/8, 1/4 and 1/2 mile of an identified address. The information shall be updated as deemed necessary by the superintendent.¹¹⁷

Although the purpose of making this registry available to the public was to protect the community from gun offenders that may be violent and to reduce recidivism rates, the publication of the registry has yet to yield such results.¹¹⁸

2. Proposed Gun Offender Registries

There are three states that are attempting to pass gun offender registry acts: Connecticut; Massachusetts; and Tennessee.¹¹⁹ The

111. § 8-26-010.

112. § 8-26-020(a)(1)(A)–(B).

113. § 8-26-020(c).

114. § 8-26-040.

115. §§ 8-26-035, -100.

116. § 8-26-080; *see supra* Part II.C.1.a–c.

117. § 8-26-080.

118. *See* Mick Dumke, *Chicago's Gun Laws Keep Getting Tougher, But More People Are Breaking Them*, CHI. READER (Apr. 12, 2013, 7:32 AM), <http://www.chicagoreader.com/Bleader/archives/2013/04/10/chicagos-gun-laws-keep-getting-tougher-but-more-people-are-breaking-them> (recognizing Chicago as having the broadest gun offender registry act due to its availability to the public and large amount of crimes falling within its purview, yet the act has not achieved the results that the legislature desired).

119. S. 1076, Gen. Assemb., Jan. Sess. (Conn. 2013); H. 3255, 188th Gen. Ct., Reg. Sess. (Mass. 2013); S. 1834, 106th Gen. Assemb., Reg. Sess. (Tenn. 2009).

legislation that each state is attempting to pass is based on the legislation of the cities that currently maintain gun offender registries.¹²⁰ Due to the lack of change in the text of these bills, the registries will likely contain the same flaws and inefficiencies as the other criminal registries.¹²¹

III. THE FLAWS AND INEFFICIENCIES OF GUN OFFENDER REGISTRIES

This Part begins by discussing the purpose of enacting gun offender registries.¹²² After discussing the legislature's intention of protecting the public and assisting law enforcement, this Part will discuss the flaws in the current gun offender registry model.¹²³ These flaws include: the under-inclusiveness of the gun offender registry; the common failure of the gun offender to register and the lack of punishment for failing to do so; the extremely short period that the offender is required to register for; and the lack of reduction in recidivism rates.¹²⁴ Following the discussion of the flaws in the current gun offender registry model, this Part will outline the intention of numerous cities, including NYC, to make its gun offender registry available to the public.¹²⁵ This Part will conclude with the core argument that the gun offender registry should not be made available to the public due to the aforementioned flaws in the current model and the additional flaws that will result in making the registry available to the public, such as: vigilantism against the offender; difficulty for the offender to maintain employment; difficulty for the offender to find housing; the fact that the offender's information will remain on the Internet permanently; and the high cost of maintaining an online registry.¹²⁶

A. *The Public Safety Rationale for Maintaining a Gun Offender Registry*

The purpose of a gun offender registry is to allow law enforcement to track and observe potentially dangerous offenders who have been released from prison.¹²⁷ Gun offenders are considered to be "the baddest

120. See *supra* Part II.C.

121. See *infra* Part III.

122. See *infra* Part III.A.

123. See *infra* Part III.B.

124. See *infra* Part III.B.

125. See *infra* Part III.C.

126. See *infra* Part III.D.1-5.

127. See N.Y.C., N.Y., ADMIN. CODE § 10-601 n.* (2010); *Samms v. Fischer*, No. 9:10-CV-0349, 2011 WL 3876528, at *3 (N.D.N.Y. Mar. 25, 2011) (stating that the purpose of creating the gun offender registry was to be able to monitor gun offenders and keep the community safe after the offender is released from prison).

of the bad,” and therefore, the gun offender registry is supposed to promote public safety and reduce recidivism rates.¹²⁸ But, legislatures that have taken the position that a gun offender registry will bring about these benefits fail to recognize the negatives that come with the gun offender registry and how these negatives outweigh the positives.¹²⁹

B. The Flaws of the Gun Offender Registry Model

The gun offender registry presents a vast number of flaws and inefficiencies that can be analogized to the other criminal registries.¹³⁰ The flaws include: the under-inclusive nature of the gun offender registry system; the fact that offenders fail to register; the fact that a registry is only a short-term solution; and the fact that maintenance of a registry has failed to reduce recidivism rates.¹³¹ The presence of these flaws, in addition to the flaws that come with making the registry available to the public, show the inefficiency of the gun offender registry and the criminal registry model as a whole.¹³²

1. The Gun Offender Registry Is Under-Inclusive

Gun offender registries only require a person convicted of specific felony gun offenses to register.¹³³ In NYC, a person is considered a gun offender, within the purview of GORA, if he is convicted of specific sections of section 265.02 and section 265.03 of the New York Penal Law.¹³⁴ In section 265.02—Criminal Possession of a Weapon in the Second Degree—the potential offender must commit one of the following crimes to fall within the purview of the statute: possess three or more firearms; possess a firearm and have previously been convicted of a class A misdemeanor; knowingly possess a disguised gun; possess an assault weapon; or possess a large capacity ammunition feeding device.¹³⁵ In section 265.03—Criminal Possession of a Weapon in the Third Degree—the potential offender must possess any loaded firearm, which does not include possession in a person’s home or place of business.¹³⁶

128. See § 10-601 n.*; *Samms*, 2011 WL 3876528, at *2.

129. See *infra* Part III.B.

130. See *infra* Part III.B.

131. See *infra* Part III.B.

132. See *infra* Part III.C–D.

133. See, e.g., § 10-602(d)–(e).

134. § 10-602(e).

135. N.Y. PENAL LAW § 265.02(5)–(8) (McKinney 2008).

136. § 265.03(3).

