

DISTRICT COURT, COUNTY OF ARAPAHOE,
COLORADO

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Centennial, CO 80112

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Plaintiff:

STEPHEN BRETT RYALS, an individual,

v.

Defendant:

CITY OF ENGLEWOOD.

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▲ COURT USE ONLY ▲

Case Number:

Div.: Crtm.:

COMPLAINT



Plaintiff Stephen Brett Ryals, for his Complaint against the City of Englewood, states as follows:

1. In this action, Plaintiff Stephen Brett Ryals challenges the City of Englewood's Sex Offender Residency Restriction, codified at ENGLEWOOD, COLO., CODE § 7-3-1 (2000) *et seq.* ("ESORR" or "Residency Restriction") (attached as Ex. 1), which makes it a crime for him to live in his Englewood home. The Residency Restriction: (a) is preempted under Article XX, Section 6 of the Colorado Constitution by a comprehensive and detailed state system of sex offender regulation; (b) constitutes a new, after-the-fact punishment that violates the Ex Post Facto Clauses of the federal and state constitutions (U.S. CONST. art. I, § 10; COLO. CONST. art. I, § 9); and (c) deprives Plaintiff of liberty without due process, in violation of the Fourteenth Amendment to the United States Constitution and Article II, Section 25 of the Colorado Constitution.

2. Over a decade ago, Mr. Ryals was convicted of a crime requiring registration with the Colorado Bureau of Investigation as a sex offender. Since then, he has successfully completed his sentence and the State of Colorado's comprehensive counseling and treatment programs. Mr. Ryals is now a contributing member of the community who recently purchased a home in Englewood for him and his wife. He is not a risk for recidivism and poses no public safety threat. And yet the City of Englewood has charged Mr. Ryals with a crime for violating the ESORR, which effectively banishes former sex offenders from living almost anywhere in the City of Englewood.

3. Mr. Ryals seeks declaratory relief under the Colorado Uniform Declaratory Judgments Law, COLO. REV. STAT. § 13-51-101 (2011) *et seq.*, Colorado Rule of Civil Procedure 57, and under 42 U.S.C. § 1983. In addition, he seeks an injunction pursuant to Colorado Rule of Civil Procedure 65 and 42 U.S.C. § 1983 prohibiting Defendant, and all persons and entities acting under its direction or on its behalf, from taking any further actions to enforce the Residency Restriction, including but not limited to, enjoining the City of Englewood from prosecuting Plaintiff for violating the ESORR and from taking any other action to enforce the ESORR or to exclude Plaintiff from living in the place of his choosing in Englewood. Finally, Mr. Ryals seeks reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under Article VI, Section 9 of the Colorado Constitution.

5. Venue is proper in this County under Colorado Rule of Civil Procedure 98(c). Plaintiff's Complaint is challenging the official actions of the City of Englewood, which is located in Arapahoe County, and Plaintiff resides in Arapahoe County.

PARTIES

6. Plaintiff Stephen Brett Ryals is a resident of Colorado and owns a home in the City of Englewood.

7. Defendant City of Englewood is a political subdivision of the State of Colorado located within the Denver Metropolitan area. Englewood is a home-rule city that was incorporated in 1903; its City Charter was adopted in 1958. With regard to all actions described in this Complaint, Defendant acted and is threatening to act under color of state law.

FACTUAL ALLEGATIONS

A. Plaintiff's Offense and Guilty Plea

8. In 1995, when Mr. Ryals was 22 years old, he began coaching a youth girls' soccer team. Mr. Ryals coached the team for the next three years, while also working part time as a substitute teacher and at an indoor soccer arena. Mr. Ryals was attending college at Metropolitan State University of Denver during that time.

9. In 1998, the mother of "GN"¹, a then-fifteen-year-old girl on the soccer team Mr. Ryals was coaching, offered to let Mr. Ryals move into their home in Evergreen to help him cut down on his daily commute. Mr. Ryals accepted and moved in with the family in December 1998. Over the course of the next year, Mr. Ryals trained both GN and her younger brother in soccer.

10. Mr. Ryals developed a close, personal relationship with GN. The two of them began having sexual relations in September 1999, when GN was sixteen years old. Their relationship continued until October 2000, when GN was seventeen. Mr. Ryals moved out of the family's home around that time.

11. In November 2000, an Evergreen High School administrator confronted GN about rumors regarding her relationship with Mr. Ryals. GN admitted the relationship. The administrator contacted the Jefferson County Sheriff's Department the next day.

12. In a telephone interview with a Jefferson County investigator on November 10, 2000, Mr. Ryals admitted that he and GN had sexual relations with one another.

13. Three days later, Mr. Ryals was booked at the Jefferson County Detention Facility for sexual assault on a child by one in a position of trust. He was formally charged with two felonies and two misdemeanors on January 23, 2001.

14. On April 16, 2001, Mr. Ryals entered into a plea agreement. He pleaded guilty to Attempted Criminal Sexual Assault On a Child 15 to 18 Years Old By One in a Position of Trust, a Class 4 felony, in the fifth degree. The remaining charges were dismissed.

¹ Because of GN's age at the time of the offense, she is identified in this Complaint only by her initials.

B. Plaintiff's Sentence and Subsequent Rehabilitation

15. Mr. Ryals was sentenced to seven years probation on July 3, 2001. As a condition of his probation, he was not allowed any contact with GN. He was also required to go to therapy, perform 120 hours of community service, wear an ankle bracelet, and submit to polygraph and penile plethysmograph² testing.

16. While Mr. Ryals was on probation, GN persisted in visiting him. After eight months, Mr. Ryals admitted this continued contact to his probation officer in an attempt to comply with his probation conditions.

17. Mr. Ryals was sentenced to two years in prison for violating his probation based on the post-conviction visits with GN. While there, he received a six-month reduction in his sentence for successfully completing the prison's "Boot Camp" program. He served the later part of his sentence in a halfway house and was released in April 2003.

18. Mr. Ryals' parole began on April 13, 2003. During that time, he attended counseling sessions, wore a monitoring device, and met regularly with his parole officer, Joe Thistlewood.

19. Mr. Ryals successfully completed the State of Colorado's rehabilitative treatment programs.

20. Mr. Ryals fulfilled all of the obligations related to his conviction and sentence and was discharged from his parole on October 13, 2004. Since then, he has not been charged with or convicted of violating any law, with the exception of a few routine traffic violations. He continues to comply with Colorado state laws requiring him to register as a sex offender wherever he lives. He will become eligible for removal from the Colorado sex offender registry in October 2014.

21. Mr. Ryals has worked at an HVAC company in Denver since 2003. He worked his way up in the company and currently serves as a branch manager.

22. Mr. Ryals has been in a committed relationship with his wife, whom he met in high school, for the past four years. They recently moved into their Englewood residence together. He also sees his 13-year-old daughter on a regular basis.

23. In short, since his incarceration, Mr. Ryals has become a productive citizen in good standing. He is in a healthy relationship, and poses no safety risk to his community.

² "Penile plethysmography tests a man's level of sexual arousal and involves placing a pressure-sensitive device around a man's penis, presenting him with an array of sexually stimulating images, [and] determining his level of sexual attraction by measuring minute changes in his erectile responses." Michael C. Harlow & Charles L. Scott, *Penile Plethysmography Testing for Convicted Sex Offenders*, 35 *Journal of the American Academy of Psychiatry & the Law* 536 (Dec. 2007) (quotations and citation omitted), available at <http://www.jaapl.org/content/35/4/536.full.pdf+html>.

C. Colorado Sex Offender Regulation

24. Colorado has a comprehensive and detailed system for sex offender regulation.

25. In 1992, the Colorado General Assembly enacted legislation creating a standardized treatment program for sex offenders. *See* COLO. REV. STAT. § 16-11.7-101 (2011) *et seq.* (“Article 11.7”). The stated purpose of Article 11.7 is to establish “evidence-based standards for the evaluation, identification, treatment, management, and monitoring of adult sex offenders . . . at each stage of the criminal . . . justice system to prevent offenders from reoffending and enhance the protection of victims and potential victims.” *Id.* § 16-11.7-101(2). The General Assembly recognized that such a comprehensive program is necessary “to protect the public and to work toward the elimination of sexual offenses.” *Id.* § 16-11.7-101(1).

26. Article 11.7 created the Sex Offender Management Board (“SOMB”) to administer the program. Under the law, the SOMB is charged with “[developing], [implementing], and [revising], as appropriate, guidelines and standards to treat adult sex offenders, . . . which guidelines and standards can be used in the treatment of offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections.” *Id.* § 16-11.7-103(4)(b)(3) (2011).

27. Article 11.7 specifically addresses sex offender residency; it directs the SOMB to adopt “guidelines as it may deem appropriate regarding the living arrangements and location of adult sex offenders,” after considering “safety issues raised by the location of sex offender residences, especially in proximity to public or private schools and child care facilities” *Id.* § 16-11.7-103(4)(g).

28. SOMB guidelines and standards established under Article 11.7 state that the “residence and living situation of [the] sex offender must be approved in advance by the supervising officer in consultation with the community supervision team.” COLO. SEX OFFENDER MGMT. BD., STANDARDS AND GUIDELINES FOR THE ASSESSMENT, EVALUATION, TREATMENT, AND BEHAVIORAL MONITORING OF ADULT SEX OFFENDERS 87 (MAR. 2008) (attached as Ex. 2); *see also id.* at 80-92 (outlining community supervision team composition and responsibilities).

29. In addition, the Colorado Sex Offender Registration Act charges the Colorado Bureau of Investigation with creating and maintaining a statewide sex offender registry. *See* COLO. REV. STAT. § 16-22-110 (2011). Under the Act, all adult sex offenders must register with the Bureau of Investigation for the remainder of their natural life, with certain exceptions for lesser offenses. *Id.* § 16-22-108.(2011). Registration information is available to the public via their local law enforcement agency or by visiting the Bureau of Investigation website. *Id.* § 16-22-110.

D. The City of Englewood's Unconstitutional Sex Offender Residency Restriction Ordinance

30. On October 18, 2006, the Englewood City Council enacted a sex offender residency restriction, ENGLEWOOD, COLO., ORDINANCE 06-34, § 1, based on a finding that “sexual predators and the specified sex offenders who use physical violence or who prey on children present an extreme threat to public safety.” ENGLEWOOD, COLO., CODE § 7-3-1. The State of Colorado did not authorize the Residency Restriction, and on information and belief the City Council did not consult with the State or the SOMB before enacting it.

31. The Residency Restriction applies to: “[a]ny person required to register under the Colorado Sex Offender Registration Act, . . . who has been:

- a. Convicted of a felony for an offense requiring registration; or
- b. Has multiple convictions for offenses requiring registration; or
- c. Whose offense(s) requiring registration involved multiple victims.”

Id. § 7-3-3(A)(i-ii). Mr. Ryals’ offense comes within the broad terms of the Residency Restriction because he was convicted of a felony and, pursuant to state law, was required to register with the Colorado Bureau of Investigation under the Colorado Sex Offender Registration Act. *See* COLO. REV. STAT. § 16-22-108(d)(II)(C) (2011).

32. Under the ESORR, a sex offender is prohibited from establishing a permanent or temporary residence “within two thousand feet (2,000') of any school, park, or playground or within one thousand feet (1,000') of any licensed day care center, recreation center or swimming pool (other than pools located at private, single-family residences), or any property located adjacent to any designated public or private school bus stop, walk-to-school route, or recreational trail.” ENGLEWOOD, COLO., CODE § 7-3-3(A).

33. As demonstrated by the attached map (Ex. 3), there is virtually nowhere in the City where registered sex offenders are permitted to live. And the few areas where offenders may live are for the most part commercial zones where no housing exists (*see* Ex. 4). Therefore, the Residency Restriction effectively banishes sex offenders from the City of Englewood.

E. Effect of Englewood Sex Offender Residency Restriction on Plaintiff

34. In April 2012, unaware of the Residency Restriction, Mr. Ryals purchased a home in the City of Englewood for him and his wife to live in. They moved into their home one month later. Their residence is approximately 1,200 feet from Bates-Logan Park, and 1,800 feet from Bishop Elementary School (*see* Ex. 5).

35. On May 11, 2012, Mr. Ryals contacted Englewood City Hall to determine what he needed to do to register his new address, in accordance with the Colorado Sex Offender Registration Act. During that call, a city clerk informed Mr. Ryals that he was not allowed to live at his new address because of the Residency Restriction. The clerk instructed Mr. Ryals to

appear at City Hall the following Tuesday, May 15, to register his address and, at the same time, be served with a criminal Summons and Complaint for violating the Residency Restriction.

36. Mr. Ryals complied with the clerk's instructions, and on May 15, he was charged with violating ENGLEWOOD, COLO., CODE § 7-3-3 for establishing a residence in a restricted area of the City. He was arraigned in Englewood Municipal Court on May 23, 2012.

37. On information and belief, when deciding to charge Mr. Ryals under the ESORR, the City of Englewood made no individualized assessment as to whether he posed a public safety risk.

38. On information and belief, when deciding to charge Mr. Ryals under the ESORR, the City of Englewood solicited no input from the State of Colorado, the SOMB or any person involved in Mr. Ryals' monitoring and treatment for his offense.

39. The City of Englewood has agreed to stay the criminal prosecution of Mr. Ryals during the pendency of this civil action challenging the constitutionality of the ESORR.

F. Policy Considerations Underlying Sex Offender Residence Restrictions

40. In a 2009 report, the Sex Offender Management Board warned that sex offender restrictions like the ESORR "may not deter sex offender re-offense and should not be used as a universal sex offense management strategy." CATHY RODRIGUEZ & AMY DETHLEFSEN, COLO. SEX OFFENDER MGMT. BD., WHITE PAPER ON THE USE OF RESIDENCE RESTRICTIONS AS A SEX OFFENDER MANAGEMENT STRATEGY 3 (2009) (attached as Ex. 6). The SOMB noted further "the false sense of security that can result from [residency restriction] ordinances. The concept of limiting where a sex offender sleeps at night versus where he/she spends time during the day if not supervised through the criminal justice system seems ineffective." *Id.* at 4. Decisions on where a sex offender ought to live, according to the SOMB, "should be made on an individualized basis by the sex offender's Community Supervision Team." *Id.* at 3.

41. Another recent report found that "[s]ex offenders who lived in closer proximity to schools and daycares were not more likely to reoffend than those who lived farther away." Paul A. Zanderbergen et al., *Residential Proximity to Schools and Daycares: An Empirical Analysis of Sex Offense Recidivism*, 37 CRIM. JUSTICE & BEHAVIOR 482, 498 (2010) (attached as Ex. 7).

42. Sex offender residency restrictions of the type at issue here can lead to sex offender homelessness because there is nowhere suitable for them to live. In one prominent example, Miami-Dade County's residency restriction led to seventy sex offenders living in a shantytown under a bridge. Jeffrey Koman, *Sex Offenders Live in Village Under Miami Bridge*, ABC NEWS, Sept. 3, 2009.³ Moreover, such restrictions deter sex offenders from registering a permanent address with state officials.

43. These consequences make it more difficult for State of Colorado officials to monitor sex offenders and notify the public of their whereabouts, two of the very purposes

³ <http://abcnews.go.com/Nightline/sex-offenders-live-miami-bridge/story?id=8420696>.

residency restrictions are meant to serve. Law enforcement agents in Des Moines, Iowa, for example, estimate that they lost track of approximately 300 registered sex offenders once the city's residency restrictions went into effect. HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 107 (SEPT. 2007).⁴

FIRST CLAIM FOR RELIEF

(Preemption under Article XX, Section 6 of the Colorado Constitution)

44. The foregoing allegations are incorporated by reference.

45. Article XX, Section 6 of the Colorado Constitution grants home-rule municipalities "the full right of self-government in both local and municipal matters." COLO. CONST. XX, § 6. However, "[i]f the matter is one of statewide concern . . . home-rule cities may legislate in that area only if the [State] constitution or [State] statute authorizes the legislation. Otherwise, state statutes take precedence over home-rule actions." *Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000) (emphasis added).

