THE PERILS OF PANICKED LEGISLATION

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I. INTRODUCTION

Critique of the carceral state has been and remains a central focus of the law school professoriate. One can scarcely peruse the table of contents of a legal journal,[1] or view a bookstore's shelves,[2] without encountering critical assessments of mass incarceration. Law professors, however, have been far less inclined to focus upon non-brick-and-mortar social control,[3] especially sex offender registration and notification (SORN) laws, another strategy in which the U.S. boasts world leadership.[4]

Professor Catherine Carpenter's scholarship is a notable exception to this silence. Over the course of her remarkable career, Professor Carpenter published several noteworthy articles focusing on SORN laws and policies. Here, I will focus on one in particular: *Panicked Legislation*,[5] her last published piece.

II. PANICKED LEGISLATION

In *Panicked Legislation*, Catherine builds upon her two prior works addressing the legislative fervor driving enactment of SORN laws since the

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1. *See, e.g.*, Symposium, *Mass Incarceration as a Chronic Condition*, 104 MINN. L. REV. 2619 (2020); Symposium, *Understanding and Responding to Mass Incarceration*, 65 WM. & MARY L. REV. 777 (2024).

2. *See, e.g.*, RACHEL BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION (2019); JEFFREY BELLIN, MASS INCARCERATION NATION: HOW THE UNITED STATES BECAME ADDICTED TO PRISONS AND JAILS AND HOW IT CAN RECOVER (2022).

3. An exception lies in the literature concerning "e-carceration," which uses electronic technology to monitor individuals under community supervision. *See, e.g.*, Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 UCLA L. REV. 478 (2024); Kate Weisburd, *The Carceral Home*, 103 B.U. L. REV. 1879, 1899 (2023).

4. Andrew J. Harris & Scott M. Walfied, *Variations in the Structure and Operation of SORN Systems*, 17, 29, *in* SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION LAWS: AN EMPIRICAL EVALUATION (Wayne A. Logan & J.J. Prescott eds., 2022) [hereinafter LOGAN & PRESCOTT].

5. Catherine L. Carpenter, *Panicked Legislation*, 49 J. LEGIS. 1 (2022).

1990s.[6] She uses as her framework the sociological construct of "moral panic," which came to public attention with Stanley Cohen's 1972 book *Folk Devils and Moral Panics: The Creation of Mods and Rockers.*[7] Cohen's book, based on events in the 1960s involving young hooligans descending upon and roughhousing in a British seaside town, illustrated how exaggerated accounts of the harm caused by a social problem can spur overblown fear and legislative overreaction.[8]

Drawing upon Cohen's framework and the work of others who elaborated upon it, in Part I of *Panicked Legislation* Catherine makes the case for SORN being a prime example of a moral panic. As she notes, from the early 1990s onward, the media and politicians justified SORN by invoking unsupported assertions that persons convicted of sexual offenses recidivate at a rate that is "frightening and high"[9] and that most sexual offenses are committed by unknown strangers ("stranger danger"),[10] complemented by graphic language describing offenders as "predators."[11]

Part II employs the political science concept of "Crime Control Theater" for insight into the popularity of SORN laws. Responding to public pressure to "do something," politicians have enthusiastically embraced SORN in the name of combatting sexual offending (especially by strangers). As Catherine notes, however, since the early 1990s, proponents have oversold SORN's crime control utility.[12]

In Part III, Catherine pivots from the descriptive to the normative, proposing that the irrebuttable presumption doctrine should be used to challenge SORN laws in court. The doctrine requires that courts not simply defer to legislative classifications embedded in irrebuttable presumptions but rather allow challenges predicated upon contrary empirical facts.[13] SORN would appear vulnerable to successful challenge on this basis because of its reliance upon several unfounded empirical assertions, including one of its

6. Catherine L. Carpenter, *All Except For: Animus that Drives Exclusions in Criminal Justice Reform*, 50 S.W. L. REV. 1 (2020); Catherine L. Carpenter, *Legislative Epidemics: A Cautionary Tale of Criminal Laws That Have Swept the Country*, 58 BUFF. L. REV. 1 (2010).