Although the crimes that allow an offender to be labeled as such are serious, the statute omits a large number of crimes that can be considered just as, if not more, serious.¹³⁷ The primary flaw in GORA is that it fails to classify a person convicted of criminal possession of a weapon in the first degree as an “offender.”¹³⁸ The registry fails to incorporate a person who “possesses any explosive substance with intent to use the same unlawfully against the person or property of another.”¹³⁹ Additionally, all of the aforementioned crimes that qualify under the statute only deal with a person *possessing* a firearm, but fail to consider the crimes that result in *another person’s possession* of a firearm.¹⁴⁰

A person convicted of selling a firearm is not considered an offender and does not have to register.¹⁴¹ Therefore, a person who sells a gun to another person who then uses that gun to commit a violent act will still be prosecuted,¹⁴² but will not suffer the penalty of having to register as a gun offender.¹⁴³ This contradicts a common concept in the American criminal justice system: the equal punishment of accomplices and co-conspirators.¹⁴⁴

A second problem is that criminals tend to plead to lesser charges.¹⁴⁵ A person who is indicted and going to be tried for one of the felony charges that fall within the purview of GORA has the capability of pleading to a lesser charge that does not result in the defendant being required to register.¹⁴⁶ Therefore, the common practice of allowing defendants to plead to lesser charges undermines the purpose of GORA because the offenders from whom the legislature was attempting to protect the public from are capable of avoiding registration.¹⁴⁷

137. See § 10-602(e) (including only gun offenses in the second and third degrees); § 265.04 (“Criminal possession of a weapon in the first degree.”).

138. See § 10-602(e).

139. See § 265.04(1).

140. See § 265.12 (“Criminal sale of a firearm in the second degree.”); § 265.13 (“Criminal sale of a firearm in the first degree.”).

141. See § 10-602(d)–(e).

142. See §§ 265.12–13.

143. See § 10-602(e).

144. *People v. Clements*, 192 N.E.2d 923, 926 (Ill. 1963) (recognizing that in the American criminal justice system, “there is no distinction between an accessory before the fact and a principal, and both may be punished in the same manner”).

145. See Kyle Graham, *Facilitating Crimes: An Inquiry into the Selective Invocation of Offenses Within the Continuum of Criminal Procedures*, 15 LEWIS & CLARK L. REV. 665, 686 (2011).

146. See § 10-602(e) (stating that a qualifying gun offense requires a conviction).

147. See *Samms v. Fischer*, No. 9:10-CV-0349, 2011 WL 3876528, at *3 (N.D.N.Y. Mar. 25, 2011) (stating that the purpose of creating the gun offender registry was to be able to monitor gun offenders and keep the community safe after the offender is released from prison).

2. Gun Offenders Fail to Register

In order for the gun offender registry to serve its purpose of protecting the public, all of the offenders must register, as required by the act.¹⁴⁸ Many criminals who are supposed to register fail to do so.¹⁴⁹ A gun offender is motivated to avoid registration because the penalty for failing to register is so minor.¹⁵⁰ In addition to the minor penalty, law enforcement agencies are occupied with their regular duties, thus resulting in a lack of manpower and financial resources to actually apprehend and penalize the offender for failing to register.¹⁵¹

It is also common practice for the offender to provide a false address to the law enforcement agency maintaining the registry.¹⁵² Even if the offender provides his correct address when registering, many offenders fail to report a change of address.¹⁵³ This becomes even more problematic because the majority of offenders that move end up leaving the state, outside the jurisdiction of the law enforcement agency maintaining the database.¹⁵⁴ As a result, “the central [state] registry does not contain complete and updated information, [and] authorities cannot utilize it effectively to apprehend suspects or notify the public to prevent possible crimes, rendering the statutes virtually useless.”¹⁵⁵ Moreover, the fact that offenders move out of the jurisdiction—in order to avoid being watched by law enforcement—leads to the dangerous offenders moving to other cities, thus making the problem worse because the other cities are unaware of the offender’s criminal status.¹⁵⁶

3. Gun Offender Registries Are Only a Short-Term Solution

A gun offender only has to register for a short period of time.¹⁵⁷ After an offender’s registration time-period expires, the offender is simply removed from the registry and from the watchful eye of local law

148. See Koresh A. Avrahamian, *A Critical Perspective: Do “Megan’s Laws” Really Shield Children from Sex-Predators?*, 19 J. JUV. L. 301, 311 (1998).

149. *Id.*

150. § 10-608 (stating that the punishment for failure to register “shall be a misdemeanor punishable by fine of not more than one thousand dollars or imprisonment of not more than one year or both”); D.C. CODE § 7-2508.07(a) (2009 & Supp. 2012) (punishing an offender that has failed to register by fining them no more than one thousand dollars, or sentencing them to imprisonment for no more than twelve months, or both).

151. Avrahamian, *supra* note 148, at 312.

152. *Id.* at 311-12.

153. See *id.* at 312.

154. See *id.*

155. *Id.*

156. See *id.*

157. D.C. CODE § 7-2508.02 (Supp. 2012) (requiring registration for two years); N.Y.C., N.Y., ADMIN. CODE § 10-604 (2010) (“[F]or a period of four years from the date of conviction . . . or [if the offender is imprisoned] for a period of four years from the date of release.”).

enforcement.¹⁵⁸ There is a rational basis for putting a time limit on how long a *sex offender* must register.¹⁵⁹ Sex offenders suffer from some type of addiction or disease.¹⁶⁰ Therefore, the sex offender has the opportunity to be rehabilitated or “cured” within the statutory time frame that he is required to register.¹⁶¹ On the contrary, while the United States has been criticized for being “addict[ed]” to guns as a country,¹⁶² there is no claim that a person can be addicted to guns and receive some sort of rehabilitation in order to be cured.¹⁶³ Moreover, based on the high recidivism rates of gun offenders,¹⁶⁴ it is unlikely that these minimum registration requirements are going to deter a gun offender from re-offending after his registration period has ended.¹⁶⁵