46. Sex offender regulation is a matter of statewide concern, and therefore the ESORR is preempted by State law. For example:

a. When it enacted Article 11.7, the General Assembly recognized the need for a comprehensive, standardized program for sex offender treatment and supervision, COLO. REV. STAT. § 16-11.7-101(1), and specifically provided standards for the SOMB to decide where an offender should live. *See id.* § 16-11.7-103(4)(g). The ESORR is inconsistent with these standards.

b. The Residency Restriction may force sex offenders to look for places to live in neighboring municipalities, which may in turn enact their own residency restrictions, thereby creating an extraterritorial impact. Likewise, the Residency Restriction may lead to an inappropriate concentration of registered sex offenders in neighboring communities that do not enact residency restrictions of their own.

c. Article 11.7, the SOMB's Standards and Guidelines, and the Colorado Sex Offender Registration Act all establish that sex offender regulation has traditionally been governed by the State of Colorado.

d. The Colorado Constitution says nothing about sex offender regulation.

e. Article 11.7 and the Colorado Sex Offender Registration Act establish that the General Assembly sought to occupy the field of treating, managing, and supervising sex offenders, to the exclusion of independent local regulation.

47. Because sex offender regulation is a matter of statewide concern, and because neither the Colorado Constitution nor state law authorize home-rule municipalities to legislate in

⁴ Available at <http://www.hrw.org/reports/2007/us0907/us0907web.pdf>.

this area, the ESORR is preempted under Article XX, Section 6 of the Colorado Constitution by Colorado's state laws regulating sex offenders.

48. All necessary parties under Colorado Rule of Civil Procedure 57(j) are before the Court.

49. Pursuant to the Colorado Uniform Declaratory Judgments Law, COLO. REV. STAT. § 13-51-101 *et seq.*, and C.R.C.P. 57, Plaintiff is entitled to a declaration that the Englewood Sex Offender Residency Restriction is preempted under Article XX, Section 6 of the Colorado Constitution because it legislates on a matter of statewide concern without specific constitutional or statutory authorization.

50. Pursuant to Colorado Rule of Civil Procedure 65, this Court should issue an injunction prohibiting enforcement of the ESORR.

SECOND CLAIM FOR RELIEF

(Ex Post Facto Clause, Article I, Section 10 of the United States Constitution; 42 U.S.C. § 1983)

51. The foregoing allegations are incorporated by reference.

52. The United States Constitution prohibits ex post facto laws. U.S. CONST. art. I, § 9. A law that "makes more burdensome the punishment for a crime after its commission" is an impermissible ex post facto law. *Collins v. Youngblood*, 497 U.S. 37, 42 (1990) (quoting *Beazell v. Ohio*, 269 U.S. 167, 169-170 (1925)).

53. Mr. Ryals has been punished for his offense.

54. The ESORR was enacted in 2006, roughly six years after Mr. Ryals committed his offense and roughly two years after he successfully completed his parole.

55. Because the ESORR effectively banishes Mr. Ryals from residing in Englewood, where he owns property and wants to live, the restriction imposes an additional punishment on him that was not prescribed when he committed the offense.

56. As a result, the ESORR is an ex post facto law.

57. The City of Englewood has, by the ESORR, deprived Mr. Ryals of his constitutional right to be free from ex post facto laws.

58. Mr. Ryals is entitled to declaratory and injunctive relief under 42 U.S.C. § 1983 and reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

(Ex Post Facto Clause, Article II, Section 11 of the Colorado Constitution)

59. The foregoing allegations are incorporated by reference.

60. The Colorado Constitution prohibits ex post facto laws. COLO. CONST. art. II, § 11. This prohibition extends to laws that “[impose] additional punishment to that then prescribed” at the time the offense was committed. *People v. DeWitt*, 275 P.3d 728, 731 (Colo. App. 2011) (quoting *Weaver v. Graham*, 450 U.S. 24, 28 (1981)).

61. Mr. Ryals has been punished for his offense.

62. The ESORR was enacted in 2006, roughly six years after Mr. Ryals committed his offense and roughly two years after he successfully completed his parole.

63. Because the ESORR effectively banishes Mr. Ryals from residing in Englewood, where he owns property and wants to live, the restriction imposes an additional punishment on him that was not prescribed when he committed the offense.

64. As a result, the ESORR is an unconstitutional ex post facto law.

65. All necessary parties under Colorado Rule of Civil Procedure 57(j) are before the Court.

66. Pursuant to the Colorado Uniform Declaratory Judgments Law, COLO. REV. STAT. § 13-51-101 *et seq.*, and C.R.C.P. 57, Plaintiff is entitled to a declaration that the Englewood Sex Offender Residency Restriction violates the Ex Post Facto Clause, Article II, Section 11 of the Colorado Constitution.

67. Pursuant to Colorado Rule of Civil Procedure 65, this Court should issue an injunction prohibiting enforcement of the ESORR.

FOURTH CLAIM FOR RELIEF

**(Substantive Due Process under the Fourteenth Amendment to the U.S. Constitution;
42 U.S.C. § 1983)**

68. The foregoing allegations are incorporated by reference.

69. The Fourteenth Amendment to the United States Constitution prohibits state and local governments from “[depriving] any person of life, liberty, or property without due process of law.” U.S. CONST. amend. XIV, § 1.

70. The ESORR effectively banishes Mr. Ryals from the City of Englewood, where he has chosen to live and purchased a home, which is a deprivation of the liberty secured to him by the Fourteenth Amendment.

71. The ESORR is not rationally related to any legitimate government interest the City of Englewood has in protecting public health, safety, and welfare. Rather, it panders to the public stereotype that all sex offenders are violent predators who target children and can never be rehabilitated. Moreover, it materially conflicts with Colorado's goals of supervision, rehabilitation, and reintegration of sex offenders, and undermines Colorado's interest in uniformity by replacing SOMB's individualized determinations as to an offender's risks and needs with a blanket determination that no offenders are permitted in the City of Englewood.

72. As a result, the ESORR deprives Mr. Ryals of liberty without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

73. Mr. Ryals is entitled to declaratory and injunctive relief under 42 U.S.C. § 1983 and reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

FIFTH CLAIM FOR RELIEF

(Substantive Due Process under Article II, Section 25 of the Colorado Constitution)

74. The foregoing allegations are incorporated by reference.

75. Article II, Section 25 of the Colorado Constitution guarantees that "[n]o person shall be deprived of life, liberty or property, without due process of law." COLO. CONST. art. II, § 25. Liberty includes the right "to go where one pleases, and when, and to do that which may lead to one's business or pleasure" if not disturbing other citizens' rights. *Dominguez v. Denver*, 147 Colo. 233, 239 (Colo. 1961).

76. The ESORR is not rationally related to any legitimate government interest the City of Englewood has in protecting public health, safety, and welfare. Rather, it panders to the public stereotype that all sex offenders are violent predators who target children and can never be rehabilitated. Moreover, it materially conflicts with Colorado's goals of supervision, rehabilitation, and reintegration of sex offenders, and undermines the SOMB's regulatory scheme by replacing individualized determinations as to an offender's risks and needs with a blanket determination that no offenders are permitted in the City of Englewood.

77. All necessary parties under Colorado Rule of Civil Procedure 57(j) are before the Court.

78. Pursuant to the Colorado Uniform Declaratory Judgments Law, COLO. REV. STAT. § 13-51-101 *et seq.*, and C.R.C.P. 57, Plaintiff is entitled to a declaration that the Englewood Sex Offender Residency Restriction deprives him of liberty without due process, in violation of Article II, Section 25 of the Colorado Constitution.

79. Pursuant to Colorado Rule of Civil Procedure 65, this Court should issue an injunction prohibiting enforcement of the ESORR.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that the Englewood Sex Offender Residency Restriction is preempted under Article XX, Section 6 of the Colorado Constitution;

B. Declare that the Englewood Sex Offender Residency Restriction constitutes a new, after-the-fact punishment that violates the Ex Post Facto Clauses of the federal and state constitutions (U.S. CONST. art. I, § 10; COLO. CONST. art. I, § 9);

C. Declare that the Englewood Sex Offender Residency Restriction deprives Plaintiff of liberty without due process, in violation of the Fourteenth Amendment to the United States Constitution and Article II, Section 25 of the Colorado Constitution;

D. Enter a permanent injunction prohibiting Defendant, and all persons and entities acting under its direction or on its behalf, from taking any further actions to enforce the Residency Restriction, including but not limited to, enjoining the City of Englewood from prosecuting Plaintiff for violating the ESORR; and enjoining the City of Englewood from taking any other action to enforce the ESORR or to exclude Plaintiff from living in the place of his choosing in Englewood;

E. Award Plaintiff his attorneys' fees, expenses, and costs incurred in bringing this lawsuit; and

F. Order such other and further relief as this Court may deem just and appropriate.

Respectfully submitted this 26th day of July, 2012.

s/ Daniel D. Williams

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*In accordance with C.R.C.P. 121, § 1-26(9), a printed copy of this document with original
signatures is being maintained as stated above and will be made available for inspection by
other parties or the Court upon request.*

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EXHIBIT 1

**CITY OF ENGLEWOOD SEX OFFENDER
RESIDENCY RESTRICTION**

(ENGLEWOOD, COLO., CODE § 7-3-1 (2000) *et seq.*)

Chapter 3 - PROHIBITED RESIDENCY OF SEX OFFENDERS

7-3-1: - Findings and Intent.

7-3-2: - Definitions.

7-3-3: - Prohibitions.

7-3-4: - Exceptions.

7-3-5: - Measurement.

7-3-1: - Findings and Intent.

A. The City Council hereby finds that sexual predators and the specified sex offenders who use physical violence or who prey on children present an extreme threat to the public safety. Sexual predators and the specified sex offenders have a high rate of recidivism, making the cost of sex offender victimization to society at large extremely high. Removing such offenders from regular proximity to places where children are located and limiting the frequency of contact is likely to reduce the risk of an offense.

B. This Chapter is intended to serve the City's compelling interest to promote, protect and improve the public health, safety and welfare by creating areas, around locations where children regularly congregate in concentrated numbers, where sexual predators and specified sexual offenders are prohibited from establishing temporary or permanent residence.

(Ord. 06-34, § 1, 9-18-06)

7-3-2: - Definitions.

For purposes of this Chapter, the following terms shall have the following meanings:

A. *Permanent Residence*: A place where a person abides, lodges, or resides for five (5) or more consecutive days.

B. *Temporary Residence*: A place where a person abides, lodges, or resides for a period of five (5) or more days in the aggregate during any calendar year and which is not the person's permanent residence, or a place where a person routinely abides, lodges, or resides for a period of five (5) or more consecutive or nonconsecutive days in any month and which is not the person's permanent address.

C. *Walk-to-School Route*: A route officially designated by the City for use by children walking to or from a public or private school, and shown on maps maintained by the City's Police Department and available for public inspection.

(Ord. 06-34, § 1, 9-18-06)

7-3-3: - Prohibitions.

A. It shall be unlawful for:

- i. Any person who has been found to be a sexually violent predator pursuant to 18-3-414.5 C.R.S.; or
- ii. Any person required to register under the Colorado Sex Offender Registration Act, C.R.S. Section 16-22-101, et. seq. who has been:
 - a. Convicted of a felony for an offense requiring registration; or
 - b. Has multiple convictions for offenses requiring registration; or
 - c. Whose offense(s) requiring registration involved multiple victims

to establish a permanent residence or temporary residence within two thousand feet (2,000') of any school, park, or playground or within one thousand feet (1,000') of any licensed day care center, recreation center or swimming pool (other than pools located at private, single-family residences), or any property located adjacent to any designated public or private school bus stop, walk-to-school route, or recreational trail.

B. It is unlawful to let or rent any portion of any property, place, structure, trailer or other vehicle with the knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such permanent or temporary residence pursuant to this Chapter.

(Ord. 06-34, § 1, 9-18-06)

7-3-4: - Exceptions.

A person is not guilty of a violation of this Section if:

- A. The person established the permanent or temporary residence prior to the effective date of this chapter; provided, however, that this exception shall not apply if the person committed the offense, for which registration under the Colorado Sex Offender Registration Act is required, after the effective date of this chapter;
- B. The person is placed in the residence pursuant to a State of Colorado foster care program; or
- C. The school, designated public or private school bus stop, walk-to-school route, licensed day care center, park, playground, swimming pool, recreational trail or recreation center was opened after the person established the permanent or temporary residence, and is not replacing an existing school, designated public or private school bus stop, walk-to-school route, licensed day care center, park, playground, swimming pool, recreational trail or recreation center.

(Ord. 06-34, § 1, 9-18-06)

7-3-5: - Measurement.

For purposes of determining the minimum distance separation required herein, the measurement shall be made by following a straight line from the outer property line of the property on which the school, licensed day care center, park, playground, swimming

pool or recreation center is located to the nearest point on the outer property line of the property on which the permanent or temporary residence is located.
(Ord. 06-34, § 1, 9-18-06)

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EXHIBIT 2

EXCERPTS FROM COLO. SEX OFFENDER MGMT. BD.,
STANDARDS AND GUIDELINES FOR THE ASSESSMENT,
EVALUATION, TREATMENT, AND BEHAVIORAL
MONITORING OF ADULT SEX OFFENDERS (Mar.
2008)

COLORADO SEX OFFENDER MANAGEMENT BOARD

STANDARDS AND GUIDELINES FOR THE ASSESSMENT, EVALUATION, TREATMENT AND BEHAVIORAL MONITORING OF ADULT SEX OFFENDERS



Colorado Department of Public Safety
Division of Criminal Justice
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Revised March 2008

Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders

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**5.000
STANDARDS AND GUIDELINES FOR MANAGEMENT OF SEX
OFFENDERS ON PROBATION, PAROLE AND COMMUNITY
CORRECTIONS**

5.100 Establishment of an Interagency Community Supervision Team

5.110 As soon as possible after the conviction and referral of a sex offender to probation, parole, or community corrections, the supervising officer should convene a team to manage the offender during his/her term of supervision:

- A. The purpose of the team is to staff cases, share information, and make informed decisions related to risk assessment, treatment, behavioral monitoring, and management of each offender. The team should use the sex offense-specific evaluation and pre-sentence investigation as a starting point for such decisions;

Discussion: Although policy development is an important function, the primary purpose of the team is individual case management, not policy development.

- B. Supervision and behavioral monitoring is a joint, cooperative responsibility of the supervising officer, the treatment provider, and the polygraph examiner.

5.120 Each team at a minimum, should consist of:

- The supervising officer
- The offender's treatment provider and
- The polygraph examiner⁹

Each team is formed around a particular offender and is flexible enough to include any individuals necessary to ensure the best approach to managing and treating the offender. Team membership may therefore change over time.

The team may include individuals who need to be involved at a particular stage of management or treatment (e.g., the victim's therapist or victim advocate). When the sexual offense is incest, the child protection worker is also a team member if the case is still open.

Discussion: In rural areas, the team members may be the same for each offender. In more highly populated areas, there may be a cluster of teams that include various combinations of supervising officers, treatment providers, and polygraph examiners.

5.120 DD

In addition to the supervising officers from probation, parole or community correction who serve as the team leader, the treatment provider and the polygraph examiner, any of the following team

⁹ Please see Standard 5.430 regarding the attendance of polygraph examiners at team meetings.

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members, when involved and appropriate, shall be added to teams supervising sex offenders who have developmental disabilities:

- Community Centered Board Case Manager
- Residential Providers
- Supported Living Coordinator
- Day Program Provider
- Vocational or Educational Provider
- Guardians
- Social Services
- Family Members
- Authorized Representatives
- Other Applicable Providers

5.121 DD

Responsibilities of Additional Team Members For Sex Offenders Who Have Developmental Disabilities:

- A. Team members shall have specialized training, or be provided education or knowledge, regarding sexual offending behavior, the management and containment of sex offenders and the impact of sex offenses on victims;

Discussion: Team members for sex offenders who have developmental disabilities should have knowledge and understanding specific to this population.

- B. Team members shall be familiar with the conditions of the offender's supervision and the treatment contract;
- C. Team members shall immediately report to the supervising officer and the treatment provider any failure to comply with the conditions of supervision or the treatment contract or any high-risk behavior;
- D. Team members shall limit the offender's contact with victims and potential victims. Residential, supported living, day, vocational and educational providers of services to other clients with developmental disabilities shall recognize the risk to their clients and shall limit the sex offender's access to possible victims in their programs. Clients who are lower functioning or who are non-verbal are at particularly high risk because of their inability to effectively set limits or report in appropriate behavior or sexual assaults.

5.130 The team is coordinated by the supervising officer, who determines:

- A. The members of the team, beyond the required membership, may include, but are not limited to: guardians, social services, family members, and authorized representatives. The individuals should attend any given meeting;
- B. The frequency of team meetings;
- C. The content of the meetings, with input from other team members;
- D. The types of information required to be released.

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5.140 Team members should keep in mind the priorities of community safety and risk management when making decisions about the management and/or treatment of offenders.

