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RETROACTIVE APPLICATION OF SEX OFFENDER REGISTRY STATUTES: 1995 SURVEY OF THE STATES

July, 1995

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Governor
State of New York

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DIVISION OF
**CRIMINAL
JUSTICE
SERVICES**



**NEW YORK
STATE**



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National Institute of Justice

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Background

As of June 1995, forty-four states have enacted sex offender registration laws for the purposes of assisting law enforcement and enhancing community safety. Of these, twenty-five states also established community notification procedures to inform the public of an offender's presence. Due to the presumed low rehabilitation rates for sex offenders, many registries and community notification provisions apply retroactively to offenders who committed their crimes prior to the enactment of the law.¹ In several of these states the retroactive application of these laws has encountered legal challenges, resulting in their suspension and subsequent revision.

Seeking to answer the questions of which and how many states retroactively applied their statutes, and what the legal consequence of such action has been, the Office of Justice Systems Analysis within the New York State Division of Criminal Justice Services contacted the United States Department of Justice, the National Center for Missing and Exploited Children and the Washington State Institute for Public Policy. Although helpful, none of these entities were able to provide this specific information, prompting a survey of states known to have sex offender registration laws.

Methodology

The methodology for the survey consisted of phone calls to the individual states made in May and June, 1995. The names of individuals contacted were obtained primarily through a 1995 publication of the Washington State Institute for Public Safety titled, "Sex Offender Registration: A Review of State Laws."² Those providing information were administrators, legislative research staff, legal counsel, and law enforcement officials. Because this publication did not reflect action taken by states in 1995, updated information was sought and obtained from the National Center for Missing and Exploited Children. The Center forwarded laws from three other states (Iowa, New Mexico, and Maryland) known to have enacted sexual offender registries in 1995. In these instances, the laws from these individual states were reviewed and individuals within these respective states were contacted to verify the accuracy of the information.

Summary of Findings

- Of forty-four states with sex offender registry statutes, twenty-two states have a retroactive application.
- Of the twenty-two states with retroactive application, legal challenges are pending in four states (Alaska, Louisiana, Minnesota, and New Jersey) and one state (South Dakota) is

¹"The Legal Validity and Policy Concerns Associated With Community Notification for Sex Offenders." Memorandum of the National Center for Missing and Exploited Children, (May, 1995).

²Thomas, Staci and Roxanne Lieb, *Sex Offender Registration: A Review of State Laws*, The Washington State Institute for Public Policy, (February, 1995).

anticipating challenges. Due to a court ruling, Montana revised its statute to drop retroactive application in 1991. Washington State noted that its retroactive application provision was upheld in 1991.

- Two states (New Hampshire and North Dakota) recently revised their registry statutes to include retroactive application. Two other states (Nevada and Ohio) have legislation pending to amend existing registration statutes to require retroactive application.
- Of the six states remaining without sex offender registries (Hawaii, Massachusetts, Nebraska, North Carolina, Pennsylvania, and Vermont), legislation to establish a registry has been introduced in Massachusetts, North Carolina, and Pennsylvania.

New York's Legislation

On June 28, 1995, the New York State Assembly adopted legislation, which passed in the State Senate on May 24, 1995, to create a Sex Offender Registry effective November 1, 1995. The bill (A.1059-C/S.11-B) requires individuals convicted of a sex offense to register with the Division of Criminal Justice Services and to provide notification to a variety of agencies regarding their addresses, including prior notification of any relocation.

New York's statute will apply retroactively to persons previously convicted of specified sex offenses. Sex offenders confined in State or local correctional facilities, hospitals, or institutions will be required to register upon their discharge. Law enforcement agencies are to receive notification of a pending release or parole of a sex offender within their jurisdiction. Officials are authorized to disseminate specified information to the community based upon a risk assessment of the threat to public safety posed by each offender. The duration of registration for every sex offender on parole or probation as of the effective date of the Act will be determined by the Division of Parole and Division of Probation and Correctional Alternatives.

1995 Survey of the States: Retroactive Application of Sex Offender Registry Statutes

<i>State</i>	<i>Year Enacted</i>	<i>Retroactive Application</i>
Alabama	1967 1994 (Revised)	No
Alaska	1994	Yes, applied to individuals unconditionally discharged by 7/1/84 and offenders with two or more convictions. Preliminary Injunction issued in Federal Court regarding ex-post facto application, case is pending.
Arizona	1951 1985 (Revised)	No
Arkansas	1987	No
California	1944 1994 (Revised)	No
Colorado	1991	No
Connecticut	1994 1995 (Revised)	No
Delaware	1994	Yes, every convicted sex offender must register.
Florida	1993	No
Georgia	1994	Yes, applied to individuals under parole supervision for a sexual offense against a child.
Idaho	1993	No
Illinois	1986 1993 (Revised)	Yes, retroactive for a ten year period.
Indiana	1994	No
Iowa	1995	Yes, limited to those individuals participating in a work release or institutional work release program, and those who are under parole or probation supervision on or after the effective date of the act.
Kansas	1993 1994 (Revised)	No
Kentucky	1994	No
Louisiana	1992	Yes, but case pending in State Supreme Court regarding ex-post facto application.
Maine	1991	Yes, applied to criminal offenses occurring on or after 9/30/89 with convictions on or after 6/30/92.
Maryland	1995	No
Michigan	1994	No
Minnesota	1991 1994 (Revised)	Yes, but case pending in State Court of Appeals. A ruling is expected in July.
Mississippi	1994	Yes
Missouri	1994	Yes, retroactive for convictions occurring after 7/1/79

Montana	1989 1991 (Revised to remove retroactive application)	No. Was originally retroactive. Due to court decision in February 1991 retroactive application was dropped.
Nevada	1961 1991 (Revised)	No, but legislation is pending to make community notification retroactive.
New Hampshire	1993 1994 (Revised)	Yes, legislation enacted in 1994 established retroactive application dating back to 1/1/88.
New Jersey	1994	Yes, but current court action pending.
New Mexico	1995	No
New York	1995	Yes, the Division of Parole and Division of Probation and Correctional Alternatives are required to determine the duration of registration for every sex offender who is on parole or probation on the effective date of the Act (11/1/95).
North Dakota	1991 1993 (Revised) 1995 (Revised to require retroactive application)	Yes, legislation enacted in March 1995 established retroactive application. To be effective as of 8/1/95.
Ohio	1963	No, but enactment of pending legislation to establish retroactivity is anticipated during the current legislative session.
Oklahoma	1989 1991 (Revised)	No
Oregon	1989 1991 (Revised)	No
Rhode Island	1992	No
South Carolina	1994	Yes
South Dakota	1994 1995 (Revised)	Yes, legislation enacted in 1995 establishes retroactive application for anyone convicted of specified sex offenses. Legal challenges are anticipated.
Tennessee	1994	No
Texas	1991 1993 (Revised)	Yes, but limited. Discretion to apply retroactivity on a case by case basis resides with the Board of Parole.
Utah	1987 1994 (Revised)	Yes
Virginia	1994	Yes, but limited to individuals under community supervision or incarcerated as of the effective date of the act (7/1/94).
Washington	1990 1991 (Revised)	Yes, but limited to individuals under active supervision of the Department of Corrections or Department of Social and Health Services. Retroactive application was challenged and upheld in 1991.
West Virginia	1994	No
Wisconsin	1993	Yes, applied to individuals convicted prior to 12/31/93 and released from supervision after such date.
Wyoming	1994	Yes. Applies to offenses committed on or after 1/1/85. Registration statute limited to adult felony sex offenders whose victim was under 18 and who was at least 4 years older than victim.