7. STANLEY COHEN, FOLK DEVILS AND MORAL PANICS: THE CREATION OF THE MODS AND ROCKERS (Routledge, 3d ed. 2002) (1972).

8. *Id.* at 9, 26. The concept was previously, but less popularly, advanced by English criminologist Jock Young. *See* JOCK YOUNG, THE DRUGTAKERS: THE SOCIAL MEANING OF DRUG USE (1971).

9. Carpenter, *Panicked Legislation, supra* note 5, at 7.

10. *Id.* at 36-38.

11. *Id.* at 23-25.

12. *Id.* at 5-6.

13. *Id.* at 43-44 (citing precedent).

basic underpinning presumptions: that individuals convicted of sex offenses pose a "frightening and high" risk of recidivism.[14]

Although she acknowledges that the irrebuttable presumption doctrine is arguably extinct,[15] Catherine maintains that it retains vitality in jurisdictions making personal "reputation" a constitutionally protectable liberty interest.[16] Pennsylvania is one such jurisdiction, where the state supreme court rejected application of an irrebuttable presumption of dangerousness concerning a juvenile registrant, in *In re J.B.*,[17] and later an adult registrant, in *Commonwealth v. Torsilieri (I)*.[18]

Four years later, in 2024, however, after the publication of *Panicked Legislation*, the Supreme Court of Pennsylvania reversed course in *Commonwealth v. Torsilieri (II)*,[19] based on an augmented evidentiary record developed upon remand. After noting that there was uncertainty over whether the irrebuttable presumption doctrine endured in Pennsylvania,[20] the court presumed so (for purposes of its decision),[21] but held that the state's SORN law did not rest on an unfounded presumption that sex offenders pose high recidivism risk.[22] The majority reasoned that individuals challenging the law failed to satisfy their "heavy burden" that the presumption was not "necessarily or universally true, in fact."[23] They did not establish a "scientific consensus that sexual offenders pose no greater risk of committing additional sexual crimes than other groups not subject to similar registration laws."[24]

III. A (SOMEWHAT) CRITICAL RESPONSE

Panicked Legislation is a wonderful piece of scholarship: it comprehensively addresses its subject in an incisive and creative way, drawing upon law, sociology, political science, psychology, and

14. *See* Ira Mark Ellman & Tara Ellman, *"Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 CONST. COMMENT. 495, 500-04 (Fall 2015).

15. This is certainly so in federal courts. *See, e.g.*, Black v. Snow, 272 F. Supp. 2d 21, 30 (D.D.C. 2003).

16. See Carpenter, *Panicked Legislation*, *supra* note 5, at 49 n.355, which notes several state constitutions that recognize reputation as a protectible interest.

17. *In re* J.B., 107 A.3d 1 (Pa. 2014).

18. Commonwealth v. Torsilieri, 232 A.3d 567 (Pa. 2020). The court granted only provisional relief, remanding for an augmented record regarding the legislature's reliance on the purported heightened recidivism risk of all individuals convicted of sex offenses. *Id.* at 587-88.

19. Commonwealth v. Torsilieri, 316 A.3d 77 (Pa. 2024).

20. *Id.* at 93-94.

21. *Id.* at 94.

22. *Id.* at 99-100.

23. *Id.* at 98-99.

24. *Id.*

criminology. It remains "go to" scholarship for understanding the powerful catalysts driving the enactment and continued existence of SORN laws since the early 1990s.

That said, I'd like to offer a few observations. The first concerns unqualified use of the "moral panic" framework vis-a-vis SORN. While useful as an analytic starting point, moral panic is an imperfect fit with respect to the problem that has ostensibly driven and sustained SORN laws. While Cohen was justified in characterizing the public alarm triggered by the Mods and Rockers as an exaggerated overreaction, sexual offending is quite plainly another matter: it causes very significant harm. As discussed later, whether SORN is a defensible legislative response to sexual offending is another matter.