5.150 The team should demonstrate the following behavioral norms:

- A. There is an ongoing, completely open flow of information among all members of the team;
- B. Each team member participates fully in the management of each offender;
- C. Team members settle among themselves conflicts and differences of opinion that might make them less effective in presenting a unified response. The final authority rests with the supervising officer;
- D. Team members are committed to the team approach and seek assistance with conflicts or alignment issues that occur.

Discussion: Supervising officers are encouraged to periodically attend group and/or individual treatment sessions to monitor sex offenders under their supervision. Treatment providers are encouraged to allow attendance of supervising officers and prepare sex offenders in the group in advance for the attendance of a supervising officer. Preparation should include notification of the supervising officer's attendance and execution of appropriate waivers of confidentiality if necessary. The visiting supervising officer shall be bound by the same confidentiality rules as the treatment provider and should sign a statement to that effect. It is understood that treatment providers may set reasonable limits on the number and timing of visits in order to minimize any disruption to the group process.

5.160 Team members should communicate frequently enough to manage and treat sexual offenders effectively, with community safety as the highest priority.

5.200 Responsibilities of the Supervising Officer for Team Management

5.201 The supervising officer shall refer sex offenders for evaluation and treatment only to treatment providers who meet these *Standards*. (Section 16-11.7-106 C.R.S.)

Discussion: Supervising officers have a responsibility to ensure that the offender is engaged in appropriate treatment with a provider who is listed on the SOMB's Provider List and that the treatment program is consistent with SOMB Standards. It is the supervising officer's responsibility to refer to evaluators and treatment providers who will best meet the sex offenders' treatment/evaluation needs and the need for community safety.

5.202 The supervising officer should ensure that sex offenders sign releases for at least the following types of information:

- Releases of information to treatment providers, including information from any treatment program in which the offender participated at the Department of Corrections;
- Releases of information to case management team members, including collateral information sources, as indicated, such as the child protection agency, the treatment provider, the polygraph examiner, the victim's therapist, and any other professionals involved in the treatment and/or supervision of the offender;

Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders

- Releases of information to the victim's therapist, the guardian ad litem, custodial parent, guardian, caseworker, or other involved professional, as indicated. Such information may be used in the victim's treatment and/or in making decisions regarding reunification of the family or the offender's contact with the victim.

5.203 The supervising officer, in cooperation with the treatment provider and polygraph examiner, should utilize the results of periodic polygraph examinations for treatment and behavioral monitoring. Team members should provide input and information to the polygraph examiner regarding examination questions. The information provided by the team should include date and results of last polygraph examination.

Discussion: Supervising officers have a responsibility to ensure that the offender receives polygraph examinations from a polygraph examiner who is listed on the SOMB's Provider List and that the examinations are consistent with SOMB Standards. It is the supervising officer's responsibility to refer to polygraph examiners who will best meet the sex offenders' treatment and evaluation needs and the need for community safety.

Exceptions to the requirement to use the polygraph shall be made only with the unanimous agreement of the case management team and the reasons for the exception shall be recorded in the sex offender's file.

Discussion: Although deceptive findings on a polygraph test are not in and of themselves a violation of probation or parole, they can be considered in determining the intensity and conditions of supervision. Pre-and post-test admissions, however, may be used in a revocation hearing. An offender's failure to take a polygraph as directed should be considered a violation of probation, parole, or community corrections.

5.204 The supervising officer should require sex offenders to provide a copy of the written plan developed in treatment for preventing a relapse, signed by the offender and the therapist, as soon as it is available. The supervising officer should utilize the relapse prevention plan in monitoring offenders' behavior.

5.205 The supervising officer should require sex offenders to obtain the officer's written permission to change treatment programs.

5.206 The supervising officer should ensure maximum behavioral monitoring and supervision for offenders in denial. The officer should use supervision tools that place limitations on offenders' use of free time and mobility and emphasize community safety and containment of offenders.

5.207 The supervising officer should require treatment providers to keep monthly written updates on sex offenders' status and progress in treatment.

5.208 The supervising officer should discuss with the treatment provider, the victim's therapist, custodial parent or foster parent, and guardian ad litem specific plans for any and all contacts of an offender with a child victim and plans for family reunification.

5.209 The supervising officer should develop a supervision plan and contact standards based on a risk assessment of each sex offender, the sex offender's offending cycle, physiological monitoring results, and the offender's progress in treatment.

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- 5.210 Recognizing that sex offenders present a high risk to community safety, probation/parole/community corrections officers should base their field work on the supervision plan, relapse prevention plan, and offense cycle of an offender.
- 5.211 The supervising officer should not request early termination of sex offenders from supervision.
- 5.212 On a regular basis, the supervising officer should review each offender's specific conditions of probation, parole, or community corrections and assess the offender's compliance, needs, risk, and progress to determine the necessary level of supervision and the need for additional conditions.
- 5.213 If contact is allowed, the supervising officer should limit and control the offenders' authority to make decisions for minors or to discipline them.
- 5.214 If necessary and possible, the supervising officer should request an extension of supervision to allow an offender to complete treatment.
- 5.215 The supervising officer should notify sex offenders that they must register with local law enforcement, in compliance with Section 18-3-412.5 C.R.S.
- 5.216 The supervising officer should discuss treatment issues and progress with offenders during office visits and other contacts.
- 5.217 The supervising officer/agency should impose or request criminal justice sanctions for offenders' unsatisfactory termination from sex offender treatment, including revocation of probation or parole.
- 5.218 The supervising officer should require sex offenders who are transferred from other states through an Interstate Compact Agreement to agree in advance to participate in offense-specific treatment and specialized conditions of supervision contained in these *Standards*.
- 5.219 The supervising officer should not allow a sex offender who has been unsuccessfully discharged from a treatment program to enter another program unless the new treatment program and case management arrangement will provide greater behavioral monitoring and increased treatment in the areas the sex offender "failed" in the previous program.

Discussion: The purpose of this standard is to discourage movement among treatment providers by offenders as a way of avoiding doing the work of therapy.

- 5.220 Supervising officers assessing or supervising sex offenders should successfully complete training programs specific to sex offenders. Such training shall include information on:
 - Prevalence of sexual assault
 - Offender characteristics
 - Assessment/evaluation of sex offenders
 - Current research
 - Community management of sex offenders
 - Interviewing skills
 - Victim issues
 - Sex offender treatment
 - Choosing evaluators and treatment providers
 - Relapse prevention
 - Physiological procedures
 - Determining progress

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- Offender denial
- Special populations of sex offenders
- Cultural and ethnic awareness

It is also desirable for agency supervisors of officers managing sex offenders to complete such training.

5.220 DD

Supervising officers should have specialized training specific to sex offenders who have developmental disabilities.

5.221 On an annual basis, supervising officers should obtain continuing education/training specific to sex offenders.

5.222 The successful completion of training required in guidelines 5.222 and 5.223 is necessary prior to the supervising officer attending any individual or group treatment sessions of sex offenders under his/her supervision (See Standard 5.150).

5.300 Responsibilities of the Treatment Provider within the Team

A treatment provider shall establish a cooperative professional relationship with the supervising officer of each offender and with other relevant supervising agencies. This includes but may not be limited to:

- A. A provider shall immediately report to the supervising officer all violations of the provider/client contract, including those related to specific conditions of probation, parole, or community corrections;
- B. A provider shall immediately report to the supervising officer evidence or likelihood of an offender's increased risk of re-offending so that behavioral monitoring activities may be increased;
- C. A provider shall report to the supervising officer any reduction in frequency or duration of contacts or any alteration in treatment modality that constitutes a change in an offender's treatment plan. Any permanent reduction in duration or frequency of contacts or permanent alteration in treatment modality shall be determined on an individual case basis by the provider and the supervising officer;
- D. On a timely basis, and no less than monthly, a provider shall provide to the supervising officer progress reports documenting offenders' attendance, participation in treatment, increase in risk factors, changes in the treatment plan, and treatment progress;
- E. If a revocation of probation or parole is filed by the supervising officer, a provider shall furnish, when requested by the supervising officer, written information regarding the offender's treatment progress. The information shall include: changes in the treatment plan, dates of attendance, treatment activities, the offender's relative progress and compliance in treatment, and any other material relevant to the court at the hearing. The treatment provider shall be willing to testify in court if necessary;

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- F. A provider shall discuss with the supervising officer, the victim's therapist, custodial parent, foster parent and/or guardian ad litem specific plans for any and all contacts of the offender with the child victim and plans for family reunification;
- G. A provider shall make recommendations to the supervising officer about visitation supervisors for an offender's contact with children, if such contact is allowed.

5.400 Responsibilities of the Polygraph Examiner within the Team

- 5.410 The polygraph examiner shall participate as a member of the post-conviction case management team established for each sex offender.
- 5.420 The polygraph examiner shall submit written reports to each member of the community supervision team for each polygraph exam as required in section 6.190. Reports shall be submitted in a timely manner, no longer than two (2) weeks post testing.
- 5.430 Attendance at team meetings shall be on an as-needed basis. At the discretion of the supervising officer, the polygraph examiner may be required to attend only those meetings preceding and/or following an offender's polygraph examination, but the examiner is nonetheless an important member of the team.

5.500 Conditions of Community Supervision

In addition to general conditions imposed on all offenders under community supervision, the supervising agency should impose the following special conditions on sex offenders under community supervision:

- A. Sex offenders shall have no contact with their victim(s), including correspondence, telephone contact, or communication through third parties except under circumstances approved in advance and in writing by the supervising officer in consultation with the community supervision team. Sex offenders shall not enter onto the premises, travel past, or loiter near the victim's residence, place of employment, or other places frequented by the victim;
- B. Sex offenders shall have no contact, nor reside with children under the age of 18, including their own children, unless approved in advance and in writing by the supervising officer in consultation with the community supervision team. The sex offender must report all incidental contact with children to the treatment provider and the supervising officer, as required by the team;
- C. Sex offenders who have perpetrated against children shall not date or befriend anyone who has children under the age of 18, unless approved in advance and in writing by the supervising officer in consultation with the community supervision team;
- D. Sex offenders shall not access or loiter near school yards, parks, arcades, playgrounds, amusement parks, or other places used primarily by children unless approved in advance and in writing by the supervising officer in consultation with the community supervision team;
- E. Sex offenders shall not be employed in or participate in any volunteer activity that involves contact with children, except under circumstances approved in advance and in writing by the supervising officer in consultation with the community supervision team;

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- F. Sex offenders shall not possess any pornographic, sexually oriented or sexually stimulating materials, including visual, auditory, telephonic, or electronic media, computer programs or services. Sex offenders shall not patronize any place where such material or entertainment is available. Sex offenders shall not utilize any sex-related telephone numbers. The community supervision team may grant permission for the use of sexually oriented material for treatment purposes;
- G. Sex offenders shall not consume or possess alcohol;
- H. The residence and living situation of sex offender must be approved in advance by the supervising officer in consultation with the community supervision team. In determining whether to approve the residence, the supervising officer will consider the level of communication the officer has with others living in the residence, and the extent to which the offender has informed household members of his/her conviction and conditions of probation/parole/community corrections, and the extent to which others living in the residence are supportive of the case management plan;
- I. Sex offenders will be required to undergo blood, saliva, and DNA testing as required by statute;
- J. Other special conditions that restrict sex offenders from high-risk situations and limit access to potential victims may be imposed by the supervising officer in consultation with the community supervision team;
- K. Sex offenders shall sign information releases to allow all professionals involved in assessment, treatment, and behavioral monitoring and compliance of the sex offender to communicate and share documentation with each other;
- L. Sex offenders shall not hitchhike or pick up hitchhikers;
- M. Sex offenders shall attend and actively participate in evaluation and treatment approved by the supervising officer and shall not change treatment providers without prior approval of the supervising officer.

5.600 Behavioral Monitoring of Sex Offenders in the Community

The monitoring of offenders' compliance with treatment and sentencing requirements shall recognize sex offenders' potential to re-offend, to re-victimize, to cause harm, and the limits of sex offenders' self-reports:

- A. Responsibility for behavioral monitoring activities shall be outlined under explicit agreements established by the supervising officer. Some or all members of the team described in Section 5.000 will share monitoring responsibility. At a minimum, the provider, the supervising officer, and the polygraph examiner shall take an active role in monitoring offenders' behaviors;

For purposes of compliance with this standard, behavioral monitoring activities shall include, but are not limited to the following: (For some activities, monitoring and treatment overlap.)

1. The receipt of third-party reports and observations;

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2. The use of disclosure and maintenance polygraphs; measures of arousal or interest including sexual and violent arousal or interest;
 3. The use and support of targeted limitations on an offenders' behavior, including those conditions set forth in Section 5.500;
 4. The verification (by means of observation and/or collateral sources of information in addition to the offender's self report) of the offender's:
 - (a) Compliance with sentencing requirements, supervision conditions and treatment directives;
 - (b) Cessation of sexually deviant behavior;
 - (c) Reduction of behaviors most likely to be related to a sexual re-offense;
 - (d) Living, work and social environments, to ensure that these environments provide sufficient protection against offenders' potential to re-offend;
 - (e) Compliance with specific conditions of the relapse prevention plan;
 5. The direct involvement of individuals significant in the offenders' life in monitoring offenders' compliance, when approved by the community supervision team.
- B. Behavioral monitoring should be increased during times of an offender's increased risk to re-offend, including, but not limited to, such circumstances as the following:
1. The offender is experiencing stress or crisis;
 2. The offender is in a high-risk environment;
 3. The offender will be having visits with victims or potential victims, as recommended by the provider and approved by the supervising officer, victim treatment provider, custodial parent, and/or guardian ad litem;
 4. The offender demonstrates a high or increased level of denial.

5.700 Sex Offenders' Contact with Victims and Potential Victims

5.710 Sex offenders shall have no contact with any child under the age of 18 or adult/ child victims of the offender's sex offenses until the Community Supervision Team unanimously agrees that the offender has met the corresponding criteria listed in Standard 5.741 through 5.742, Section A, B, or C as applicable. Additionally, offenders shall not meet any of the Exclusionary Criteria listed in Standard 5.720.

Contact is intended to refer to any form of interaction including:

- Physical, face-to-face, or any verbal contact;
- Being in a residence with a child or victim;
- Being in a vehicle with a child or victim;
- Visitation of any kind;

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- Correspondence (both written and electronic), telephone contact (including messages left on a voice mail or answering machines), gifts, or communication through third parties;
- Entering the premises, traveling past or loitering near the child or victim's residence, school, day care, or place of employment;
- Frequenting places used primarily by children, as determined by the Community Supervision Team.

Prohibition of contact does not impact an offender's responsibility to pay child support.

The rationale for contact restrictions involves both known and unknown factors regarding the offender's risk for sexual recidivism. The accuracy of risk prediction is limited to available information even when a sex offense specific evaluation has been completed. The offense for which a person is convicted is not necessarily a reliable indicator of the offender's risk to children or victims¹⁰. As an offender participates in treatment and supervision, a more accurate assessment can be made to determine his/her specific risks to children and victims with whom he/she may request contact. An important aspect of ongoing risk assessment is measuring an offender's ability to comply with the requirements of treatment and supervision¹¹.

A growing body of research indicates most sex offenders supervised by the criminal justice system have more extensive sex offending histories, including multiple victim and offense types, than is generally identified in their criminal justice records¹². Some of this research has been conducted with convicted sex offenders in Colorado. Research also indicates that children and victims are particularly vulnerable and are unlikely to report or re-report abuse¹³.

The SOMB recognizes the significance of the relationship between a parent and his/her child and also recognizes the risk that a sex offender can pose to his/her own children. There are multiple factors that must be considered in making a determination of an offender's risk to his/her own children. When contact between a sex offender and a child under the age of eighteen (18) who meets the definition of "own child" in this document is being considered, the offender shall complete the Parental Risk Assessment (PRA) as described in this document in order to assess whether child contact is appropriate. This assessment will result in a determination of risk level and make recommendations in an individualized plan for level and type of contact, if any, with the offender's own children. No sex offender will have any contact with his/her own children until he/she has undergone a Parental Risk Assessment and has been determined to be an acceptably low risk. Please see section 5.740 A for further information.

Discussion: For offenders who have already been sentenced and have non-victim children under the age of 18 with whom they desire contact, it is important for the offender to participate in the Parental Risk Assessment in order to determine appropriateness and level of contact.

Community Supervision Teams should plan for changes in risk level and recognize that offenders will always present with some level of risk for sexual re-offending. Progress in treatment may not be consistent over time. The team should also consider that changes in child development

¹⁰Knopp, F.H. (1984); Freeman-Longo, R., Blanchard, G. (1998); Ahlmeyer, S., Heil, P., McKee, B., and English, K. (2000); English, K. (1998); Heil, P., Ahlmeyer, S., Simons, D. (2003); Ahlmeyer, S. (1999); Becker, J., and Coleman, E. (1987); Abel, G., Rouleau, J. (1990); Office of Research and Statistics, Division of Criminal Justice, Colorado Department of Public Safety (2000); Tanner, J. (1999); Hanson, R., Harris, A. (1998); Hindman, J. (1989).