4. The Installation of Gun Offender Registries Has Not Reduced Recidivism Rates

Since the enactment of the gun offender registry in NYC, more than fifty percent of people within the purview of the gun offender registry statute have re-offended and returned to jail.¹⁶⁶ As of December 2012, there were 595 registered gun offenders in NYC and 302 of them are currently back in jail.¹⁶⁷ When compared to other crimes, offenders convicted of gun offenses were: (1) the most likely to be re-arrested; (2) most likely to have their re-arrest involve violence—murder, sex offense, robbery, assault, weapons; and (3) most likely to be arrested for homicide.¹⁶⁸ In Baltimore and NYC, “[s]tudies indicate people who

158. See, e.g., § 10-604.

159. See Michael P. Griffin & Desirée A. West, Student Article, *The Lowest of the Low? Addressing the Disparity Between Community View, Public Policy, and Treatment Effectiveness for Sex Offenders*, 30 LAW & PSYCHOL. REV. 143, 167 (2006).

160. *Id.*

161. See Beth Miller, *A Review of Sex Offender Legislation*, KAN. J.L. & PUB. POL’Y, 1998, at 65-66 (recognizing the existence of “relapse prevention therapy,” which allows the offender to experience empathy for his victims). The rehabilitation process acknowledges that “[t]he empathy is created by sex offenders watching videotapes from a victim’s perspective, reading victims’ accounts, writing about the offense they committed from the victim’s perspective and reenacting the crime while playing the role of the victim.” *Id.* at 66.

162. See Andrew D. Herz, *Gun Crazy: Constitutional False Consciousness and Dereliction of Dialogic Responsibility*, 75 B.U. L. REV. 57, 149-52 (1995).

163. See *id.*

164. See *infra* Part III.B.4.

165. See Peter F. Vallone, *Spotlighting NY’s Gun Thugs*, N.Y. POST, Feb. 26, 2013, <http://www.nypost.com/2013/02/26/spotlighting-nys-gun-thugs>; see also Wilson, *supra* note 5, at 518-19 (recognizing that sex offender registries impose lengthy registration requirements in order to deter sex crimes and reduce recidivism rates).

166. See Vallone, *supra* note 165.

167. See *id.*

168. FED. BUREAU OF INVESTIGATION, U.S. DEP’T OF JUSTICE, EXPANDED HOMICIDE DATA TABLES, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/>

carry illegal guns pose a very high risk of recidivism.”¹⁶⁹ Statistics show that forty-two percent of persons charged with gun offenses have prior gun arrests.¹⁷⁰

The lack of reduction in recidivism rates after the enactment of GORA can ironically be attributed to the actual enactment of these acts.¹⁷¹ When examining whether stricter gun laws would result in reduced crime, a Harvard study indicates that “the answer is no.”¹⁷² The study went even further and said: “[a]nd not just no, as in there is no correlation between gun ownership and violent crime, but an emphatic no, showing a negative correlation: as gun ownership increases, murder and suicide decreases.”¹⁷³ Moreover, it has been recognized that gun registration does “not appear to [reduce] violence rates.”¹⁷⁴ Since recidivism rates have not decreased, gun offender registries are inefficient, and needlessly cost the cities in which they operate hundreds of thousands of dollars to maintain.¹⁷⁵

C. *The Push to Make Gun Offender Registries Available to the Public*

The purpose of making gun offender registries public is to enhance public safety by allowing communities to know where gun offenders live in order keep their children away from the offenders.¹⁷⁶ In response to being questioned about his bill to have NYC’s gun offender registry made available to the public, council member Peter Vallone said:

offenses-known-to-law-enforcement/expanded-offense-data (last visited July 20, 2014).

169. *Gun Offender Registration*, *supra* note 106.

170. *Id.*

171. See *Harvard Study: Gun Control Is Counterproductive*, AM. CIV. RTS. UNION, http://theacru.org/acru/harvard_study_gun_control_is_counterproductive (last visited July 20, 2014).

172. *Id.*

173. *Id.*

174. David Sherfinski, *States' Crime Rates Show Scant Linkage to Gun Laws*, WASH. TIMES, Jan. 25, 2013, <http://www.washingtontimes.com/news/2013/jan/24/states-crime-rates-show-scant-linkage-to-gun-laws/?page=all>. In concern to gun control initiatives, it has been recognized that:

There do appear to be some gun controls which work, all of them relatively moderate, popular and inexpensive Thus, there is support for a gun-control policy organized around gun-owner licensing or purchase permits . . . stricter local dealer licensing; bans on possession of guns by criminals and mentally ill people; stronger controls over illegal carrying; and possibly discretionary add-on penalties for committing felonies with a gun.

Id.

175. Hugh McQuaid, *Implementing Gun Bill Could Cost up to \$25M a Year*, CT NEWS JUNKIE (Apr. 4, 2013, 7:30 AM), http://www.ctnewsjunkie.com/ctnj.php/archives/entry/implementing_gun_bill_could_cost_up_to_25m_a_year (costing Connecticut up to \$1.5 million to create the registry, and \$250,000 annually to operate the database).