Second, there is a question over the viability of the article's prescriptive part—that the application of the irrebuttable presumption doctrine can be a viable basis for challenging SORN laws. Catherine admits that use of the doctrine holds promise of only a "partial victory" because "reputation" is constitutionally protected in only a few states. Yet, as noted, even in Pennsylvania, one of these states, the state supreme court recently dashed hope of the doctrine serving as a basis to empirically challenge the presumptions on which SORN is predicated.[25]

Of course, despite her many talents, Catherine is not a soothsayer; she could not predict the course of subsequent litigation in Pennsylvania. However, experience in Pennsylvania lends support to the view that courts often afford only a "hollow hope" of comprehensive civil liberty protection.[26] While SORN laws adopted over the past thirty years have become considerably more expansive and onerous,[27] state and lower federal courts

25. Other central features of SORN laws would also be vulnerable to challenge. For instance, the federal tier-based registrant classification approach, used in many jurisdictions, is known to be highly problematic, resulting in over and under-inclusiveness of actual recidivism risk. *See, e.g.*, James Freeman, *The Dangers of Federalizing Crime Law: Consequences of the Adam Walsh Act and Sex Offender Registry Expansion*, 48 J. CRIME & JUST. 406 (2025); Naomi J. Freeman & Jeffrey C. Sandler, *The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative?*, 21 CRIM. JUST. POL'Y REV. 31 (2010); Kristen M. Zgoba et al., *The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems*, 28 SEXUAL ABUSE 7222 (2016).

26. GERALD ROSENBERG, THE HOLLOW HOPE (3rd ed., 2023); *see also, e.g.*, Adam Chilton & Mila Versteeg, *Courts' Limited Ability to Protect Constitutional Rights*, 85 U. CHI. L. REV. 293 (1985).

27. See Robert Lytle, *Beyond Panic: Variation in the Legislative Activity for Sex Offender Registration and Notification Laws Over Time*, 30 CRIM. JUST. POL'Y REV. 451 (2019) for discussion of SORN expansion over the years. The literature often characterizes the sustainment and growth of SORN laws as a "perpetual" panic. *See, e.g.*, Jennifer L. Klein & Alexandra B. Mckissick, *Moral Panics and Community Member Perceptions Regarding Reductions in Sex Offender Recidivism*, 16 JUST. POL'Y J. 1 (2019). I think, however, the history of SORN more accurately reflects stasis, enabled by the political science concepts of "path dependence" and "lock-

continue to reject constitutional challenges, relying upon the Supreme Court's 2003 decisions in *Smith v. Doe*,[28] which rejected an ex post facto challenge against Alaska's SORN law, and *Connecticut Department of Public Safety v. Doe*,[29] which held that procedural due process does not require that SORN provisions provide an individualized determination of recidivism risk.

This is not to say that constitutional challenges should not be brought, nor is it intended to denigrate litigation victories achieved to date. Recent years have witnessed multiple successful ex post facto challenges in state courts, based on the U.S. or state constitutions (which can be broader in coverage).[30] Recent examples of successful state court litigation based on other constitutional protections include *People v. Lymon*, where the Michigan Supreme Court held that requiring individuals convicted of non-sexual offenses to register violated the state's constitutional prohibition of cruel or unusual punishment;[31] *Powell v. Keel*, where the South Carolina Supreme Court held that its state SORN law violated due process because it did not allow for exit from lifetime registration (other than if the registration-required conviction was reversed, overturned, or vacated);[32] and *People in Interest of T.B.*, where the Supreme Court of Colorado held that requiring lifetime registration of youths with two or more juvenile court sexual offense adjudications violated the Eighth Amendment prohibition of cruel and unusual punishment.[33]

Federal litigation has also achieved success. Perhaps most notably, in a landmark 2016 decision the Sixth Circuit Court of Appeals in *Does # 1-5 v.*

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in." *See* Wayne A. Logan, Symposium, *Megan's Laws: A Case Study in Political Stasis*, 61 SYRACUSE L. REV. 371 (2011) (discussing the reasons behind the political popularity and continued support of SORN laws); *see also* Lytle, *supra*, at 469-71 (reporting results of nationwide review of state SORN laws over time and concluding that, while panics might have triggered adoption of laws, changes to them over time have involved "tinkering, definitional, or even some less publicized procedural changes to laws. [Also], the differences in timing and content [of] SORN policy change between states raises questions about the sufficiency of nationwide panics as an explanation for sex offense laws.").