¹¹ Hanson, R.K., Harris, A. (1998).

¹² Knopp, F.H. (1984); Freeman-Longo, R., Blanchard, G. (1998); Ahlmeyer, S., Heil, P., McKee, B., and English, K. (2000); English, K. (1998); Heil, P., Ahlmeyer, S., Simons, D. (2003); Ahlmeyer, S. (1999); Becker, J., and Coleman, E. (1987); Abel, G., Rouleau, J. (1990); Office of Research and Statistics, Division of Criminal Justice, Colorado Department of Public Safety (2000); Weinrott, M. & Saylor, M. (1991).

¹³ Marshall, W. (1998); Hanson, R.F., et al (1999); (1992). *Rape in America: A Report to the Nation*; Underwood, R., Patch, P., Cappelletty, G., Wolfe, R. (1999); Hindman, J. (1989); Colorado Coalition Against Sexual Assault (1998); Cardarelli, A. (1998).

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characteristics or adult victim characteristics may affect offenders' risk level. Approval of situations that involve contact with children under the age of eighteen shall be continually reviewed and changed by the Community Supervision Team based on current risk.

It is the responsibility of treatment providers, evaluators and other community supervision team members to follow these *Standards*. Treatment providers, particularly after a Parental Risk Assessment has been completed, have the most expertise and are in the best position to accurately assess an offender's risk to his own children and are ethically obligated to ensure child safety remains the highest priority. This may result in decisions that are difficult for both the offender and the criminal justice system. While the court has authority and discretion in sentencing matters, the treatment provider is an independent entity who is responsible to maintain best clinical practices. In rare instances, the referring agency may request services that are in conflict with the *Standards* due to a court order. It is important to recognize that treatment under unsafe conditions is not beneficial to the offender or others in the treatment program and undermines treatment program integrity¹⁴.

In order to maintain program integrity, treatment providers and evaluators who receive referrals for offenders in circumstances which conflict with these *Standards* should refuse to accept or continue to treat offenders who do not agree to comply with the requirements in the *Standards* regarding restricted contact. The referral source should be informed in writing of the reasons for the refusal and of the possible risk to the involved children or victims.

Discussion: During any time that an offender is not in treatment, the supervising officer should maximize the use of surveillance, monitoring and containment methods including more frequent use of polygraphs. The supervising officer may obtain additional information during this period of time, which should be brought back to the court for additional guidance and/or sentencing conditions.

Sections 5.741 through 5.742 A, B, and C of this Standard state the requirements for contact with children. This contact shall be supervised unless the offender has met the criteria in Standard 5.750 for unsupervised contact. See *Standards* 5.760-5.763 for Approved Supervisor requirements.

5.720 Exclusionary Criteria

Due to extreme risk, when any of the following are present, the community supervision team shall ensure that the offender is **not** considered for any type of contact with children.

A clinical diagnosis by an approved evaluator or treatment provider:

- Pedophilia (Exclusive Type, per DSM IV-TR, i.e. attracted only to children)
 - Psychopathy or Mental Abnormality per the psychopathy checklist revised (PCL-R) or per the MCMJ III (85 or more on each of the following scales: Narcissistic, Antisocial and Paranoid)
 - Sexual sadism, as defined in the DSM IV-TR
- or
- A Colorado court or parole board has ruled the offender is a Sexually Violent Predator.

5.730 Parental Risk Assessment (PRA)

When a sex offender has any children under the age of eighteen (18) who meet the definition of "own child" in this document, the offender wants to have contact with his/her children, none of them are his victims, it does not appear that he or she has more than one item on Tier I on the PRA Flowchart, and it does not appear that the offender will be sentenced to the Department of

¹⁴ Quinsey, V.L., Harris, G.T., Rice, M.E., Cormier, C.A. (1998).

Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders

Corrections, a Parental Risk Assessment as described in this document shall be initiated in order to assess the appropriateness of child contact. This assessment shall be initiated at the time of the offense specific evaluation. The assessment will result in a determination of risk level and a recommendation for an individualized plan regarding level and type of contact, if any, with the offender's own children. It is important to acknowledge that risk levels can change and that the plan must be continually assessed and revised as necessary throughout the period of criminal justice supervision. For offenders in the Department of Corrections, when a PRA has not been completed, the Department of Corrections treatment team should conduct a PRA.

The Parental Risk Assessment should occur after a plea has been entered, after conviction or upon acceptance of an Interstate Compact case and shall be completed by a listed SOMB Evaluator/Treatment Provider. Contact with an offender's children shall be prohibited prior to, and during, the offense specific evaluation. A recommendation regarding an offender having contact with his/her own children cannot be made until a Parental Risk Assessment has been completed as part of the offense specific evaluation. If the Parental Risk Assessment does not occur during the offense specific evaluation, it may be completed at a later time; however, the offender should not have contact with his/her own children until the Parental Risk Assessment has been completed.

Discussion: The SOMB recognizes that in cases involving DHS, where a criminal case has not been filed, it may be useful to conduct an evaluation similar to a PRA in order to make informed decisions regarding child contact. This standard is not intended to preclude that from occurring.

Discussion: Ideally, the sex offender should not have contact with his/her own children until a PRA is completed and finds contact is appropriate. However, if a court has allowed contact absent the completion of a PRA, it should not preclude a PRA from being completed.

Discussion: If all components of the Parental Risk Assessment have not been completed within a six month period of time, portions of the testing may need to be re-administered. Additionally, if an offender yields deceptive or inconclusive results on the polygraph exam, he/she may retest in a timely manner and have those results incorporated into the Parental Risk Assessment

If the Parental Risk Assessment, which includes a polygraph, indicates **high risk** with regard to his/her own children, the offender shall meet the criteria in *Standards 5.741 through 5.742 (A)* before contact can be initiated.

If the Parental Risk Assessment, which includes a polygraph, indicates **low risk** with regard to his/her own children and the offender has no known history of sexual behavior with his/her own children, criteria listed in *Standards 5.741 through 5.742 (A)* shall be waived with regard to his/her own children.

If the Parental Risk Assessment, which includes a polygraph, indicates **moderate risk** with regard to his/her own children and the offender has no known history of sexual behavior with his/her own children, teams may use their discretion in allowing written or telephone contact or therapy sessions with the offender's own children prior to the offender meeting all the criteria listed in *Standards 5.741 through 5.742 (A)*. If the offender's risk is assessed as moderate based on dynamic factors, (e.g. employment, support systems, etc.) the team may revisit the PRA conclusions if those factors change.

Discussion: In the Parental Risk Assessment, using the PRA Decision Flow Chart in Appendix D, the provider shall render an opinion of high, moderate, or low risk and the results shall be provided and explained to referral sources. If the evaluator believes that aggravating or mitigating factors exist

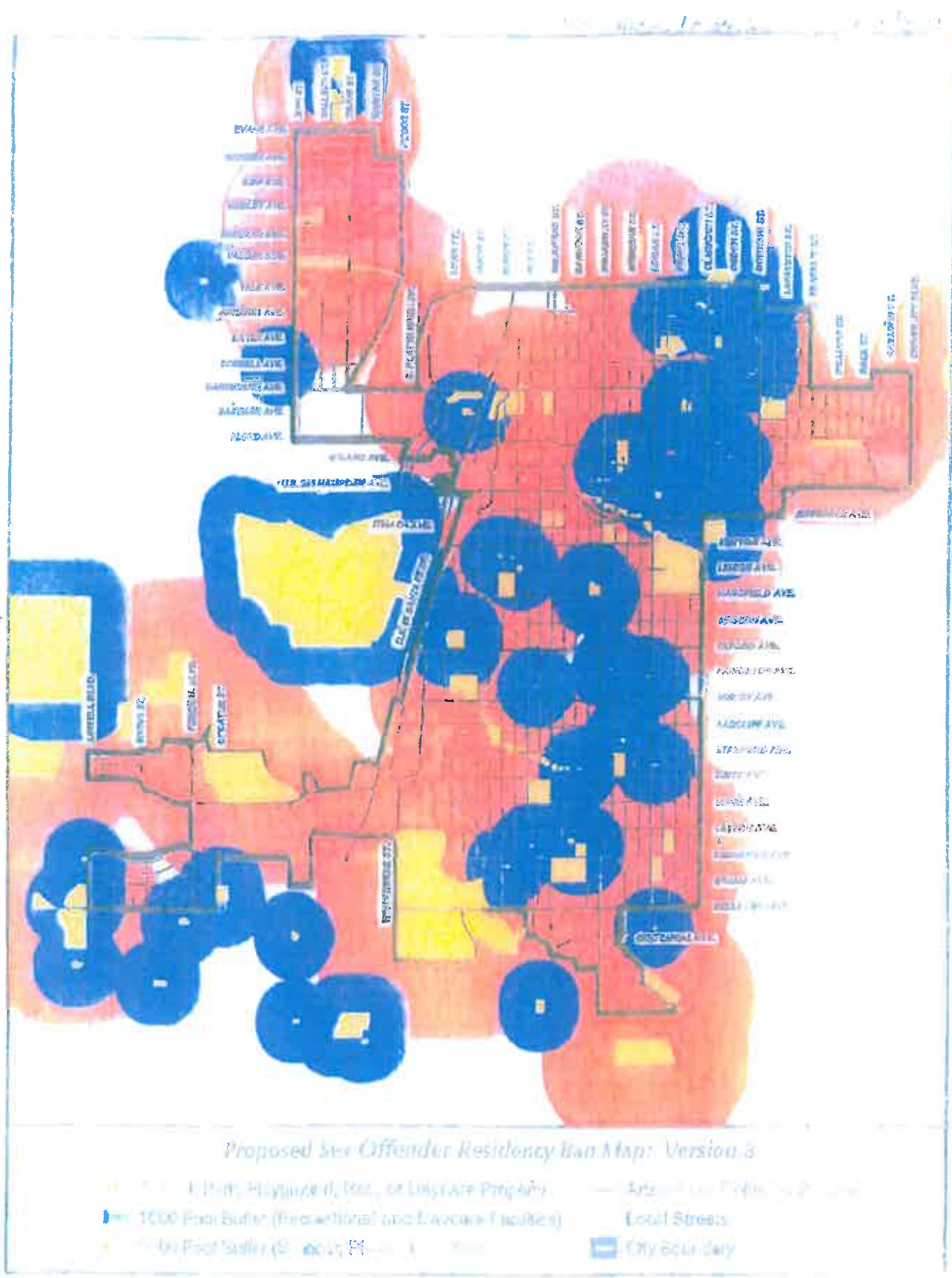
Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders

that impact the outcome indicated by the Decision Flow Chart, such factors should be documented in the PRA report to support a differential opinion regarding risk level. The offender's risk shall be acceptably low or the criteria listed in Standards 5.741 through 5.742 (A) shall be met prior to allowing contact with children.

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EXHIBIT 3

**Map of the City of Englewood under the Residency
Restriction**



Proposed Sex Offender Residency Ban Map: Version 3

- 100-foot Buffer (Provisional and Daycare Facilities)
- 100-foot Buffer (Sex Offenders)
- Interstate Highway, Rd., or Linear Property
- Local Streets
- City Boundary

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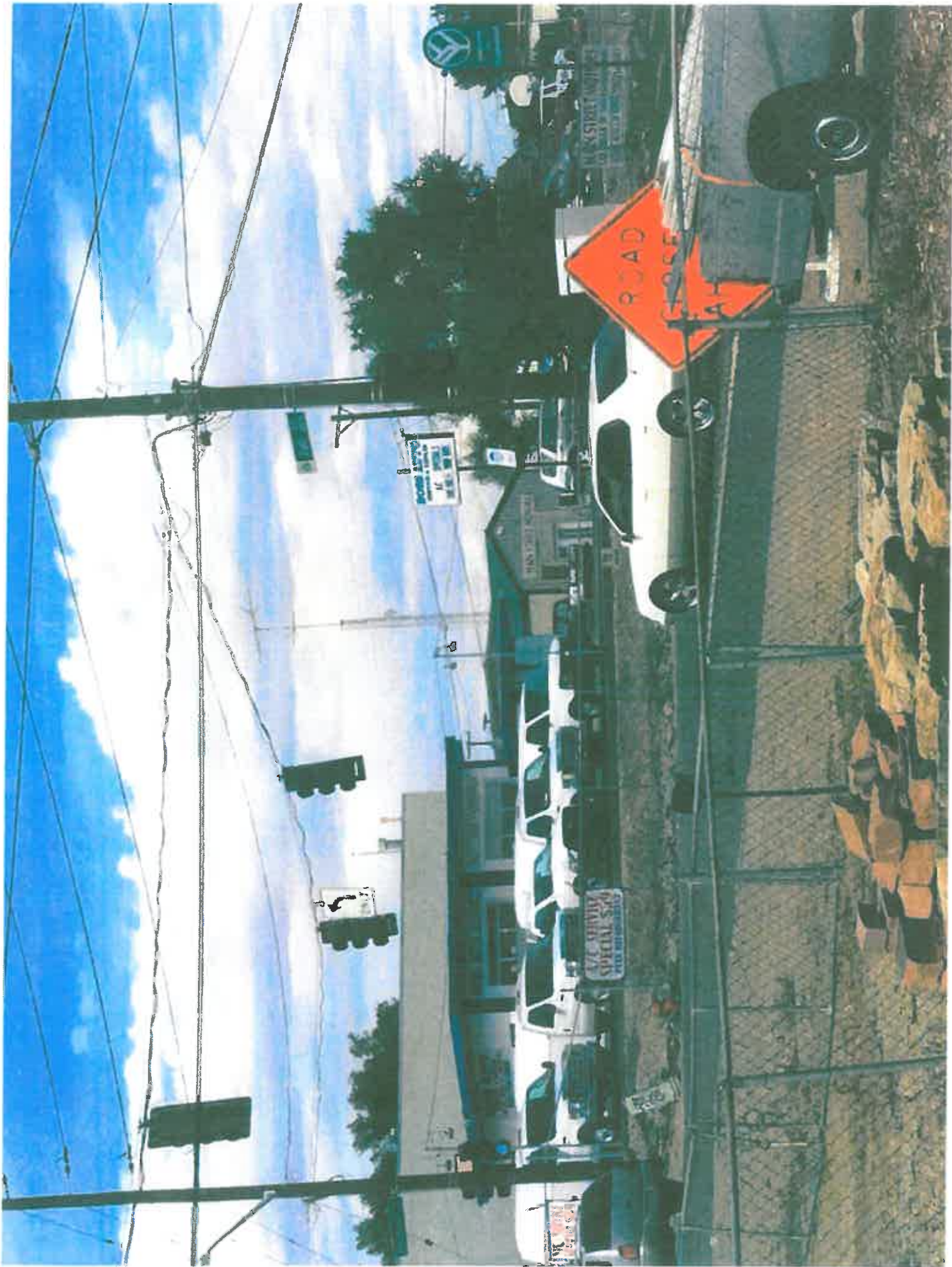
EXHIBIT 4