176. Matheson, *supra* note 10.

New York City's gun offender registry has kept the spotlight of the law on the most dangerous criminals among us—and it is time for the entire State to follow in our footsteps and utilize this effective crime-fighting tool which helped the NYPD and Commissioner Raymond Kelly make New York the safest big city in America. We cannot allow these violent offenders to slip through the cracks upon their release from prison, and these bills will keep residents and law enforcement officers across the state well aware of their locations.¹⁷⁷

Online gun offender registries will conform to the structure of sex offender registries that are available online pursuant to Megan's Law.¹⁷⁸

D. The Consequences of Making Gun Offender Registries Public

Although the gun offender registry has not been available to the public for a long enough period of time to have proper statistics showing its results, there is likely a correlation between the treatment of a sex offender and that of a gun offender when his private information is released to the public.¹⁷⁹ Although NYC is attempting to make its gun offender registry available to the public, the legislature fails to recognize the additional consequences that come with this decision.¹⁸⁰ These consequences include: vigilantism; difficulty maintaining employment and finding housing; information remaining on the Internet in perpetuity; and the excessive costs of maintaining an online registry.¹⁸¹ The gun offender registry also presents a problem that was not implicated when sex offender registries were made available to the public: retaliation by gang members.¹⁸²

1. Vigilantism

A person's public status as a criminal offender can result in the offender becoming a victim of vigilantism by the community in which he lives.¹⁸³ Vigilantism can include physical harm to the released offender, as well as harm to innocent civilians mistaken for the criminal

177. Press Release, Bronx Borough President Ruben Diaz, Jr., Vallone & Diaz Announce Introduction of Gun Offender Registry Legislation, available at <http://bronxboropres.nyc.gov/press/releases/2013-08-21.html>.

178. Durkin, *supra* note 94.

179. See Stacy A. Nowicki, *On the Lamb: Toward a National Animal Abuser Registry*, 17 ANIMAL L. 197, 201-02 (2010) (characterizing sex offender registries, arsonist registries, elder abuse registries, and child abuse registries under the single term of "criminal registries").

180. See *infra* Part III.D.

181. See *infra* Part III.D.

182. See *infra* Part III.D.1.

183. See Erin Murphy, *Paradigms of Restraint*, 57 DUKE L.J. 1321, 1380 (2008).

offender.¹⁸⁴ Numerous incidents of vigilantism against actual criminal offenders have been reported in different states.¹⁸⁵ For example, an offender's apartment was flooded,¹⁸⁶ and offenders have been assaulted.¹⁸⁷ Some of these incidents were the result of citizens creating websites—using the information provided from online criminal registries—that were meant to target the offenders and make their whereabouts known for the purpose of harming them.¹⁸⁸ Innocent bystanders have also been assaulted, resulting in death, after being mistaken for registered criminal offenders.¹⁸⁹ Based on the vigilante violence that results from having an offender's information posted to the public, the sex offender registry model, which the gun offender registry model is based on, has been recognized as flawed and in need of improvement.¹⁹⁰

In addition to the aforementioned problems that can be found in any type of criminal registry, the gun offender registry presents its own unique type of vigilantism that will result from an offender's information being made available to the public: gang retaliation.¹⁹¹ Gun offenders are commonly gang members,¹⁹² and, if a gang member's information is available to the public, it subjects that person to potential attacks from rival gangs based on the revenge mentality of gangs.¹⁹³ Once a gang member murders a rival gang member, the rival gang immediately strategizes on how and when to seek revenge.¹⁹⁴ Put more simply,

184. BARBARA K. SCHWARTZ, *THE SEX OFFENDER: CORRECTIONS, TREATMENT AND LEGAL PRACTICE* 8-16 (Barbara K. Schwartz & Henry R. Cellini eds., 1995) (recognizing that innocent people can be harmed as a result of vigilante justice, primarily when incorrect information has been provided to the agency maintaining the criminal registry); Alan R. Kabat, Note, *Scarlet Letter Sex Offender Databases and Community Notification: Sacrificing Personal Privacy for a Symbol's Sake*, 35 AM. CRIM. L. REV. 333, 339-40 (1998).

185. Avrahamian, *supra* note 148, at 313.

186. James Popkin, *Natural Born Predators*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 73 (discussing how vigilantes flooded a suspected offender's apartment by clogging his bathtub drain).

187. See Robert L. Jackson, *Sex-Offender Notification Laws Facing Legal Hurdles*, L.A. TIMES, Aug. 8, 1995, at A5 (noting that the person who was assaulted was not a sex offender, but was actually an innocent civilian).

188. See Avrahamian, *supra* note 148, at 313-14.

189. See Michele L. Earl-Hubbard, *The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U. L. REV. 788, 824 (1996).

190. See Kabat, *supra* note 184, at 356.

191. See Paul J. Arougheti, *Imposing Homicide Liability on Gun Battle Participants for the Deaths of Innocent Bystanders*, 27 COLUM. J.L. & SOC. PROBS. 467, 519 (1994).

192. *Gun Violence*, NAT'L INST. OF JUSTICE, <http://www.nij.gov/topics/crime/gun-violence/pages/welcome.aspx> (last visited July 20, 2014).

193. See Arougheti, *supra* note 191, at 519-20.

194. See Alan Jackson, *Prosecuting Gang Cases: What Local Prosecutors Need to Know*, PROSECUTOR, June 2008, at 33.

“[once] a gang member is murdered, the usual reaction is retaliatory murder.”¹⁹⁵ In order for the gang to seek revenge, it must find the rival gang member responsible for the shooting, which is difficult, because the rival gang member and his gang are aware of the plot against him.¹⁹⁶ But, if the gang member’s personal information—primarily his home address—is available on the Internet, vengeance can be sought in an effortless manner.¹⁹⁷ The only way to avoid this is by providing local law enforcement with false information, which is already a problem inherent in the criminal registry model.¹⁹⁸

2. Difficulty Maintaining Employment

After a person is labeled a gun offender, it is unlikely that he will be able to obtain or maintain employment.¹⁹⁹ Although many employers perform background checks in order to maintain a secure workplace, not all employers do.²⁰⁰ Employers choose not to conduct background checks because they are expensive.²⁰¹ But access to an online criminal registry is free, which will result in employers being able to view a potential employee’s criminal record at no cost.²⁰² Although the detriment to an offender’s potential for maintaining employment does not reach the level of constitutional infringement,²⁰³ “[the] use of registries may unfairly prejudice otherwise qualified registrants.”²⁰⁴ As a result of the offender’s inability to maintain employment, he is likely to re-offend.²⁰⁵ The increased chance of an offender’s recidivism is based on the documented correlation between unemployment and recidivism.²⁰⁶

195. *Id.*

196. See David S. Rutkowski, *A Coercion Defense for the Street Gang Criminal: Plugging the Moral Gap in Existing Law*, 10 NOTRE DAME J.L. ETHICS & PUB. POL’Y 137, 183 (1996).