28. 538 U.S. 84 (2003).

29. 538 U.S. 1 (2003).

30. *See* WAYNE A. LOGAN, THE EX POST FACTO CLAUSE: ITS HISTORY AND ROLE IN A PUNITIVE SOCIETY 135-37 (2022) (noting state supreme court decisions holding that retroactive SORN laws are unconstitutional).

31. People v. Lymon, No. 164685, 2024 WL 3573528 (Mich. July 29, 2024). *But see, e.g.*, Rainer v. State, 690 S.E.2d 827 (Ga. 2010); State v. Smith, 780 N.W.2d 90 (Wis. 2010).

32. Powell v. Keel, 860 S.E.2d 344 (S.C. 2021). Elaborating, the court stated that the absence of a mechanism to assess continued risk violated due process "because it is arbitrary and cannot be deemed rationally related to the General Assembly's stated purpose of protecting the public from those with a high risk of re-offending." *Id.* at 352.

33. People in Interest of T.B., 489 P.3d 752 (Colo. 2021).

Snyder invalidated on federal ex post facto grounds Michigan's SORN law, which was complemented by a provision imposing significant geographic limits on where registrants could live, work, or loiter.[34] The court unanimously found that the law retroactively imposed punishment, in violation of the Ex Post Facto Clause.[35] According to the court, the Michigan regime "brand[ed] registrants as moral lepers solely on the basis of a prior conviction," adding that the law consigned registrants

> to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to school zone restrictions, they may not even live. It directly regulates where registrants may go in their daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their information.[36]

IV. THE PATH AHEAD

Given the limited likelihood that constitutional litigation will lead to SORN being abandoned altogether, I have come to believe that legislative reform is the most viable path toward reconstructing, if not eliminating, SORN. For success to be achieved, legislators, who often lack knowledge regarding the problems with SORN,[37] must come to understand that:

- SORN is not effective as a crime-control measure.[38]
- SORN promotes a false sense of community safety, for several reasons. One is that registries fuel the public's misimpression that only registry-listed individuals pose risk, when in reality most sex offenses are committed by first-time offenders (who are not registered)[39] and individuals known to the victims (not the

34. Does # 1-5 v. Snyder, 834 F.3d 696, 705-06 (6th Cir. 2016), *cert. denied*, 583 U.S. 814 (2017).

35. *Id.* at 705.

36. *Id.*

37. *See, e.g.*, Michell Meloy et al., *The Sponsors of Bills Speak Up: Policy Makers' Perceptions of Sex Offenders, Sex Crimes, and Sex Offender Legislation*, 40 CRIM. JUST. & BEHAV. 438 (2013) (reporting results of study showing that 60% of legislators surveyed thought the laws were effective but could not cite any empirical research to support the belief).

38. *See* Amanda Agan & J.J. Prescott, *Offenders and SORN Laws*, *in* LOGAN & PRESCOTT, *supra* note 4, at 109; Kristen Zgoba & Meghan M. Mitchell, *The Effectiveness of Sex Offender Registration and Notification: A Meta-Analysis of 25 Years of Findings*, 19 J. EXPERIMENTAL CRIMINOLOGY 71 (2023).

39. *See* Jeffrey C. Sandler et al., *Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law*, 14 PSYCH. PUB. POL'Y & L. 284, 297 (2008).

prototypical stranger lurking in an alleyway (as SORN envisages)).[40]

- The public does not actually avail itself of registry information, and even when it does so, it often does not undertake personal or altruistic precautionary measures.[41]
- Recidivism rates of individuals convicted of sexual offenses generally are not "frightening and high" compared to individuals convicted of nonsexual offenses,[42] and even their low likelihood of recidivism decreases markedly over time.[43] Recidivism is even lower among juveniles,[44] who are often subject to SORN (whether based on juvenile court adjudication or adult court conviction).
- Individuals who sexually offend are a heterogeneous group in terms of typologies, criminological needs, risk of reoffending, and treatment responses (i.e., there is no archetypal "sex offender").[45]
- SORN has major budgetary impact.[46] Costs include expenditures for technology and law enforcement personnel required to administer registration and notification and monitor compliance of registrants,[47] expenditures that perpetually grow alongside ever-growing registry populations.[48] In a world of limited resources, where zero-sum