**Pictures of areas in City of Englewood not subject to
the Englewood Residency Restriction**





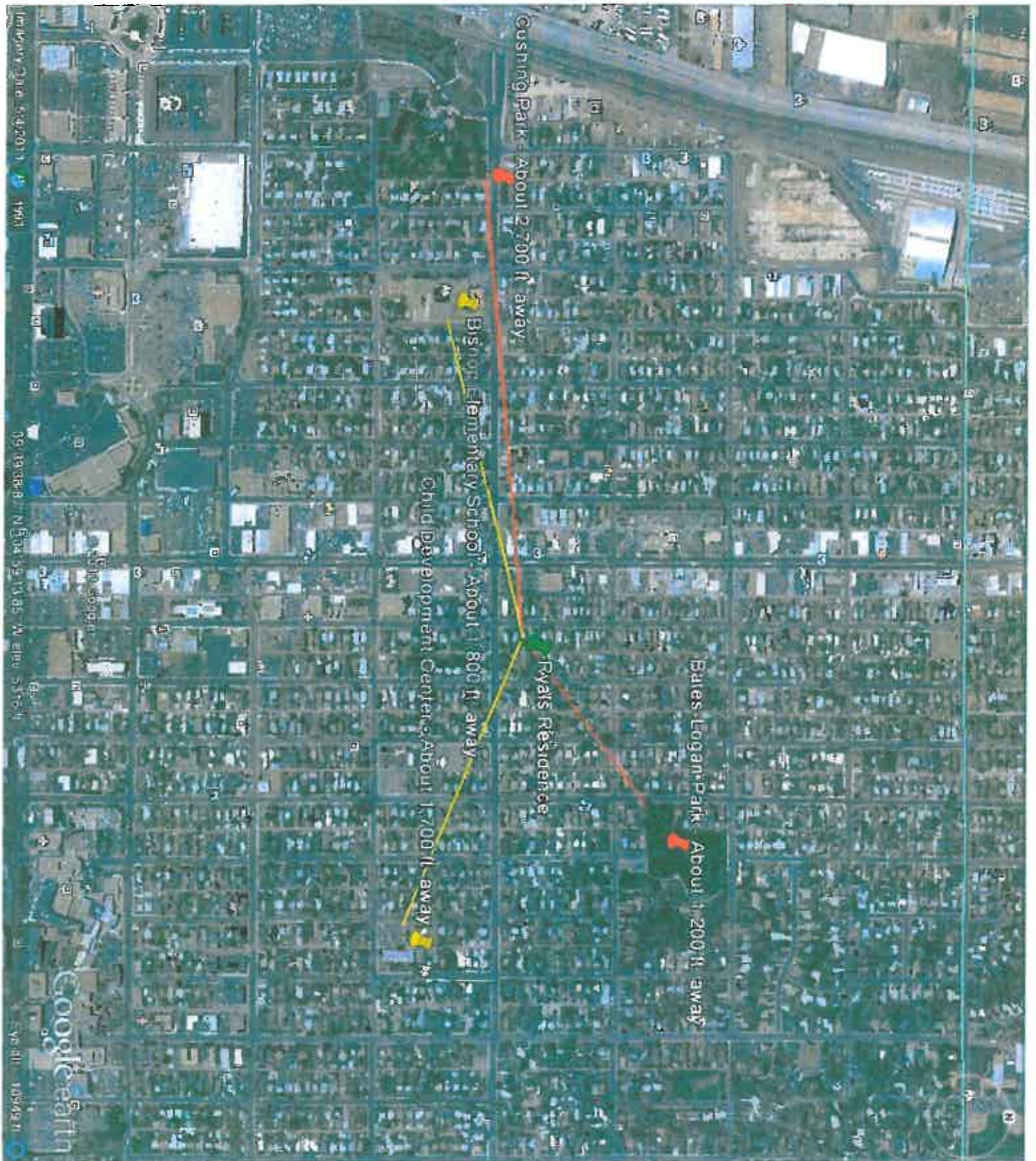




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EXHIBIT 5

Map showing distance of Mr. Ryals' home from
nearby parks, schools and day care centers



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EXHIBIT 6

CATHY RODRIGUEZ & AMY DETHLEFSEN, COLO. SEX
OFFENDER MGMT. BD., WHITE PAPER ON THE USE OF
RESIDENCE RESTRICTIONS AS A SEX OFFENDER
MANAGEMENT STRATEGY (2009)

Residence Restrictions | 2009

Colorado Sex Offender Management Board

WHITE PAPER ON THE USE OF RESIDENCE RESTRICTIONS AS A SEX OFFENDER MANAGEMENT STRATEGY



Colorado Department of Public Safety
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June 2009

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The United States has witnessed an increase in sex offender management policy beginning in the 1990's and continuing through as recently as 2006 at the Federal, State, and local level. As a result, laws have been enacted with the intention of protecting the community from sex offenders including the recent Adam Walsh Child Protection and Safety Act of 2006. Part of this movement has included the passing of zoning and residence restrictions, which prohibit convicted sex offenders from residing within a certain distance of areas where children typically congregate or from living in the same residence with another convicted sex offender. Currently, approximately 30 of the states in the U.S. have enacted statewide residence restrictions (Koch 2007). Although well intentioned and with the safety of the community in mind, these ordinances are often passed without consideration of the research and are typically ineffective for a number of reasons. Consequently, there is an emerging and escalating necessity to address these laws, which may seem appealing to the community, legislature, and policy makers despite growing concerns regarding their actual effectiveness.

A number of years ago Colorado experienced several jurisdictions contemplating such policies after a concerned citizen notified the media of a Shared Living Arrangement (SLA) in her neighborhood. (SLA's are residences where more than one convicted sex offender resides while receiving intensive correctional and treatment services). At the time there was a lack of knowledge and research regarding the use of SLA's and their effectiveness in managing high risk sex offenders. This, coupled with negative media exposure, led to the passing of several local zoning restrictions which prevented more than one sex offender per residence from being housed in the jurisdiction. When the Colorado Legislature became aware of what local jurisdictions were doing and received a request to pass a state law, they requested that the Sex Offender Management Board (SOMB) conduct a formal study on the safety issues pertinent to SLA's and residence/zoning restrictions.

The SOMB is a legislatively created board administered by the Division of Criminal Justice, Colorado Department of Public Safety. The SOMB has been mandated to develop Standards for the treatment and supervision of sex offenders. The SOMB's philosophy is to support research based community and victim safety policy development through a collaborative approach. As requested, a research study was conducted in 2004 in reference to the proximity of sex offender residences to schools and childcare centers and the related impact on community safety. This study utilized information on 130 sex offenders from the Denver metropolitan area in conjunction with plotting the subjects' residences on maps.

The findings of the research revealed that among sex offenders who reoffended, there were not a greater number of sex offenders living within proximity to schools and childcare centers than those who did not live in proximity locations. In addition, sex offenders who received positive support (i.e. family, friends, treatment, SLA's, and employers who were aware of the sex offender's issues and held the offender accountable in a supportive fashion) had significantly lower numbers of probation violations and re-offenses than those with no support or negative support (Colorado Department of Public Safety 2004). It should be noted that this finding has been supported by numerous other research studies related to residence restrictions and recidivism rates regarding the reintegration of sex offenders (Minnesota Department of Corrections 2003 & 2007; Ohio State University 2009; Levenson, Zandbergen, & Hart 2008).

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Minnesota Department of Corrections conducted two important studies in 2003 and 2007 regarding the impact of residence restrictions. The first study focused on residential placement issues of high risk offenders and found that there was no evidence that residential proximity to schools or parks affected recidivism. This was replicated by Levenson, Zandbergen, & Hart in 2008. Furthermore, the Minnesota study revealed that residence restrictions were limiting most high risk sex offenders to residing in rural, suburban, or industrial areas resulting in fewer supervising agents and less available services (Minnesota Department of Corrections 2003). The latter study conducted in 2007 was about residential proximity and recidivism and revealed that none of the 224 sexual recidivists studied would have been affected by residency restrictions. It was also learned that even when offenders made direct contact with juvenile victims, the offenders were unlikely to do so close to where they lived because they were attempting to maintain anonymity. One of the most compelling factors discovered in this research was that in 16 years of discharging sex offenders from the prison, *none* of the recidivists who returned due to a new sex offense resulted from contact with a juvenile victim near a school, park, or daycare (Minnesota Department of Corrections 2007).

There has recently been a considerable amount of research focusing on the successful reintegration of sex offenders. As a result, common themes have been discovered that significantly impact recidivism, which are stable housing or living accommodations, secure employment, and positive support systems/resources. States that have enacted residence restrictions have conducted empirical studies showing that the laws have actually proven counterproductive to these factors because they often cause destabilization to sex offenders (Iowa, California, Florida, and Ohio). Consequently, there has been discussion that the ordinances may in fact inadvertently exacerbate the factors correlated with recidivism (Ohio State University 2009).

A recommendation was made by the SOMB in 2004 indicating that placing restrictions on the location of correctionally supervised sex offender residences may not deter sex offender re-offense and should not be used as a universal sex offense management strategy. Such decisions should be made on an individualized basis by the sex offender's Community Supervision Team. Furthermore, it was suggested that the imposition of residence restrictions may increase the risk of re-offense by forcing sex offenders to live in communities where positive support systems may not exist, and they may be removed from accessible resources or live in remote areas providing them with high degrees of anonymity. This has been further supported by the Association for the Treatment of Sexual Abusers (ATSA 2005).

More recently, in 2008, the Colorado SOMB conducted a statewide survey of varying law enforcement jurisdictions regarding their sex offender residency restriction policies, if any. Twenty-eight (28) jurisdictions across Colorado participated in this on-line survey. Approximately 20% of participants had sex offender residence restrictions in place. Most of the jurisdictions that had the restrictions limited housing for registered sex offenders to at least 1,000 feet from any schools or daycare settings.

This study compared data from jurisdictions that did *not* have residence restriction ordinances (n=22) to jurisdictions that did have them in place (n=6). The average population of the jurisdictions that did *not* have residence restrictions in place was twice as high as the average population in the jurisdictions that did have them in place; however, the average number of registered sex offenders was higher in the jurisdictions with residence restrictions in place. Additionally, the average number of sex crime arrests in jurisdictions with residence restrictions in place was twice as much as the average number of sex

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crime arrests in jurisdictions that did *not* have them. There did not appear to be any differences in the number of offenders who failed to register, by sex offender population, in both types of jurisdictions.

Out of the six (6) jurisdictions that had residence restrictions in place, two (2) reported data regarding sex offender population, sex crimes, and failure to register information prior to when the ordinances were imposed. Of these two (2), there were no significant changes in the number of registered sex offenders or number of sex crimes after residence restrictions were enacted. However, the number of registered sex offenders who failed to register, perhaps going underground, seemed to increase after the ordinances were enacted.

On a national level, research from the U. S. Department of Justice conducted in 2000 indicated that 93% of child sexual abuse victims knew their abusers (Bureau of Justice Statistics 2000). This information has been confirmed through subsequent research and may in fact be a conservative number. Studies have also shown that most sexual offenses are committed in the offender's or the victim's home (Greenfield 1997; Bureau of Justice Statistics 2000; Smallbone and Wortley 2000; Colombino and Mercado 2009). Research conducted in other states, including Iowa and California, indicate that homelessness, absconding from supervision, and not registering for tracking purposes all appeared to be significant byproducts of residence restrictions (Davey and Rood 2006, Thompson 2007). Additional research has revealed that residence restrictions have negatively impacted the risk for recidivism with sex offenders due to increased isolation, financial hardship, decreased stability, and lack of support (Levenson and Cotter 2005).

The national legislation that began in the 1990's in this country were purportedly enacted to better track sex offenders in an effort to increase public safety, which appears at odds with proximity restrictions as many sex offenders end up going underground and/or providing false or inaccurate address information. This renders registration databases incomplete and unreliable, making tracking ineffective. Many of the states that originally enacted residence restrictions have expressed regret due to aforementioned issues, along with enforcement difficulties and legal dilemmas regarding constitutional rights. Many constituents in Iowa have been actively working to repeal their residence restriction law and victim centered programs have begun publicly expressing disagreement with such laws due the negative impact they have on treatment and monitoring efforts of sex offenders (Iowa County Attorney's Association, California Coalition on Sexual Offending & New Hampshire Coalition Against Domestic Violence and Sexual Violence). One of the most concerning aspects of the implementation of residence restrictions, locally or nationally, is the passing of policy and law without consideration for research, best practice, and effective methodology. This often results in unintended, counterproductive consequences which negatively impact community safety.

An additional important factor to note is the false sense of security that can result from these types of ordinances. The concept of limiting where a sex offender sleeps at night versus where he/she spends time during the day if not supervised through the criminal justice system seems ineffective. Many residence restrictions are worded so that the prohibited party is able to frequent any place, but is excluded from residing near areas where children commonly gather. There are sex offenders living in all communities because nationwide the minority of convicted sex offenders are sentenced to imprisonment or incarceration. Accordingly, housing has become a near epidemic issue, especially for those labeled

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high risk. Legally, these offenders have the right to secure a residence and as previously stated they are most likely to succeed in the community if they are afforded that right.

Politically speaking, a government official does not typically want a reputation of being soft on sex offenders. This is likely the perception of a political figure opposing residence or zoning restrictions if the community as a whole is not sufficiently educated, regardless of the ineffectiveness of such laws. Society often relies on sensationalized media accounts to educate them about sex offenders, policy, and laws. Thus, creating effective and responsible community safety policy and laws on a local and national level are cumbersome and complicated.

Communities are obviously concerned with their overall safety and as a result sex offenders have become a common topic of debate and controversy. This is evident in the legislature, the justice system, and in the media. Representatives of such systems have tended to focus on extreme cases and as a result, myths have been perpetuated and led to emotional reactions of sort. The Federal laws driving sex offender policy (Wetterling, Megan's Law, and the Adam Walsh Act) are all a result of tragic crimes that received media and legislative attention. Ironically, they are in fact, the rarest types of sex offenses and represent less than 1% of sexual assault convictions in the nation (Levenson and D'Amora 2007). As a result, implementation of these policies has been problematic because once a law is enacted, it becomes difficult to reverse. Furthermore, to date there is no research indicating that residence restrictions are correlated with reduced recidivism or increased community safety.

Colorado has historically been proactive with regard to the management of sex offenders. The state has a Board, standards for treatment providers, and has conducted valuable research. Thus, the following resources, alternatives, and suggestions are provided for governmental agencies and advocacy groups involved in policy-making and legislative activity. They include, but are not limited to: implementing policy based on relevant research; funding relevant research; identifying and promoting effective methods of community education; educating law enforcement, policy makers and legislators; encouraging the use of Shared Living Arrangements (SLA's) as utilized in Colorado; promoting the containment model; and multi-disciplinary collaboration among agencies in sex offender management.

In conclusion, the ethical and responsible choices with regard to the management of sex offenders are not always the most popular. This is especially true in the current socio-political environment that emphasizes accountability, and many times, has a punitive tone with regard to sex offenders. However, the long lasting impact on sex offenders, communities, and victims require thoughtful research based policies and laws. There is much to learn from the states that have enacted such laws and research conducted thereafter. It appears counterproductive to endorse and/or institute policy and law based on fear, ignorance, and politics when it causes more problems than it solves. Community safety is paramount and should be the common goal when considering any policy or law regarding sex offenders. Residence restrictions and zoning laws as a whole are clearly counterproductive to this goal.

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EXHIBIT 7

Paul A. Zandbergen et al., *Residential Proximity to Schools and Daycares: An Empirical Analysis of Sex Offense Recidivism*, 37 CRIM. JUSTICE & BEHAVIOR 482 (2010)

Criminal Justice and Behavior

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Residential Proximity to Schools and Daycares : An Empirical Analysis of Sex Offense Recidivism

Paul A. Zandbergen, Jill S. Levenson and Timothy C. Hart

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What is This?

RESIDENTIAL PROXIMITY TO SCHOOLS AND DAYCARES

An Empirical Analysis of Sex Offense Recidivism

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Residential restrictions for sex offenders have become increasingly popular, despite the lack of empirical data suggesting that offenders' proximity to schools or daycares contributes to recidivism. Using a matched sample of recidivists and nonrecidivists from Florida ($n = 330$) for the period from 2004 through 2006, the authors investigated whether sex offenders who lived closer to schools or daycares were more likely to reoffend sexually against children than those who lived farther away. No significant differences were found between the distances that recidivists and nonrecidivists lived from schools and daycares. There was no significant relationship between reoffending and proximity to schools or daycares. The results indicate that proximity to schools and daycares, with other risk factors being comparable, does not appear to contribute to sexual recidivism. These data do not support the widespread enactment of residential restrictions for sexual offenders.

Keywords: residence restrictions; sex offenders; housing; recidivism; geocoding

Laws restricting where convicted sex offenders live have become increasingly common. These policies are intended to reduce the risk posed to children by repeat sexual offenders. At least 30 states and hundreds of municipalities across the United States have enacted laws requiring registered sex offenders (RSOs) to reside at some minimum distance from schools, parks, daycares, school bus stops, or other places commonly visited by children (Meloy, Miller, & Curtis, 2008). These laws generally target abusers of minor children, but many jurisdictions apply housing restrictions to all RSOs. Typical residence restrictions prohibit RSOs from living within 500 to 2,500 ft of certain locations. Although repetitive predatory sexual violence is a grave concern for legislators and their constituents, no consensus exists about the strategies most effective in preventing sex crime recidivism. Few empirical studies have been conducted to ascertain the role of residential restriction laws in protecting children from sexual abuse. The purpose of this study is to examine the relationship between sex offense recidivism and residential proximity to common places where children congregate.