197. See, e.g., N.Y.C., N.Y., ADMIN. CODE § 10-603(c) (2010) (requiring the disclosure of extensive personal information when registering with the gun registry).

198. See *supra* Part III.B.2.

199. See Brian A. Loendorf, *Methamphetamine Offender Registries: Are the Rights of Non-Dangerous Offenders Cooked?*, 17 KAN. J.L. & PUB. POL’Y 542, 547 (2008) (articulating concerns with regard to methamphetamine registries that can be analogized to gun offender registries).

200. *Id.* at 551-52.

201. *Id.* at 551.

202. *Id.*

203. See *Cutshall v. Sundquist*, 193 F.3d 466, 480 (6th Cir. 1999) (holding that the Tennessee Sex Offender Registration Act does not infringe on constitutionally-protected employment interests).

204. Loendorf, *supra* note 199, at 551.

205. Elena Saxonhouse, *Unequal Protection: Comparing Former Felons’ Challenges to Disenfranchisement and Employment Discrimination*, 56 STAN. L. REV. 1597, 1600 n.20 (2004).

206. See *id.*

3. Difficulty Finding Housing

When a person is labeled a gun offender, his ability to find housing significantly decreases because landlords are unwilling to take the risk of renting to someone who is publicly categorized as a criminal.²⁰⁷ Although criminal offenders who have been required to register have attempted to protect their right to housing under the Fair Housing Act ("FHA"), their attempts have been futile because under the FHA, housing providers can legally refuse to rent or sell to people that pose a threat to the health or safety of others.²⁰⁸ In order for the housing provider to justify his refusal to sell or rent to the offender, he must provide "particularized proof" that an individual poses an "actual threat" to others.²⁰⁹ It is recognized that "[g]eneralized assumption[s], subjective fears, and speculation are insufficient to prove the requisite direct threat to others."²¹⁰ But an offender's past criminal conduct—particularly a gun offense—will likely meet the "particularized proof" burden.²¹¹ Since offenders are likely to struggle to find somewhere to live, resulting in homelessness, the offender will likely re-offend.²¹² Therefore, the publicizing of criminal registries will increase the problem of recidivism that it was intended to resolve.²¹³

4. Information on the Internet Can Still Be Accessed Even After It Is "Removed"

Although a gun offender only has to register for a specific time period,²¹⁴ information stored on the Internet exists in perpetuity.²¹⁵ Since the offender's information exists indefinitely, the stigma of being labeled a gun offender remains with that person for his entire life, despite the legislature's intention of only requiring the stigma to last a specific amount of time.²¹⁶ With a person carrying the label of "criminal offender" for his entire life, he will continue to be

207. See, e.g., Murphy, *supra* note 183, at 1380.

208. 42 U.S.C. § 3604(f)(9) (2006).

209. See *Twp. of W. Orange v. Whitman*, 8 F. Supp. 2d 408, 428 (D.N.J. 1998).

210. *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1343 (D.N.J. 1991).

211. See Loendorf, *supra* note 199, at 556.

212. See Beth A. Colgan, *Teaching a Prisoner to Fish: Getting Tough on Crime by Preparing Prisoners to Reenter Society*, 5 SEATTLE J. SOC. JUST. 293, 320 (2006) (recognizing the connection between homelessness and recidivism).

213. See *supra* Part III.C.

214. See *supra* Part III.B.3.

215. S.H. Blannelberry, *Gun Offender Registry Acts: A Viable Solution to Fighting Crime?*, GUNS.COM (May 5, 2012), <http://www.guns.com/2012/05/05/gun-offender-registry-acts-viable-solution-fighting-crime>.

216. See, e.g., N.Y.C., N.Y., ADMIN. CODE § 10-604 (2012) (requiring registration for only a period of four years).

subjected to the aforementioned hardships—vigilantism, unemployment, homelessness—resulting yet again in the likelihood of recidivism.²¹⁷

5. The High Cost of Operating an Online Database

Since the current model of gun offender registries has yet to meet its intended purpose, the infusion of an anticipated cost of approximately \$250,000 per year, plus \$3 to \$4 million in additional costs to operate an online database, seem unnecessary.²¹⁸ In addition to the excessive costs of implementing online criminal registries, “they divert resources from other potentially more effective methods of crime control.”²¹⁹ Moreover, based on the fact that the only city with a public gun offender registry—Chicago—has yet to see any benefits, the belief that making the gun offender registries of other cities public will be successful is without support.²²⁰

IV. A CHANCE TO AVOID REGISTRATION

Despite the numerous flaws that currently exist in the gun offender registry model, it is unlikely that local legislatures will remove them and repeal the statutes creating them.²²¹ In fact, in Chicago, (the only city with a gun offender registry available to the public) the legislature recently expanded the registry by adding more crimes that would require a person to register if convicted.²²² Additionally, in NYC, the legislature is attempting to make its gun offender registry available to the public.²²³ Since the gun offender registry is continuing to expand, the people convicted of crimes that fall within the purview of the statute should be afforded the opportunity to have a hearing in order to determine if they are “dangerous” or likely to re-offend.²²⁴ This will result in only dangerous offenders having their information made available to the public.²²⁵

217. See *supra* Part III.D.1–3.

218. McQuaid, *supra* note 175.

219. Wilson, *supra* note 5, at 556.

220. Dumke, *supra* note 118; see *supra* Part II.C.1.d.

221. See Winnie Hu, *Bronx Leader Wants a Public Registry for Offenders in Gun Crimes*, N.Y. TIMES, Feb. 20, 2013, at A20 (describing a recent proposal to expand the current gun offender registry in New York).