40. *See Perpetrators of Sexual Violence: Statistics*, RAINN https://rainn.org/statistics/perpetrators-sexual-violence (last visited Mar. 23, 2025). Moreover, perversely, the significant adverse personal consequences of SORN exacerbate its under-inclusiveness. This is because they encourage prosecutors and defendants to navigate around registration-eligible offenses in guilty plea negotiations, prompting even "fictional" pleas to entirely legally unrelated offenses, resulting in exclusion of individuals from registries. Thea Johnson & Tina Zottoli, *Bargaining Away Sex*, AM. CRIM. L. REV., (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5576770.

41. *See* Lisa L. Sample, *The Public and SORN Laws*, 59, 63-65, *in* LOGAN & PRESCOTT, *supra* note 4.

42. *See supra* note 14 and accompanying text.

43. *See, e.g.*, R. Karl Hanson et al., *Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender*, 24 PSYCH. PUB. POL'Y & L. 48, 48-63 (2018).

44. *See, e.g.*, Elizabeth J. Letourneau, *Juvenile Registration and Notification Are Failed Policies That Must End*, *in* LOGAN & PRESCOTT, *supra* note 4, at 166.

45. *See, e.g.*, R. Karl Hanson et al., *Long Term Recidivism Rates Among Individuals at High Risk to Sexually Reoffend*, 36 SEXUAL ABUSE 3 (2024).

46. *See, e.g.*, CAL. SEX OFFENDER MGMT. BD., WHAT YOU MAY NOT KNOW ABOUT CALIFORNIA'S SEX OFFENDER REGISTRY 12 (2017), https://casomb.org/pdf/CASOMB_Education_Pamphlet.pdf (estimating between $10 and $40 billion in nationwide costs).

47. *See* Jill Levenson et al., *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, 43 J. SOCIO. & SOC. WELFARE 3, 15-17 (2016); *see also* Kelly Socia, *The Ancillary Consequences of SORN*, 78, 88-89, *in* LOGAN & PRESCOTT, *supra* note 4.

48. The growth results from the ever-expanding number of individuals subject to registration and expanding lists of registerable offenses, which add to the already bloated registries. The Florida registry, for instance, contains information on individuals who are confined, deceased, and live out-

> budgetary decisions about public safety must be made, the money spent on SORN could be reallocated to measures that actually reduce the incidence of sexual offending[49] and aid the victims of sexual assault.[50]

Education, however, cannot be the end-all in the campaign for change. Research, for instance, suggests that public support for SORN can be inured to empirical evidence critical of SORN.[51] Likewise, for reasons Catherine provides in her article, when it comes to individuals convicted of sexual offenses, Americans' hearts are simply too hardened and their contempt too profound for there to be hope that efforts to inspire empathy will be advanced by emphasis on the significant hardships experienced by registrants and their families.[52] SORN thus differs from the shift in public sensibility away from regarding HIV/AIDS as a blameworthy reprehensible "gay disease" after

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of-state (and merely visited Florida at some point). *See Frequently Asked Questions*, *Sexual Offenders and Predators Search*, FDLE, https://offender.fdle.state.fl.us/offender/sops/faq.jsf [https://perma.cc/T3DY-HR6E] (last visited Mar. 23, 2025).

49. See Eric S. Jamus, *Preventing Sexual Violence: Alternatives to Worrying About Recidivism*, 103 MARQ. L. REV. 819, 840-43 (2020) for an overview of ways this could come about. *See also generally* WHAT WORKS WITH SEXUAL OFFENDERS: CONTEMPORARY PERSPECTIVES IN THEORY, ASSESSMENT, TREATMENT, AND PREVENTION (Jean Proulx et al. eds, 2020).

50. A foremost example being the enormous backlog of DNA samples obtained in sexual assault cases that await laboratory analysis. *See* Gina Barton, *A Year After USA Today Investigation, Rape Kit Backlog Persists*, USA TODAY (Oct. 6, 2025, 9:52 AM), https://www.usatoday.com/story/news/investigations/2025/10/01/rape-kits-unsolved-dna-results/86237790007/ [https://perma.cc/8LYK-NNWA].