AUTHORS' NOTE: *We gratefully acknowledge the Florida Department of Law Enforcement and the Florida Department of Corrections for their assistance in providing offender data. Correspondence may be sent to Paul A. Zandbergen. e-mail: zandbergen@unm.edu.*

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Little is known about the ways in which the residential locations of sex offenders might influence sex offense recidivism. Routine activities theory (RAT) (Cohen & Felson, 1979) postulates that for crime to occur, three conditions must exist: the presence of a motivated offender, access to a potential victim, and the absence of capable guardians to prevent criminal activity. As applied to sex offender residence restrictions, RAT would suggest that predatory or pedophilic sex offenders are most likely to commit new assaults against children when they have unrestricted or unmonitored access to youngsters. Living in close proximity to a school or other place known to cater to children might, theoretically, increase opportunities for sex offenders to have contact with children or to view children playing, thereby reinforcing their sexually deviant preferences and facilitating child sexual abuse.

The impact of residence restrictions laws on recidivism remains largely unknown. The only known investigation to date was conducted by the Iowa Department of Criminal and Juvenile Justice Planning (Blood, Watson, & Stageberg, 2008). Iowa's statewide 2,000-ft residential restriction law went into effect in August 2005. Researchers compared the number of charges filed for sex offenses with minor victims in the 12 months prior to the enforcement of the law with the number of charges filed within 24 months after implementation. The number of charges steadily increased each year; there were 913 charges filed during the year prior to implementation, 928 filed the subsequent year, and 1,095 filed the following year. The authors concluded that Iowa's residence law "does not seem to have led to fewer charges or convictions, indicating that there probably have not been fewer child victims" (Blood et al., 2008, p. 10).

Mapping technologies provide other opportunities for researchers to study key questions related to proximity and recidivism. In keeping with RAT, one might surmise that pedophiles choose to live within easy access to children and that those living in closer proximity to schools, parks, or bus stops would have higher recidivism rates than offenders living farther away. The empirical data surrounding these assumptions are extremely limited and decidedly mixed.

An analysis of the addresses of RSOs in Pulaski County, Arkansas, found that child abusers were more likely than other sex offenders to live near schools, daycares, and parks (Walker, Golden, & VanHouten, 2001). In Newark, New Jersey, however, those who abused children lived significantly farther from schools than did those who offended against adults (Chajewski & Mercado, 2008). However, the Newark sex offenders lived significantly closer (on average 1,094 ft closer) to schools than did other community members (Chajewski & Mercado, 2008); in Camden County, New Jersey, 88% of sex offenders lived within 2,500 ft of schools, parks, daycares, or churches, compared to 80% of households in general (Zgoba, Levenson, & McKee, 2009).

RAT might suggest that sex offenders intentionally place themselves in close proximity to potential victims, but an alternative explanation is that economic considerations are the primary factors influencing residential choices (Red Bird, 2009; Tewksbury & Mustaine, 2006; Tewksbury & Mustaine, in press-a). Underemployment is not unusual for those with a felony conviction, and as a result, sex offenders often reside in less affluent communities (Tewksbury & Mustaine, 2006). RSOs are likely to be found in disadvantaged neighborhoods with higher levels of social disorganization (Red Bird, 2009; Tewksbury & Mustaine, 2008). Lower income neighborhoods tend to exist in densely populated urban areas where, consequently, residential dwellings are in closer proximity to schools and other child-oriented sites. Such neighborhoods might be more affordable for criminal offenders, but they are

also characterized by community neglect and a paucity of resources that make their residents more vulnerable to crime. It is interesting to note that although sex offenses occur more frequently in census tracts with larger proportions of young children, the number of schools is not associated with a greater frequency of sex offenses (Tewksbury, Mustaine, & Stengel, 2008). Moreover, Tewksbury et al. (2008) found that a higher concentration of RSOs in a neighborhood was not significantly correlated with the incidence of sex offenses.

Thus far, proximity to schools has not been studied in such a way that can explicitly determine its empirical relationship to sex offense recidivism. In Colorado, sex offenders' residential proximity to schools and daycares was not specifically analyzed, but mapping allowed the authors to infer that sex offense recidivists resided randomly throughout the geographical area and did not appear to live closer to schools and daycares than nonrecidivists (Colorado Department of Public Safety, 2004). A qualitative analysis of 13 recidivistic sex offenses in Minnesota revealed that only 2 reoffenses took place in parks and none occurred near schools. In both cases, the perpetrators did not live in close proximity to the crime scene and in fact drove a vehicle to commit the offense (Minnesota Department of Corrections, 2003). More recently, researchers in Minnesota analyzed 224 recidivistic sex offenses and concluded that none would have been prevented by a residence restriction law (Duwe, Donnay, & Tewksbury, 2008). The authors did not measure where the offenders lived in relation to places where children congregate, but by using police reports and case files, they were able to determine whether an offender first established contact with a minor victim in or near a location typically restricted by housing laws. Using Google Earth, they calculated the straight-line distance between the offender's home and the locations of the offense and first victim contact. Most offenders first made contact with victims more than 1 mile from their homes. Predatory assaults that occurred within a mile of the offenders' residences were most likely to be perpetrated against adult victims; of those involving minor victims, most contact was cultivated within 2,500 ft of the offenders' homes, but none was facilitated by close proximity to a school, daycare, or park. The sex offenses against children were most likely to be perpetrated by offenders who were well acquainted with their victims, such as parents, caretakers, paramours of the mothers, babysitters, or friends of the family. Only in 3.6% of the cases was the sex offender a neighbor of the victim. The authors concluded that in child sexual abuse cases, social or relationship proximity to victims is a more important factor than residential proximity (Duwe et al., 2008).

Although the empirical link between residential proximity and sexual recidivism has yet to be established, emerging evidence indicates that housing availability is greatly diminished by residence restriction policies. In Orange County, Florida, the locations of more than 137,000 residential parcels were analyzed, and 95% were found to be located within 1,000 ft of schools, parks, daycares, or school bus stops (Zandbergen & Hart, 2006). A buffer zone of 2,500 ft resulted in excluding more than 99% of all residential parcels and eliminated all but 37 properties in the entire county (Zandbergen & Hart, 2006). Similarly, in New Jersey, 93% of Newark's residential territory is located within 2,500 ft of schools, and therefore few addresses would be compliant with a housing restriction of that distance (Chajewski & Mercado, 2008). In four major metropolitan centers in South Carolina, only 9% of the 540,613 properties zoned for residential use were unoccupied or available for rent, and of those, 45% would not be compliant with a 1,000-ft zone around schools or daycares (Barnes, Duker, Tewksbury, & DeTroye, 2009). Researchers in Colorado concluded that in urban areas, the large number of schools and childcare centers located within residential

neighborhoods severely limited the areas in which sex offenders could reside if housing restrictions were implemented (Colorado Department of Public Safety, 2004).

Residential restrictions can also create obstacles to offender reintegration. Several studies indicate that homelessness and transience have become more problematic for RSOs. In a survey of RSOs in Oklahoma and Kansas, 54% reported that a housing restriction law forced them to relocate (Tewksbury & Mustaine, in press-b). In Indiana, 26% of sex offenders surveyed said that they were unable to return to their homes after incarceration, 37% were not allowed to live with family members, and nearly a third experienced a landlord's refusal to rent to them or to renew a lease (Levenson & Hern, 2007). Many sex offenders in Florida and Indiana reported that affordable housing is less available due to limits on where they can live and that they are made to live farther away from employment, public transportation, social services, and mental health clinics (Levenson, 2008; Levenson & Cotter, 2005; Levenson & Hern, 2007). Similarly, New Jersey sex offenders indicated that residential restrictions have led to financial hardship and pushed them farther away from employment, treatment, and family support (Mercado, Alvarez, & Levenson, 2008). Escalating problems of homelessness and transience were noted in Broward County, Florida, where 39% of the participants reported spending at least 2 days homeless or living with someone else and 22% said that they were forced to relocate more than twice (Levenson, 2008). Larger buffer zones were correlated with increased transience and homelessness and reduced employment opportunities (Levenson, 2008). Young adults seemed to be especially affected by these laws; age was significantly inversely associated with being unable to live with family and having difficulties securing affordable housing (Levenson, 2008; Levenson & Hern, 2007).

Ironically, housing instability is consistently and strongly correlated with increased criminal recidivism and absconding. In a sample of more than 6,000 criminal offenders in Georgia, each time a parolee relocated, the risk of being rearrested increased by 25%, doubling the odds of recidivism by moving three times while on parole (Meredith, Speir, & Johnson, 2007). Residential instability was determined to be the most robust predictor of absconding in a study of more than 4,000 parolees in California (Williams, McShane, & Dolny, 2000), and in a national sample of probationers ($N = 2,030$), those who moved multiple times during their period of supervision were almost twice as likely as stable probationers to have a disciplinary hearing (Schulenberg, 2007). In a New Zealand study of sex offenders, poor housing accommodation was the aspect of reintegration most strongly linked with sexual recidivism (Willis & Grace, 2008). A subsequent validation study confirmed that poor reintegration planning characterized by unstable housing, unemployment, and a lack of social support predicted recidivism in a sample of 141 sex offenders from New Zealand (Willis & Grace, 2009).

Currently, there are more questions than answers regarding the efficacy of residential restriction laws in deterring repetitive sexual predation. Although these policies are assumed to be a commonsense approach to reducing sex offenders' access to children, their underlying assumption—that keeping sex offenders far from schools and other child-friendly locations will protect children from sexual abuse—has yet to be empirically confirmed. There is no doubt that children deserve to be safeguarded from sexual predators. Clarifying the relationship between recidivism and proximity to venues such as schools will assist lawmakers in their quest to ascertain which strategies are best able to achieve that goal.

PURPOSE OF THE STUDY

The purpose of this study is to investigate the relationship between sex offense recidivism and residential proximity to places where children commonly congregate. Specifically, we sought to determine whether sex offenders who lived closer to schools or daycares were more likely to reoffend sexually than those who lived farther away. The null hypothesis proposes that there will be no significant differences between recidivists and nonrecidivists in their proximity to schools or daycares. In addition, the null hypothesis assumes no statistically significant correlation between proximity and recidivism. This research is important for identifying the role that residential distance from child-oriented venues might play in inhibiting sexual recidivism. Policies informed by scientific data are more likely to successfully accomplish their goals of community protection.

METHOD

Florida was considered to be an informative state in which to conduct this research. Florida was the first state to enact a residence restriction for RSOs (Meloy et al., 2008). As of 1995, sex offenders on probation in Florida have been prohibited from living within 1,000 ft of schools, parks, playgrounds, daycares, or other places where children congregate (Special Conditions of Sex Offender Probation, 1997). In 2005, school bus stops were added for offenders leaving prison under conditional release programs. In 2005, the nation's first municipal ordinance was passed in Miami Beach, restricting RSOs with minor victims from residing within 2,500 ft of schools, daycares, parks, and bus stops. Currently, according to the state's Department of Corrections, Florida has more than 150 local ordinances (typically 2,500-ft zones passed by county and city commissioners) in addition to a statewide 1,000-ft law that now applies to all RSOs.

The general approach used in this study to examine the effect of residential proximity on recidivism consisted of (a) determining the recidivist population for the period from 2004 to 2006, (b) selecting a comparable set of nonrecidivists, (c) geocoding the residential addresses of the two groups as well as all the schools and licensed daycares, (d) calculating proximity metrics for both populations, and (e) analyzing any differences in the distributions of proximity metrics between the two groups. These steps will be described in more detail in the sections below.

OFFENDER POPULATION

Data files on RSOs were obtained from the Florida Department of Law Enforcement (FDLE). The data included demographic information about each offender, a history of offenses, and a history of registered addresses. The database was obtained in 2007 and was considered up to date until December 2006. The publicly available registry of sex offenders for December 2006 was also obtained and matched to the FDLE records to obtain additional information not available in the original FDLE files. The original FDLE files contained information about 17,678 offenders, whereas the registry contained information about 38,084 offenders. This large discrepancy results from the fact that the registry is a cumulative record of all historical entries and contains numerous offenders who are deceased, have been deported, are under INS custody, or have established residency outside of Florida.

For the purpose of this study, a recidivist was defined as an RSO who had at least one conviction for a sex offense and who was arrested for a new sex offense in the period between January 1, 2004, and December 31, 2006. FDLE prepared the data with recidivists flagged based on this definition, including only those cases in which the original victim or the recidivistic victim was a minor (or both were minors). New arrests were used for our analysis because convictions can take a long time to take place and would create a temporal mismatch. Minor offenses, such as parole violations, were not considered recidivistic, and only sex offenses were counted as recidivistic.

For each recidivist, the following variables were determined: age at time of new arrest (based on date of birth and arrest date), sex, race, marital status, number of all offenses prior to arrest date, number of all sex offenses prior to arrest date, victim's age categories associated with both the original and the recidivistic offense, predator/offender status, and residential address prior to arrest date. The information about the victims' ages in the databases of offenses and new arrests was incomplete, and no exact ages could be determined. As a result, victim's age for both the original and the recidivistic offense was coded only as "minor" or "adult." For new arrests, the victim's age information was often missing, and therefore the victim's age category was based on the offense codes at the time of the arrest. Information about the actual age of the victim, the victim's gender, and the relationship to the victim was not available in the FDLE files. The residential address history was used to obtain the last address prior to the arrest date based on the date ranges for each address.

Initially, FDLE flagged a total of 237 recidivists. Processing the data resulted in a final set of 168 recidivists, with 69 records removed for various reasons: 1 record was excluded because the offender was female; 36 records were excluded because the recidivist had no priors for sex offenses; 14 records were excluded because the address prior to the offense was outside of Florida (in most cases, this meant the only address in Florida consisted of a jail); 18 records were excluded because of other address issues—typically, the address history could not be matched reliably to the offense date (e.g., due to incomplete addresses, incomplete dates, lack of logic in address sequence, presence of only jail addresses, etc.). Geocoding of the residential address prior to the offense (described in a later section) caused 3 more records to be removed due to incomplete geocoding, bringing the final set of recidivists to 165.

The sample of 165 recidivists contained 147 cases (or 89.1%) wherein the prior conviction was for a sex offense against a minor and the new arrest was for a sex offense against a minor. In 5 cases, the prior conviction was for a sex offense against an adult, and either the new arrest was for a sex offense against a minor or the victim's age category could not be determined. In 13 cases, the prior conviction was for a sex offense against a minor, and the victim's age category for the new arrest could not be determined.

The data about all offenders in the FDLE files ($N = 17,678$) were utilized to generate a meaningful sample of nonrecidivists. The offender data were cleaned to obtain only male nonrecidivists who resided at a valid nonjail address and for whom demographic and prior offense data were available. Processing included the following specific steps: (a) removing the sample of 237 recidivists; (b) removing all female offenders; (c) removing all offenders whose status was deceased, incarcerated, under INS custody, deported, or absconded; (d) removing all offenders whose address in December 2006 corresponded to the address of a correctional facility (in many cases, an offender is reported as released or under supervision, but if he or she fails to report a new address, the last known address is still the location of

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TABLE 1: Variables Used to Characterize Offenders

Variable	Category	Code	Recidivists		Matched Nonrecidivists		Total Nonrecidivists
			n	%	n	%	
Total			185	100.0	185	100.0	8,434
Predator/offender status	Predator	P	37	22.4	40	24.2	1,007
	Offender	O	120	72.7	125	75.8	7,427
	Unknown	U	8	4.8	0	0.0	0
Sex priors (convictions)	1	1	36	21.8	34	20.8	3,116
	2 or 3	2	75	45.5	75	45.5	3,525
	4 or more	3	54	32.7	56	33.9	1,793
Total priors (convictions)	3 or less	3	64	38.8	62	37.6	5,035
	4 or more	4	101	61.2	103	62.4	3,399
Racial composition	White	W	104	63.0	103	62.4	6,252
	Non-White	N	61	37.0	62	37.6	2,182
Victim age (initial)*	Minor	M	160	97.0	157	95.2	6,605
	Adult	A	5	3.0	3	1.8	523
	Unknown	U	0	0.0	5	3.0	1,306
Victim age (current)*	Minor	—	150	90.9	—	—	—
	Adult	—	0	0.0	—	—	—
	Unknown	—	15	9.1	—	—	—
Marital status	Other	O	25	15.2	22	13.3	988
	Single	S	77	46.7	82	49.7	3,118
	Married	M	29	17.6	29	17.6	2,335
	Divorced/separated/ widowed	D	34	20.6	32	19.4	1,993
Age	Younger than 25	1	57	34.5	55	33.3	462
	25 to 40	2	70	42.4	72	43.6	3,090
	41 to 60	3	31	18.8	31	18.8	3,673
	Older than 60	4	7	4.2	7	4.2	1,209

Note. Dashes indicate the variable is not applicable.

a. For both recidivists and nonrecidivists, the Victim Age (Initial) variable refers to the age of the victim associated with the original offense, whereas the Victim Age (Current) variable refers to the age of the victim associated with the recidivistic offense. Therefore, this variable is not applicable to the nonrecidivist group and was not used in the matching procedure.

the correctional facility); (e) removing all offenders with invalid addresses (missing street number, missing zip code and city, address outside of Florida); and (f) removing all offenders without complete demographic and prior offense data. This process resulted in a total of 8,434 nonrecidivists.