222. *City Council Expands Chicago Gun Offender Registry*, CBS (Mar. 13, 2013, 1:51 PM), <http://chicago.cbslocal.com/2013/03/13/city-council-to-vote-on-expansion-of-gun-offender-registry> (under the old version of the registry, “only [offenders] convicted of unlawful use of a weapon needed to register,” while the new version includes violent crimes committed with a gun—kidnapping; assault; battery; home invasion; robbery; or carjacking).

223. Hu, *supra* note 221.

224. See *supra* Part III.

225. See *infra* Part IV.A.

It is important to note that the infringement of an offender's due process rights was not mentioned as one of the consequences of being forced to register.²²⁶ Numerous offenders who were forced to register pursuant to their state sex offender registration act have challenged the registration requirement based on their constitutional right to procedural due process.²²⁷ When faced with these challenges, the courts have consistently decided that there is no due process violation because "the reporting obligation was framed in informational terms."²²⁸ Despite the consistent holdings that no due process rights have been violated, defendants who are forced to register continue to bring due process claims.²²⁹ These futile claims are a waste of the court's time and contribute to the overcrowding of the court system.²³⁰ Although a hearing would also add to the court's docket, it is much less time consuming than litigating a full due process claim and would solve the procedural due process issue without it having to be raised.²³¹

A. The Hearing

Since a person who is labeled a gun offender will face detrimental consequences, the offender should at least be entitled to a hearing, where a judge will determine if there is probable cause that the offender is likely to re-offend or pose a danger to society.²³² This will allow the person to refute the inferred dangerousness that comes with being convicted of a gun crime.²³³ If the judge finds, by a preponderance of the evidence, that the person is likely to re-offend or is a danger to the community, his information will be made available to the public via the Internet.²³⁴ But if the judge does not believe that the person is

226. See *supra* Part III.

227. E.g., *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4, 5-6 (2003); *Doe v. Dep't of Pub. Safety*, 271 F.3d 38, 46-47 (2d Cir. 2001), *rev'd by, Conn. Dep't of Pub. Safety*, 538 U.S. at 1; *State v. Smith*, 780 N.W.2d 90, 95 (Wis. 2010).

228. *Murphy*, *supra* note 183, at 1354 (summarizing the results of due process challenges to sex offender registration requirements).

229. See *Smith*, 780 N.W.2d at 90 (filing suit after the Supreme Court—in 2003—had already found that sex offender registration requirements do not violate the offender's right to due process).

230. See Paul F. Kendall & Anne E. Gardner, *Legislation: A New Design for Justice Integration*, 30 MCGEORGE L. REV. 9, 14-15 (1998) (recognizing the hardships of judges dealing with full dockets).

231. See *infra* Part IV.B.

232. See, e.g., *Carty v. Nelson*, 426 F.3d 1064, 1067 (9th Cir. 2005) (holding that in order for a person who is labeled a sexually violent predator to be released from custody, he must attend a hearing, where a judge must find that there is no probable cause to show that the person will engage in sexually violent behavior).

233. See *infra* Part IV.B.3.

234. See *Carty*, 426 F.3d at 1067 (holding that if a judge determines that there is probable cause that an offender will engage in violent conduct, the offender will be committed indefinitely).

likely to re-offend or be a danger to the community, his information will only be made available to the local police department for monitoring purposes.²³⁵

This hearing would be beneficial for three reasons: (1) it insures that only dangerous offenders are made known to society because each offender will have the opportunity to present evidence to an impartial judge, showing that he is not dangerous or likely to re-offend, thus resulting in only confirmed dangerous offenders having their information made public; (2) it will reduce the costs of maintaining an excessively large registry because the number of offenders that the police department will have to monitor will decrease based on the number of offenders who will be deemed non-dangerous or unlikely to re-offend; and (3) it will protect the offender's due process rights.²³⁶ It is important to recognize that a person is not necessarily dangerous because he is convicted of a crime that requires him to register for a criminal registry. Therefore, he should have the opportunity to rebut this inference.²³⁷

B. Solving the Due Process Issue Once and for All

The issue of whether a person's due process rights have been violated by having to register as a criminal offender has led to a vast amount of litigation.²³⁸ If the stigma plus test were properly applied, it would show that the registration requirement implicates a person's right to refute the stigma that comes with being labeled a criminal offender.²³⁹ Although the Supreme Court has held that an offender has no right to contest the requirement to register, the Supreme Court incorrectly applied the stigma plus test, resulting in a violation of the potential offender's due process rights.²⁴⁰

after his release from prison).

235. See *id.* (holding that the judge will dismiss the petition to commit the offender if he determines that the offender is not likely to engage in violent conduct).

236. See Margaret Troia, Note, *Ohio's Sex Offender Residency Restriction Law: Does It Protect the Health and Safety of the State's Children or Falsely Make People Believe So?*, 19 J.L. & HEALTH 331, 359, 367 (2005) (recognizing that all offenders are not equally dangerous and should be afforded a hearing in order to make the determination); *supra* Part III.C, D.5; *infra* Part IV.B.

237. See, e.g., *State v. Robinson*, 873 So. 2d 1205, 1211-15 (Fla. 2004) (holding that a person convicted of kidnapping a child is entitled to a hearing in order to contest his obligation to register as a sex offender because kidnapping a child is not a sexual offense).

238. E.g., *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 5-6 (2003); *Doe v. Dep't of Pub. Safety*, 271 F.3d 38, 46 (2d Cir. 2001), *rev'd by*, *Conn. Dep't of Pub. Safety*, 538 U.S. at 1; *State v. Smith*, 780 N.W.2d 90, 95 (Wis. 2010).