51. *See, e.g.*, Dylan S. Campbell & Anna-Kaisa Newhesier, *Must the Show Go On? The (In)ability of Counterevidence to Change Attitudes Toward Crime Control Theater Policies*, 43 L. & HUM. BEHAV. 568 (2019); Kelly M. Socia & Andrew A. Harris, *Evaluating Public Perceptions of the Risk Presented by Registered Sex Offenders: Evidence of Crime Control Theater?*, 22 PSYCH. PUB. POL'Y & L. 375 (2016). *Cf.* Jason Ryberg et al., *Nobody Gives a #% &!: A Factorial Survey Examining the Effect of Criminological Evidence on Opposition to Sex Offenders Residence Restrictions*, 14 J. EXPERIMENTAL CRIMINOLOGY 541 (2018).

52. *See, e.g.*, Ashley Kilmer & Chrysanthi S. Leon, *"Nobody Worries About Our Children": Unseen Impact of Sex Offender Registration on Families with School-Age Children and Implications for Desistance*, 30 CRIM. JUST. STUD. 181 (2017).

That said, it is worth noting that social construction played a key role in the genesis and growth of SORN laws. *See* WAYNE A. LOGAN, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA 94-95 (2009) (noting that despite the racial diversity of sexual assault victims, all eighteen sexual assault victims specified by Congress in its "roll call" in support of the Adam Walsh Act (2006) were white, and with the exception of one female adult victim, children). On the potential role of personal narrative in combatting erroneous empirical understandings of SORN, i.e., adoption of a social constructionist perspective, see Mauricio P. Yabar, *Narratives in Sex Offender Management Laws: How Stories About a Label Shape Policymaking*, 48 J. SOCIO. & SOC. WELFARE 33 (2021). To date, while the approach has not discernibly moved public opinion and policy on SORN generally, media attention spotlighting the registration of juveniles for "Romeo and Juliet" sexual offenses likely played a role in prompting states to modify their policies regarding the registrant subpopulation (itself only a small proportion of the nation's total registrant population).

media focus on Ryan White, a thirteen-year old boy who died of the disease in 1990 after contracting it via a contaminated blood product.[53]

As a consequence, it is important that advocates secure the involvement of other potential stakeholders. For instance, individuals concerned about racial disparities in prisons and jails should be made aware of similar racial disparities in registries,[54] and have their voices heard. Similarly, feminists, who have raised concern over SORN,[55] should be part of the public discussion, as should victims' advocates. For instance, Patty Wetterling, whose eleven-year-old son was abducted and murdered in 1989, and whose name (Jacob) was enshrined in the initial federal SORN law,[56] has become a critic of the growing onerousness of SORN laws.[57] Fiscal conservatives, such as those involved in "Right on Crime" initiatives to shrink the nation's corrections' footprint, should be concerned about the massive budgetary outlays associated with SORN (along with its demonstrated lack of public safety utility).[58] Finally, law enforcement can be critical of SORN,[59] and their assessments could have particular impact on policymakers. Together, the shared voices can push back against the "crime control theater" sustaining SORN laws.

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53. *See generally* PAUL M. RENFRO, THE LIFE AND DEATH OF RYAN WHITE: AIDS AND INEQUALITY IN AMERICA (2024).

54. Karen Turley, Comment, *Sex Crimes and Progressive Prosecution: Reimagining Sex Offenses and SORN Laws as an Opportunity for Criminal Justice Reform*, 115 J. CRIM. L. & CRIMINOLOGY 391, 394-95 (2025).

55. *See, e.g.*, JUDITH LEVINE & ERICA R. MEINERS, THE FEMINIST AND THE SEX OFFENDER: CONFRONTING SEXUAL HARM, ENDING STATE VIOLENCE 43-52 (2020).

56. *See* Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071 (1994) *repealed by* Sex Offender Registration and Notification Act of 2006, Pub. L. No. 109-248, § 129, 120 Stat. 587, 600.