For each nonrecidivist, the following variables were determined for December 2006: age, race, marital status, number of prior offenses, number of prior sex offenses, victim's age category, predator/offender status, and residential address.

Next, a sampling strategy was devised to create a comparable sample of nonrecidivists based on age, race, marital status, number of prior offenses, number of prior sex offenses, and victim's age. For recidivists, the age of the victim associated with the prior sex offense was used. The logic behind this strategy is that such a sample controls for potential risk factors and other demographic variables, allowing for a direct comparison of proximity metrics. To facilitate the matching process, each of the seven variables was recoded according to Table 1.

The coding in Table 1 was used to create a seven-character code for each recidivist and nonrecidivist. Stratified random sampling using this code was employed to generate a sample of nonrecidivists equal in size ($n = 165$). In other words, if there were 3 recidivists who were predators who had two or three sex priors, had four or more total priors, were White, victimized minors, were single, and were between 25 and 40, a total of 3 nonrecidivists were selected at random from the total population of nonrecidivists with those exact same characteristics. This process was repeated to get a comparable sample of 165 nonrecidivists.

SCHOOLS AND DAYCARES

A database of all public and private schools for all of Florida was obtained from the National Center for Education Statistics for the 2005-2006 school year. All grades up to and including Grade 12 were included. The database included fields for the physical address of the school and consisted of 3,713 records for public schools and 1,818 records for private schools.

A database of all licensed daycares for Florida was obtained from the Florida Department of Children and Families for 2006. The database included both childcare facilities and home-based family daycares. The database included fields for the physical addresses of the daycares and consisted of 13,564 records.

The database of daycares contained records with missing address information, and both databases contained records with post office boxes for the street address. Secondary information from individual school boards and counties was therefore employed to supplement the address information. Although complete address information was obtained for every public school, a substantial number of incomplete records remained for private schools ($n = 72$) and daycares ($n = 4,276$). In the case of daycares, the incomplete address information was primarily the results of blank address fields for home-based daycares due to privacy concerns.

GEOCODING

The addresses for recidivists, nonrecidivists, schools, and daycares were geocoded using a multistage geocoding process. The most accurate way to represent the locations of these addresses within the context of this study is through the use of parcel boundaries. Although street geocoding is the most common method used in the United States to determine the location of addresses, this technique introduces positional error (Zandbergen, 2009), which can lead to substantial misclassification in determining proximity in the context of sex offender residence restrictions (Zandbergen & Hart, 2009). Parcel data, however, are not always available for all areas, and geocoding to parcels is also known for its relatively poor match rates, even when good parcel data are available (Zandbergen, 2008). The multistage geocoding process employed in the study was designed to overcome these limitations and to achieve the highest possible match rate at the parcel level. The geocoding process consisted of a combination of in-house geocoding using available address point, parcel, and street centerline data from local counties and third-party parcel and street geocoding by a commercial firm.

For the in-house geocoding, the Geographic Information System and property appraiser departments of all 67 Florida counties were contacted with a request for address point, parcel, and street centerline data. Address point data consist of address locations in point

format (i.e., a single XY location), typically associated with the Master Address File for a local jurisdiction such as a county. They are the preferred reference data for geocoding because their positional accuracy is excellent (the point is often placed directly on top of the building) and the match rates are very similar to those for street geocoding (Zandbergen, 2008). Parcel geocoding often results in lower match rates due in part to the fact that many addresses can be associated with a single parcel, such as a multiunit property. In the case of address points, these individual addresses are typically captured as individual points, resulting in multiple address points for a single parcel. The primary limitation of address points is their availability because only a selected number of local jurisdictions have developed an address point database. Address point data were obtained for 16 counties, including several of the most populated counties in the state such as Miami-Dade County and Orange County. Parcel data were obtained for all 67 counties, but the address information contained in the parcel data were considered of sufficient quality for geocoding for only 30 counties. Reliable street centerline data were obtained for 23 counties.

In-house geocoding using the available reference data was accomplished in ArcGIS 9.2. All reference data were projected to a common Florida Albers coordinate system. Individual address locators were built for every available data set. Geocoding settings included the use of a minimum match score of 80, which effectively means that minor misspellings in the street name are allowed but that the street number has to be a perfect match. Each of the three data sets (offenders, schools, and daycares) was run through the same geocoding sequence. First, addresses were run through the address point geocoding. Any nonmatching records after this first step were run through the parcel geocoding. Any nonmatching records after this second step were run through the street geocoding. This resulted in three sets of points: those from address points (the exact XY location of the building associated with the address), those from parcel polygons (the centroid of the polygons), and those from street segments (the interpolated location along the street segment).

Any of the records that did not produce a match using the in-house geocoding were submitted to a commercial firm specializing in parcel geocoding for Florida. This company essentially uses the same information as requested from each individual county but has gone through considerably more effort to acquire the data through licensing agreements. The company reported having complete address point and/or parcel data available for 62 counties and partial data for an additional 3 counties. Counties for which the coverage is lacking or incomplete are some of the least populated areas in Florida, which means that geocoding coverage at the parcel level based on population is greater than 99%. In addition to parcel-level geocoding, the commercial firm employs a secondary street geocoding technique based on local street centerlines. This second phase of the geocoding process resulted in two sets of points: those from parcel polygons (the centroid of the polygons) and those from street segments (the interpolated location along the segment).

Table 2 reports the geocoding match rates based on all valid addresses (i.e., after removing all blank address and post office boxes). Results for in-house address points, in-house parcels, and third-party parcels are grouped together as "parcel geocoded" because the locations can be associated with a specific parcel boundary. Results for in-house streets and third-party streets are grouped together as "street geocoded" because these represent interpolated locations along a street segment and cannot be associated with a specific parcel boundary.

Table 2 indicates that in-house address points resulted in the largest number of matches in all three databases, followed by in-house parcels. This reflects the fact that address

TABLE 2: Geocoding Match Rates

	<i>Offenders (n = 336)</i>	<i>Schools (n = 5,419)</i>	<i>Daycares (n = 9,288)</i>
Parcel geocoded			
In-house address points	123	1,831	3,301
In-house parcels	90	1,297	2,493
Third-party parcels	85	969	1,822
Subtotal	298	4,097	7,616
Street geocoded			
In-house streets	16	588	922
Third-party streets	16	616	554
Subtotal	32	1,204	1,476
Total	330	5,301	9,092
Parcel match rate (%)	88.7	75.6	82.0
Street match rate (%)	9.5	22.2	15.9
Total match rate (%)	98.2	97.8	97.9

points and/or parcel data were available for many of the most populated counties. The multistage geocoding proved successful in achieving high parcel-level match rates ($\approx 80\%$) and very high overall match rates ($\approx 98\%$). In the case of offenders, only 6 records could not be geocoded (3 recidivists and 3 nonrecidivists), resulting in a final sample of 165 in each category for further analysis.

Prior to further analysis, all parcel-geocoded locations as identified in Table 2 were spatially matched to the actual property boundary with which they are associated. This resulted in a set of polygons for all parcel-geocoded locations and a set of points for all street-geocoded locations for use in the proximity analysis.

PROXIMITY METRICS

The location of each recidivist and nonrecidivist was compared to the locations of schools and daycares. Specifically, the following proximity metrics were determined: distance to nearest daycare (in feet), distance to nearest school (in feet), number of daycares within a 1,000-ft buffer, number of daycares within a 2,500-ft buffer, number of schools within a 1,000-ft buffer, and number of schools within a 2,500-ft buffer. Figure 1 illustrates this methodology and includes the residential location of a single offender as well as the locations of one school and one daycare. The lines represent the shortest straight-line distance between the residence of the offender and the property boundaries of the school and daycare. The 1,000- and 2,500-ft buffers around the offender are also shown. In the example shown in Figure 1, the daycare location falls within the 1,000- and 2,500-ft buffers, and the school falls inside the 2,500-ft buffer but outside the 1,000-ft buffer.

The two distance values of 1,000 and 2,500 ft were chosen because Florida statutes currently employ a 1,000-ft buffer for residence restrictions and most of the local ordinances employ a 2,500-ft buffer. In determining these proximity measures, euclidean (or straight-line) distance was used. In the case of polygons, the shortest distance to any of the points along the boundary of the polygon was considered. These interpretations are consistent with the wording of the residence restrictions in Florida statutes and many local ordinances.

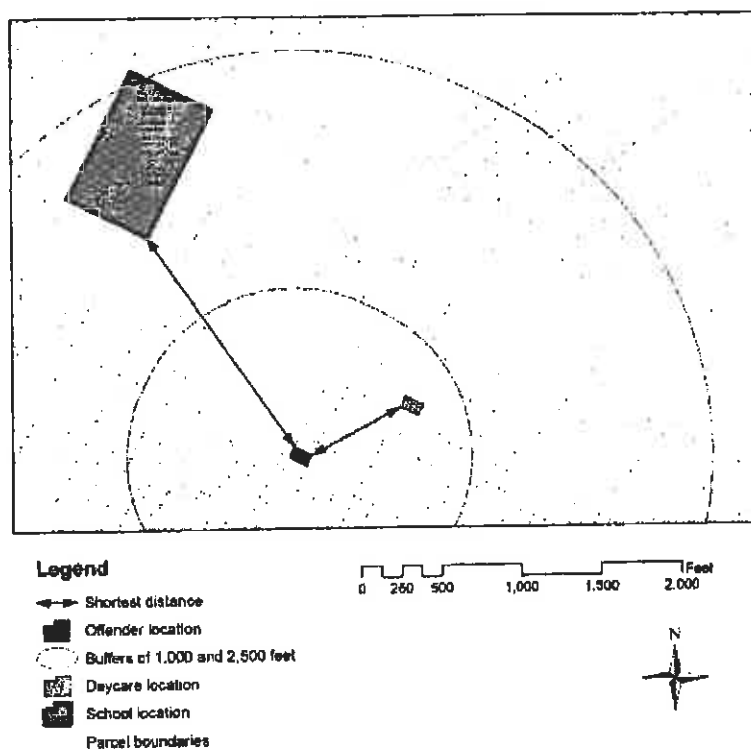


Figure 1: Illustration of the Methodology to Obtain Proximity Metrics

Note. 1,000- and 2,500-ft buffers are created around each offender's residence. Within each buffer polygon, a count was produced of the number of schools and daycare locations. A school or daycare is determined as residing within a particular buffer if any part of the parcel boundary falls inside the buffer polygon. Identical results would be produced if buffers were created around schools and daycares and the number of buffers overlapping each offender location were counted.

STATISTICAL ANALYSES

The distributions of the number of schools and daycares within distance buffers were summarized in tabular form and compared using a chi-square test. The distances to the nearest daycare and school were graphically summarized as cumulative distribution functions. Differences between the distributions were tested using chi-square and parametric and nonparametric tests of means. The predictive power of distance, controlling for certain risk factors, was assessed through a linear regression model.

RESULTS

Descriptive statistics of the offender population are displayed in Table 3. It is important to remember that this sample was generated by identifying recidivists and then creating a matched sample of nonrecidivists. The sample is therefore not representative of the sex

TABLE 3: Descriptive Statistics ($n = 330$)

	%	Mean	Median	Mode	Standard Deviation
White	63				
Minority	37				
Currently married	18				
Divorced/separated/widowed	34				
Never married	48				
Priors (all)		5.45	4.00	4	4.18
Priors (sex)		3.35	2.50	2	2.78
Offender	74				
Predator	23				
Minor victim ^a	96				
Offender age		33.1	30.0	24	12.8
Feel to daycare		5,182	1,780		9,118
Within 1,000 of daycare	23				
Within 1,500 of daycare	42				
Within 2,500 of daycare	61				
Feel to school		4,962	2,442		7,740
Within 1,000 of school	13				
Within 1,500 of school	26				
Within 2,500 of school	51				
Recidivist	50				

a. For recidivists, the victim age category is based on prior victim(s) only, not the new arrests.

offender population in Florida, and it consists of a more high-risk group than a randomly selected sample would be. The sample ($n = 330$) had accrued an average of 5.5 prior arrests for any crime (mode = 4) and 3 prior sex crime arrests (mode = 2). They were predominantly White and unmarried, and one quarter were designated as predators. Almost all (96%) had at least one minor victim in their criminal sexual history. The sample lived an average of 5,182 ft from a daycare and 4,962 ft from a school. More than half lived within 2,500 ft of a school or daycare.

Figure 2 shows the distribution of the recidivists ($n = 165$) and nonrecidivists ($n = 165$) within Florida. Although many offenders are located in large metropolitan areas (e.g., Miami, Tampa, Orlando, Jacksonville), a substantial number are located in smaller communities and rural areas. Some of the least populated counties in Florida, however, had no offenders. The general pattern that emerges from Figure 2 is that both recidivists and nonrecidivists are located throughout the state and not concentrated in a single area.

FACILITY COUNTS WITHIN BUFFER DISTANCES

Counts of the number of daycares and schools within 1,000-ft and 2,500-ft buffers around offenders are summarized in Table 4. Manual inspection of the distributions suggests very small differences. For example, when considering a buffer of 1,000 ft around offenders, 115 out of 165 recidivists have no daycare within this buffer, and 28 have one daycare, whereas 116 out of 165 nonrecidivists have no daycare and 31 have one daycare. Logically, a larger buffer of 2,500 ft results in more offenders having one or more daycares within this buffer, but the differences between the two populations remain small.

Differences between the distributions were tested using chi-square. A total of four tests were carried out, each comparing recidivists and nonrecidivists for one type of facility for

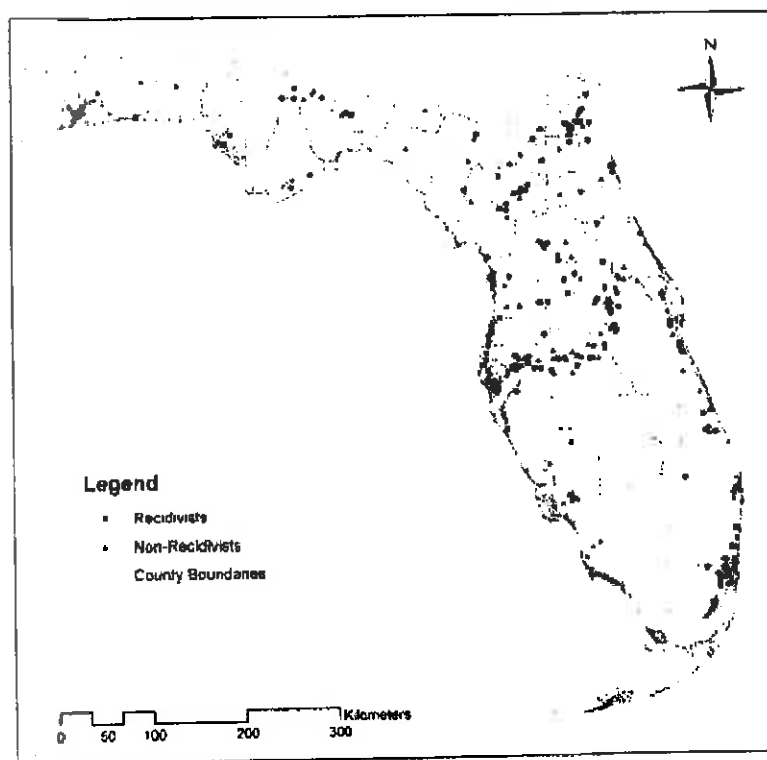


Figure 2: Residential Locations of Recidivists and Nonrecidivists Within Florida

one distance value. Consistent with standard practice in chi-square tests, count categories were combined to ensure no observation counts fell below the minimum of five. Results are shown in Table 5. Three of the four tests indicated no significant differences between the distributions of counts for recidivists and nonrecidivists. The only significant difference was found for the count of schools within a 2,500-ft buffer. Although the chi-square test itself does not reveal any particular direction, visual inspection of the results in Table 4 suggests that nonrecidivists are more likely than recidivists to have at least one school within 2,500 ft. Multiple iterations of the chi-square test using only two categories (count = 0 vs. count > 0, count ≤ 1 vs. count > 1, etc.) indicate that the strongest difference between the two populations occurs when comparing the counts for zero or one school within 2,500 ft (103 vs. 128) and more than one school within 2,500 ft (62 vs. 37). This finding confirms that the only statistically significant difference found is the result of nonrecidivists having more schools in close proximity than recidivists.