239. See *infra* Part IV.B.1.

240. See *infra* Part IV.B.2.

1. The Stigma Plus Test

When an offender files a due process claim²⁴¹ regarding the registration requirement of a criminal registry, the court applies the stigma plus test.²⁴² Under this test a plaintiff must show:

(1) the utterance of a statement about him or her that is sufficiently derogatory to injure his or her reputation, that is capable of being proved false, and that he or she claims is false, and (2) some tangible and material state-imposed burden or alteration of his or her status or of a right in addition to the stigmatizing statement.²⁴³

The Second Circuit applied this test to a person claiming a violation of his due process rights for having to register as a sex offender.²⁴⁴ To satisfy the first prong, the plaintiff must show that a stigmatizing statement—being placed in a criminal offender registry—was made and is capable of being proven true or false.²⁴⁵ A hearing would provide the alleged offender with a chance “to have his name cleared and the stigma thus avoided.”²⁴⁶ The court found that the plaintiff met the stigma requirement because the registry implies that the people on it are dangerous and that each registrant is likely to be more dangerous than the average person.²⁴⁷ Moreover, although “no determination of any individual’s dangerousness has been made, the registry suggests that [the] plaintiff is currently dangerous.”²⁴⁸ The court concluded by saying that if the second prong—“plus”—is met, then the plaintiff is entitled to a hearing, at which “he would have the opportunity to establish that he is not particularly likely to be dangerous and therefore should not be listed in a publicly disseminated registry in a way that falsely implies otherwise.”²⁴⁹

241. 42 U.S.C. § 1983 (2006).

242. *Paul v. Davis*, 424 U.S. 693, 701 (1976); *Dep’t of Pub. Safety*, 271 F.3d at 47; *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1302 (11th Cir. 2001); *Cutshall v. Sundquist*, 193 F.3d 466, 479 (6th Cir. 1999); *WMX Techs. Inc. v. Miller*, 197 F.3d 367, 376 (9th Cir. 1999); *Greenwood v. New York*, 163 F.3d 119, 124 (2d Cir. 1998).

243. *Dep’t of Pub. Safety*, 271 F.3d at 47 (citations omitted).

244. *Id.* at 47-60.

245. *Id.* at 48.

246. *Id.*; see Eric J. Mitnick, *Procedural Due Process and Reputational Harm: Liberty as Self-Invention*, 43 U.C. DAVIS L. REV. 79, 88 (2009).

247. *Dep’t of Pub. Safety*, 271 F.3d at 48; see Jessica Ann Orben, Comment, *Connecticut Department of Public Safety v. Doe: Sex Offenders’ Due Process Under “Megan’s Law” and the Effectiveness of Sex Offender Registration*, 36 U. TOL. L. REV. 789, 798 (2005).

248. *Dep’t of Pub. Safety*, 271 F.3d at 48 (citation omitted).

249. *Id.* at 49; see Jill D. Moore, Comment, *Charting a Course Between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process*, 73 N.C. L. REV. 2063, 2100 (1995) (“To reach the level of ‘stigma plus,’ the individual must show that a state action creates a stigma, and that there is an additional loss associated with the stigma.”).

Turning to the second prong, the court found that the plus factor had been met because the obligation to register “altered the plaintiff’s legal status” and the obligation is “governmental in nature.”²⁵⁰ The court described all of the requirements of having to register, including but not limited to providing personal information and having to update the information.²⁵¹ The court held that all of the requirements taken together are considered a plus factor, because if the requirements are not met, the plaintiff will be subject to felony prosecution.²⁵² Since the plaintiff was able to meet both prongs, the court held that he was entitled to a hearing.²⁵³ Unfortunately for offenders, the Supreme Court overturned this decision and the right to have a hearing was lost.²⁵⁴

2. The Supreme Court Incorrectly Applied the Stigma Plus Test in Determining that Offenders Are Not Entitled to a Hearing

In reversing the decision of the Second Circuit, the Supreme Court held that a person is only afforded a hearing if the fact attempting to be established is material under the statute.²⁵⁵ The Court found that the plaintiff’s attempt to prove that he was not dangerous was immaterial to Megan’s Law because the obligation to register was not based on the offender’s dangerousness, but solely on the offender’s conviction.²⁵⁶ Therefore, the offender was not entitled to a hearing.²⁵⁷

The Court’s error lies in the fact that the Court believed a person’s dangerousness is immaterial, solely because of the plain language of

250. *Dep’t of Pub. Safety*, 271 F.3d at 56; see Gabriel Baldwin, Connecticut Department of Public Safety v. Doe: *The Supreme Court’s Clarification of Whether Sex Offender Registration and Notification Laws Violate Convicted Sex Offenders’ Right to Procedural Due Process*, 24 J. NAT’L ASS’N ADMIN. L. JUDGES 383, 391 (2004) (“Under the second prong, a claimant must show that the stigmatization established in the first prong affected some tangible interest, imposed a material, state-imposed burden, or altered claimant’s status or rights.”).

251. *Dep’t of Pub. Safety*, 271 F.3d at 43; see Kimberly B. Wilkins, Comment, *Sex Offender Registration and Community Notification Laws: Will These Laws Survive?*, 37 U. RICH. L. REV. 1245, 1258 (2003).

252. *Dep’t of Pub. Safety*, 271 F.3d at 57.

253. *Id.* at 62; see Melissa Blair, Comment, *Wisconsin’s Sex Offender Registration and Notification Laws: Has the Wisconsin Legislature Left the Criminals and the Constitution Behind?*, 87 MARQ. L. REV. 939, 951 (2004) (“Because the plaintiff fulfilled both components of the ‘stigma plus’ test, the court held that the plaintiff was entitled to a hearing . . .”).

254. See *Conn. Dep’t of Pub. Safety v. Doe*, 538 U.S. 1, 8 (2003), *rev’g*, *Dep’t of Pub. Safety*, 271 F.3d at 38.

255. *Id.* at 6-8.

256. *Id.*; Eileen Fry-Bowers, Note, *Controversy and Consequence in California: Choosing Between Children and the Constitution*, 25 WHITTIER L. REV. 889, 906 (2004) (“[D]ue process [does] not require that the offender be given an opportunity to establish that he [is] not currently dangerous.”).