57. *See* Sarah Stillman, *The List*, NEW YORKER (Mar. 6, 2016), https://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sexcrimes ("[Patty] Wetterling had watched the registry evolve into something very different from what she'd fought to create . . . . It also imposed a costly burden on law enforcement--time and money that might have gone for supervision of the highest-risk offenders and the training of officers in preventive measures.").

58. *See supra* note 46 and accompanying text.

59. *See, e.g.*, Kristen M. Zgoba & Richard Tewksbury, *Law Enforcement and SORN*, *in* LOGAN & PRESCOTT, *supra* note 4, at 53. Concerns over cost and workforce demands expressed by law enforcement likely would be especially impactful. ANDREW J. HARRIS ET AL., LAW ENFORCEMENT PERSPECTIVES ON SEX OFFENDER REGISTRATION AND NOTIFICATION: PRELIMINARY SURVEY RESULTS (2015), https://www.ojp.gov/pdffiles1/nij/grants/249189.pdf. Speaking out, of course, will not always be easy for law enforcement. *See, e.g.*, Jill Young Miller, *Keeping Sex Offenders Away from . . . Schools/Playgrounds/Bus Stops/Churches--Is It as Practical as It Sounds?*, ATLANTA J.-CONST., Mar. 17, 2006, at 1A, 8A (noting lobbying effort of the Georgia Sheriff's Association seeking to modify state residence exclusion provision tied to school bus stops due to enforcement difficulties and quoting one sheriff as saying "[w]e're kind of against the wall on this one because if you don't support it (the bill) you're seen as soft on crime").

Because, at this moment, abandonment of SORN would pose an intolerable risk to legislators of being cast as "soft on sex offenders" and, worse yet, dismissive of the victims whose names very often adorn SORN laws (e.g., Megan's Law), an alternative to the SORN status quo is needed. A blueprint for legislative change lies in the recent model provision drafted and approved by the American Law Institute, a highly respected honorary organization consisting of lawyers, judges, and academics. After months of research and debate, much of which Catherine and I participated in, the membership approved a provision containing major changes.[60]

The model provision contains several commendable features. First and most importantly, it requires only registration, not also notification,[61] in line with research suggesting that at least some crime control benefit might attach to registration alone.[62] Also, under the provision, registration is triggered by a significantly circumscribed list of eligible offenses,[63] and its duration is limited to a maximum of fifteen years, along with increased opportunities for exit from the registry.[64] Taken together, these and other features of the ALI model provision operationalize an approach that would be a vast improvement over the blunderbuss model characterizing current SORN laws, one sensitive to the concern expressed by Justice Potter Stewart in another context that "when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless."[65]

V. CONCLUSION

I am honored to be invited to this *festschrift* honoring Professor Carpenter and for having the opportunity to re-read several of her articles. Hopefully, despite her retirement, she will continue to be a voice of

60. *See* MODEL PENAL CODE § 213 (AM. L. INST. 2022)

61. *See id.* § 213.11I(3)(a). The law allows for disclosure of registry information to victims and for use in employment-related background checks yet otherwise imposes strict limits on the use and sharing of registry information.

62. *See* Agan & Prescott, *supra* note 38, at 109-11.

63. *See* MODEL PENAL CODE § 213.11I(1)(a) (AM. L. INST. 2022).

64. *See id.* § 213.11F(1)(b). Notably, the model law allows for imposition of additional registration burdens, on a case-by-case basis, that an official may deem "manifestly required in the interest of public safety." *Id.* § 213.11I(3)(b). The decision to impose such conditions must be based on careful consideration of all aspects of the case, including "the nature of the offense; . . . the person's prior record; and . . . the potential negative impacts of the burden, restriction, requirement, or government action on the person, on the person's family, and on the person's prospects for rehabilitation and reintegration into society." *Id.*

65. N.Y. Times Co. v. United States, 403 U.S. 713, 729 (1971) (Stewart, J., concurring); *see also, e.g.*, State v. Letalien, 985 A.2d 4, 30 (Me. 2009) (Silver, J., concurring) (noting that employing a "catch-all scope" with SORN "dilutes its utility").

eloquence and reason in the ongoing effort to address the problems with SORN laws.