PROXIMITY AND RECIDIVISM

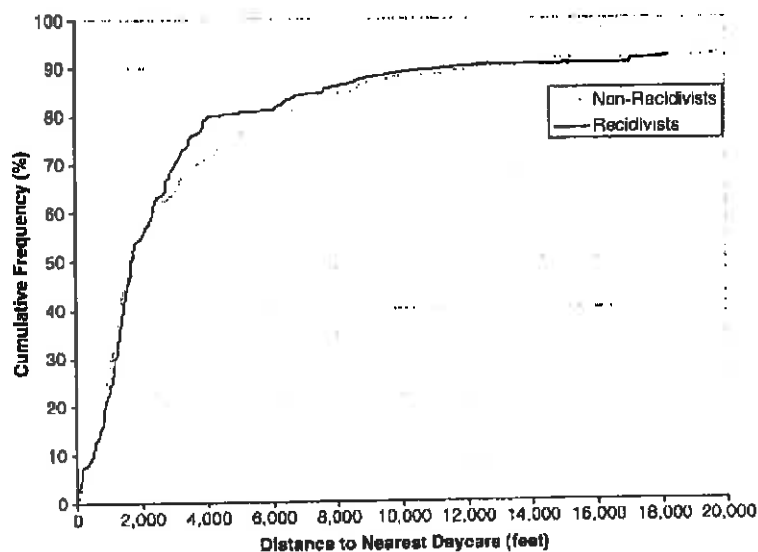
The distances to the nearest daycare and school for both populations are plotted as cumulative distribution functions in Figures 3 and 4, respectively. The results for distance to the nearest daycare indicate that there is very little difference in the two distance curves up

TABLE 4: Counts of Daycares and Schools Within Buffers Around Offenders

Count	Number of Daycares Within 1,000 Ft		Number of Daycares Within 2,500 Ft		Number of Schools Within 1,000 Ft		Number of Schools Within 2,500 Ft	
	Nonrecidivists	Recidivists	Nonrecidivists	Recidivists	Nonrecidivists	Recidivists	Nonrecidivists	Recidivists
0	116	115	65	57	123	127	68	77
1	31	28	30	35	26	25	35	51
2	12	12	14	19	13	10	35	21
3	5	7	17	21	2	2	12	11
4	1	1	13	15	1	1	7	3
5	0	1	8	8	0	0	7	1
6	0	0	7	6	0	0	1	1
7	0	0	4	1	0	0	0	0
8	0	0	3	1	0	0	0	0
9	0	1	1	1	0	0	0	0
10	0	0	0	1	0	0	0	0
>10	0	0	3	1	0	0	0	0
Sum	165	165	165	165	165	165	165	165

TABLE 5: Results of Chi-Square Tests for Counts of Daycares and Schools Within Buffers When Comparing Recidivists to Nonrecidivists

Test	χ^2	df	Two-Tailed p Value
Daycares within 1,000 ft	1.930	3	.587
Daycares within 2,500 ft	10.581	6	.102
Schools within 1,000 ft	0.858	2	.651
Schools within 2,500 ft	35.496	4	<.001

**Figure 3: Cumulative Distribution Function of Distance to Nearest Daycare**

until approximately 2,000 ft, indicating that recidivists and nonrecidivists are located at very similar distances when considering these shorter distances. At greater distances, the curve for recidivists is above the curve for nonrecidivists, indicating that a larger proportion of recidivists live between approximately 2,500 and 4,000 ft. At greater distances, the difference gets smaller again.

The results for the distance to nearest school indicate that the curve for recidivists falls below the curve for nonrecidivists up until approximately 3,500 ft, indicating that a smaller proportion of recidivists is located close to schools at these distances. At greater distances, the curve for recidivists exceeds the curve for nonrecidivists, indicating that a larger proportion of recidivists live between approximately 3,500 and 10,000 ft. The curves become very similar at greater distances.

Statistical testing is necessary to determine the significance of the differences between the curves in Figures 3 and 4. A common test for comparing these distributions is the Kolmogorov-Smirnov test. However, the Kolmogorov-Smirnov test determines the maximum differences between the curves, and it is clear from Figures 1 and 2 that this maximum difference occurs at fairly large distance values (approximately 4,000 ft for daycares

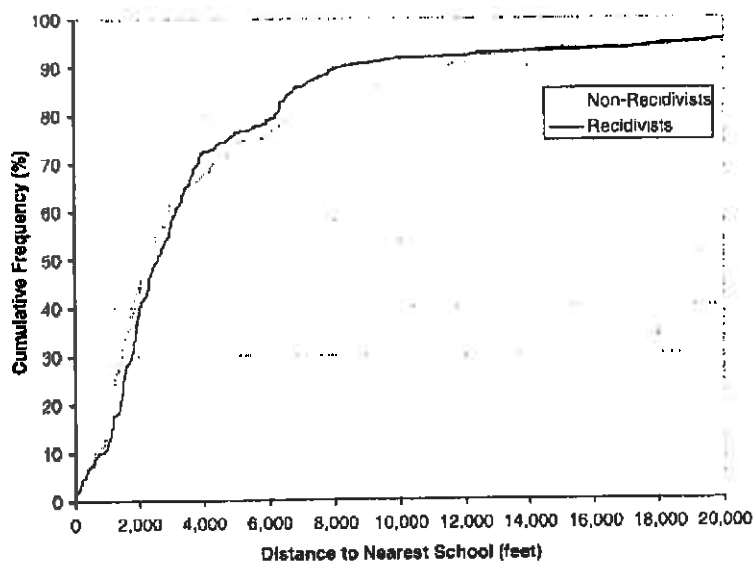


Figure 4: Cumulative Distribution Function of Distance to Nearest School

and 8,000 ft for schools), which fall outside of the values of interest. Therefore, differences were tested using parametric and nonparametric tests of means as well as chi-square tests for specific distance values of interest.

To assess whether sex offenders who lived closer to schools or daycares were more likely to reoffend sexually than those who lived farther away, we utilized two-tailed *t* tests to compare the mean distance that recidivists and nonrecidivists lived from schools and daycares and found no significant differences between the groups (see Table 6). Nonrecidivists lived slightly closer to daycares, and recidivists lived slightly closer to schools, but neither difference was statistically significant, indicating that these differences were not more than would be expected by chance. In other words, sex offenders who lived in closer proximity to schools and daycares were no more likely to reoffend than those who lived farther away. Because the distributions did not conform to all the assumptions of parametric comparisons of means, we performed a Mann-Whitney *u* test, a nonparametric test used for two samples measured on an ordinal scale (Mann & Whitney, 1947; Vogt, 2005). Again, there were no significant differences between recidivists and nonrecidivists in the distances they lived from schools ($p = .485$) and daycares ($p = .934$).

We also compared the proportions of recidivists and nonrecidivists who lived within common buffer zones using chi-square analyses (see Table 7). In these analyses, we tested three distances: the 1,000- and 2,500-ft zones used in previous analyses for the reasons stated above, and a distance zone of 1,500 ft—the distance designated in proposed legislation in 2008 in Florida for expanding the statewide buffer zone. Again, no significant differences were found, indicating that recidivists were not more likely to live within 1,000, 1,500, or 2,500 ft of schools or daycares than nonrecidivists.

We also examined the bivariate correlations between proximity and recidivism. There was a virtually nonexistent association between reoffending and proximity to schools ($r = .004$,

TABLE 6: Mean Distances From Schools and Daycares

	Recidivist	n	Mean	Standard Deviation	Standard Error Mean	t Test (Difference Between Groups)	Two-Tailed p Value
Feet to daycare	no	165	5144.15	8655.80	673.85	-.075	.940
	yes	165	5219.76	9581.04	745.88		
Feet to school	no	165	5296.75	9029.17	702.92	.785	.433
	yes	165	4627.80	6198.25	482.53		

TABLE 7: Group Comparisons Between Recidivists and Nonrecidivists Based on Distance

Proximity	Percentage of Recidivists Living		Percentage of Nonrecidivists Living		χ^2	Two-Tailed p Value
	Outside the Buffer Zone	Within the Buffer Zone	Outside the Buffer Zone	Within the Buffer Zone		
Within 2,500 ft of a school	52	49	47	53	0.776	.378
Within 2,500 ft of a daycare	38	62	39	61	0.115	.734
Within 1,500 ft of a school	78	23	70	30	2.687	.102
Within 1,500 ft of a daycare	59	41	56	44	0.311	.577
Within 1,000 ft of a school	90	10	85	15	1.746	.188
Within 1,000 ft of a daycare	78	21	76	24	0.491	.511

Notes. $df = 1$.

$p = .940$) or daycares ($r = -.043$, $p = .433$). Keeping in mind that the sample was matched on relevant risk factors (prior offenses, age, marital status, predator status), when the distances to schools and daycares were entered along with risk factors into a logistic regression model with recidivism as the dependent variable, neither distance variable was statistically significant ($p = .091$ and $p = .141$, respectively). The overall model was not statistically significant ($\chi^2 = 5.767$, $df = 7$, Nagelkerke $R^2 = .024$, $p = .567$), indicating that proximity to schools and daycares, with other risk factors being comparable, explains virtually none of the variation in sexual recidivism.

DISCUSSION

This study represents a pioneering effort to determine whether evidence exists to support the widespread enactment of residential restriction laws. The results of this study indicate no empirical association between where a sex offender lives and whether he reoffends sexually against a minor (recidivists who reoffended against adults were not included in the current analysis). Sex offenders who lived in closer proximity to schools and daycares were not more likely to reoffend than those who lived farther away.

It is important to recognize that our recidivists were defined as those on the registry who reoffended with a new sex offense arrest date in 2004, 2005, or 2006. Nonrecidivists during the follow-up time frame were matched based on the risk factors of the recidivists, and therefore there was no chance of selecting a nonrecidivist with no priors. In other words, neither group included first-time offenders, but recidivists were defined as those who reoffended

during the time frame in which we could calculate their proximity to schools and daycares. This sample is, therefore, a more high-risk sample than a randomly selected sample would be and was not intended to represent the general sex offender population in Florida.

The sample included offenders living in counties throughout the state. Rural counties have a wider dispersion of schools and daycares compared to metropolitan areas, which increased the average distance these offenders lived from the venues of interest. Mean distances to schools and daycares are likely to be closer for offenders living in urban and suburban communities than the average distances found in this study. Several researchers have indicated that more than 90% of residential dwellings in metropolitan areas are located within 2,500 ft of schools and daycares (Chajewski & Mercado, 2008; Zandbergen & Hart, 2006). Because most of these sex offenders are presumably subject to state laws and local ordinances restricting where they may reside, however, it is not surprising that many of them lived outside common buffer zones. Those living within buffer zones might have established their residence prior to the enactment of local ordinances and thus been grandfathered in.

Protection of children from sexual predators is an important policy endeavor. Strategies employed to accomplish that objective should therefore be informed by research to enhance the probability of their success. The current data suggest that the expenditure of resources allocated to the implementation and enforcement of residence restrictions does not appear to be justified and might be better targeted toward other methods of community protection. A glaring irony of residence restrictions is that they regulate only where offenders sleep at night and not where they travel during daytime hours when children are more vulnerable to sexual predation. It is therefore perhaps unsurprising that housing restrictions do little to deter reoffending.

As applied to sex offenders' housing, RAT does not appear to be a viable theoretical foundation for residential restriction policies. Living close to a school or daycare does not appear to increase access to children in a way that facilitates recidivism for known sex offenders. RAT might, however, better explain the risk associated with access to youngsters when sex offenders visit places where children are commonly found and where familiarity, authority, and relationships with children can be cultivated. Child safety zones have been enacted in some jurisdictions as an alternative to policies that regulate living arrangements. Child safety zones prevent sex offenders from loitering in places where children congregate (e.g., schools, parks, arcades, pools, ball fields, etc.) without a legitimate reason and prior approval. Such laws serve the purpose of prohibiting known sex offenders from being able to linger in places where they can engage in grooming practices by becoming familiar to children and their parents and developing relationships by which opportunities for sexual abuse become possible.

Residence restriction zones create barriers to reentry and inhibit the factors known to contribute to successful reintegration, such as employment, housing stability, prosocial relationships, and civic engagement (Mayzer, Gray, & Maxwell, 2004; Schulenberg, 2007; Willis & Grace, 2008, 2009). When criminal offenders sustain jobs and social bonds, they are more likely to become invested in conformity and community norms. Housing instability, transience, unemployment, and a lack of support systems are known to increase the likelihood of recidivism for criminal offenders in general and sex offenders specifically. Alternatives to residence restrictions, such as loitering zones, are more likely to manage risk while simultaneously removing obstacles to reintegration and facilitating a better chance of a safe return to community settings.

LIMITATIONS

As with any study, the current investigation is not without certain limitations. In general, these limitations are related to (a) the size of the sample, (b) the sampling strategy, (c) measures of certain variables, (d) the types of restriction locations selected, (e) the geocoding techniques implemented, and (f) the analytic approach employed. Each of these limitations is addressed in detail below.

One of the limitations of this study is the relatively small sample size that was employed. Several factors influenced the size of the sample. First, the time period considered was relatively short (2004-2006). Second, only those recidivists with reliable demographic and address information were included. Third, only those recidivists who were arrested for a sex offense against a minor were included. Fourth, incomplete geocoding removed a few more cases. Nonetheless, the sample size was sufficient for regression models with the six covariates and for statistical comparisons between recidivists and nonrecidivists.

The second limitation is the design employed in the sampling of the nonrecidivists. By creating a stratified random sampling technique based on risk factors and demographic variables, the nonrecidivist population was nearly identical to the recidivist population. Although this allowed for a direct comparison of the proximity metrics, it prevented an analysis of the interaction between risk factors and proximity. A future research study is planned in which recidivists will be compared to a randomly selected sample of nonrecidivists.

A third and related limitation is that inherent in the database provided by FDLE was the paucity of data available to us regarding other potential risk factors for recidivism. Along with the risk factors identified in this study, future research should include additional covariates, such as time at large, a measure of housing instability or transience, the influence of urban versus rural locations, victim's age and gender, and relationship between the offender and the victim. These covariates could be used to better understand the relationship between proximity and recidivism while controlling for other risk factors. A related limitation is that it is not known where the offenders established contact with the victims. However, the purpose of the study was to determine the relationship between recidivism and residential proximity to daycares and schools, independent of whether the contact occurred at those locations.

The fourth limitation is that only daycares and schools were considered facilities of interest. Florida statutes include parks, playgrounds, and public school bus stops (for conditional releasees), and many local ordinances include additional locations such as libraries or recreational facilities. However, daycares and schools are among the most commonly used categories in residence restriction laws across the nation. With the exception of public school bus stops, the volume of the other types of facilities is also much lower than for schools and daycares. School bus stops are so plentiful throughout residential areas that almost every resident (offender or not) lives close to one (Zandbergen and Hart, 2006), making their utility in proximity analyses less meaningful.

The fifth limitation is that geocoding techniques introduce some amount of positional error. Street geocoding in general can introduce substantial error, and therefore parcel-level geocoding was employed to the extent possible based on available data. Despite the very high proportion of records matched at the parcel level and the very high overall match rate, some amount of error is introduced as a result of incomplete address information (in particular for home-based daycares) and positional error in the geocoding techniques. Nonetheless,

there is no indication that these errors introduced any form of bias in the comparison of recidivists and nonrecidivists.

The final limitation is that relatively simple proximity metrics were used, including the straight-line distance to nearest facility and number of facilities within discrete buffer zones. Such metrics do not account for more complex interactions, such as visibility (e.g., can the offender see the daycare or school from his residence?) or casual contact (e.g., if the offender walks or drives from his house to the nearest major intersection or to his place of work, does he pass a daycare or school?). The metrics employed, however, reflect the language found in current residence restriction laws.

CONCLUSION AND POLICY IMPLICATIONS

Given the paucity of data suggesting that sex offender residence restrictions prevent recidivism and the growing body of evidence indicating that housing policies increase transience, homelessness, and unemployment, these laws may be contraindicated. The belief that keeping sex offenders far from schools and other child-friendly locations will protect children from sexual abuse appears to be a well-intentioned but flawed premise. The data from this study do not support the widespread enactment of residential restrictions for sexual offenders. The time that police and probation officers spend addressing sex offender housing issues is likely to divert law enforcement resources away from behaviors that truly threaten our communities.

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