257. See *Conn. Dep’t of Pub. Safety*, 538 U.S. at 8.

Megan's Law.²⁵⁸ Although the law indicates that the offender's requirement to register is based solely on his conviction, it is necessary to delve further into the material inferences that come with having to register.²⁵⁹ The law does not explicitly state that an offender is required to register because he is dangerous, but an offender's status as dangerous is almost guaranteed to be inferred based on his presence on the registry.²⁶⁰ The acknowledged danger that comes with being a sex offender, for example, can be seen in *Smith v. Doe*,²⁶¹ through the language of the Supreme Court.²⁶² In *Smith*, the Court said that public safety requires the public to be alerted about the "risk of sex offenders in their community."²⁶³ As a result of the automatically inferred dangerousness of a person required to register, it is difficult to say that dangerousness is immaterial for the sole reason that it is not explicitly stated as the cause for registration in the language of the law.²⁶⁴ Therefore, based on the inferred materiality of danger, the Supreme Court should have affirmed the findings of the Second Circuit in *Doe v. Dep't of Pub. Safety*,²⁶⁵ thus guaranteeing an offender the right to have a hearing in order to determine whether he is dangerous and required to register.²⁶⁶

3. Applying the Stigma Plus Test to a Potential Gun Offender

As to the first prong, a person who is convicted of a gun offense will receive the stigma of being labeled dangerous.²⁶⁷ But, the person's dangerousness has not necessarily been proven based on the non-violent nature of certain crimes that allow a person to fall within the purview of GORA.²⁶⁸ The offender will have the opportunity to show that he is not dangerous at the hearing, and therefore, potentially avoid having his

258. See *id.* at 7-8; Jason F. Mohan, Note, *A Community's Response to a Shocking Crime: The Jessica Lunsford Act and the Florida Sexual Offender Registry*, 40 SUFFOLK U. L. REV. 703, 715 (2007) ("[D]angerousness determinations are irrelevant . . . because prior convictions represent the only factor governing sexual offender status and community notification requirements.").

259. See *Conn. Dep't of Pub. Safety*, 538 U.S. at 4 (recognizing that sex offenders pose a serious threat).

260. See *id.*

261. 538 U.S. 84 (2003).

262. See *id.* at 93.

263. *Id.* at 103.

264. See Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1080-83, 1091 (2012).

265. 271 F.3d 38 (2d Cir. 2001), *rev'd by*, *Conn. Dep't of Pub. Safety*, 538 U.S. at 1.

266. See *Dep't of Pub. Safety*, 271 F.3d at 47-60.

267. *Samms v. Fischer*, No. 9:10-CV-0349, 2011 WL 3876528, at *2 (N.D.N.Y. Mar. 25, 2011) (describing gun offenders as the "baddest of the bad" and a danger to society).

268. *E.g.*, N.Y.C., N.Y., ADMIN. CODE § 10-602(e) (2013) (requiring a person to register for the mere possession of a firearm).

information disbursed to the public.²⁶⁹ In regard to the second prong, the offender will be subject to different penalties—fine or imprisonment—if he does not comply with the registration obligations.²⁷⁰ This will result in a change in the offender's legal status, thus meeting the second prong.²⁷¹ The dangerousness of a potential offender is material because the very purpose of the gun offender registry, and of making it available to the public, is to make the public aware of gun offenders in their community due to the offenders' potential for violence.²⁷² Even if a city or state's Gun Offender Registration Act does not specifically assert in its plain language that the purpose of creating the registry is based on the offender's potential danger to society, it can be inferred based on the current public perception of gun crime in our country.²⁷³ Therefore, the potential gun offender meets the two-prong stigma plus test and should be entitled to a hearing to rebut the presumption of his dangerousness.²⁷⁴

V. CONCLUSION

The gun offender registry model is not fulfilling its purpose and is resulting in more harm than good.²⁷⁵ With society's current push for stricter gun control laws, it is unlikely that cities will remove their gun offender registries.²⁷⁶ However, due to the ineffectiveness of the current gun offender registry model, and the consequences that may result from making these registries public, it is essential that a gun offender's personal information is only made available to the public if the offender is likely to re-offend or be a danger to the community.²⁷⁷ Therefore, the person should be afforded a hearing in order to determine if he is dangerous to society, and, only if a judge determines that he is dangerous or likely to re-offend, should his information be made available to the public.²⁷⁸

269. See *Dep't of Pub. Safety*, 271 F.3d at 48.

270. *E.g.*, § 10-608.

271. *Dep't of Pub. Safety*, 271 F.3d at 57.

272. See *supra* Part III.A.

273. See *supra* Parts I, IV.B.2.

274. See *supra* notes 267-73 and accompanying text.

275. See LOGAN, *supra* note 70, at 109-10.

276. See Matheson, *supra* note 10 (showing New York's attempt to make its gun offender registry readily available to the public); Fran Spielman, *City Council Casts 'Wider Net,' Expands Gun Offender Registry*, CHI. SUN TIMES, Apr. 15, 2013, <http://www.suntimes.com/18826999-761/city-council-casts-wider-net-expands-gun-offender-registry.html> (summarizing Chicago's attempt to broaden the amount of crimes that fall within the purview of its gun offender registry).

277. See *supra* Part III.B-D (describing the flaws of gun offender registries, and the consequences of making them available to the public).

278. See *supra* Part IV.

The hearing will ensure that the offender's rights are protected, while also furthering the purpose of the registry model—protecting the public from offenders who are a threat to society.²⁷⁹ Additionally, guaranteeing a potential offender the right to a hearing in order to refute his classification as a gun offender will reduce the amount of litigation regarding the potential offender's due process rights.²⁸⁰ If a potential offender is not afforded such a hearing, it will be the offender with the target on his back, not society.²⁸¹

Aaron Zucker*

279. *See supra* Part IV.

280. *See supra* Part IV.

281. *See supra* Part III.

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