

# for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

Volume 14, Issue 10

October 2004



## 2004 Legislative Review

Forty-Sixth Legislature – Second Regular Session

By Kathleen Carey, Legislative Liaison

The Second Regular Session of the 46<sup>th</sup> Legislature began on the heels of a special session called by the Governor to address CPS funding and prison overcrowding issues. After a lengthy review of CPS standards and operating procedures, the legislature infused \$17 million dollars into the troubled CPS system to hire 120 new caseworkers and provide \$51 million for DOC to install 2,000 additional private prison beds while authorizing the transfer of 2,100 inmates out of state. The prison funding derived primarily from new (non-waivable) assessments on DUI's in graduated amounts starting at \$500 for first time misdemeanor offenders and upward for extreme, second or felony convictions.

The Regular Session adjourned *sine die* on May 26, 2004, creating a general effective date of legislation of August 25, 2004. The 1,127 total bills posted during the session resulted in 351 passed bills and 8 vetoes. The legislature also posted 122 memorials (post cards to Congress) and resolutions (voter ballot issues) with 18 passed. The memorials and resolutions included the controversial issue of a federal ban on gay marriages that failed to pass, and several ballot issues including the Clean Election and Protect Arizona Now (PAN) questions. The Clean

Election ballot question was removed via a court ruling while the PAN issue was upheld. The PAN ballot question places an "ask and tell" burden upon government agency employees and criminalizes failure to report affirmative disclosures of illegal presence upon government agency employees. Another ballot question seeks to modify the Arizona constitution requiring Justice of the Peace Pro Tempores to be licensed members of the bar.

Three areas of legislative activity focused predominantly on the judiciary, illegal immigration and sex offenders. The Auditor General has been directed to conduct a performance audit of programs and funds administered by the Supreme Court. Illegal immigrants were denied driver license privileges and voters must present picture identification at the ballots to ensure voters are legal residents.

This year's session was contentious for some majority members who broke party ranks, and as a result had their bills held or committee seats terminated. For the defense community, however, liaisons were



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Volume 14 Issue 10

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formed with a variety of groups with similar interests and goals. This year’s passage of criminal bills reflects the efforts of these liaisons working with our office, the Arizona Attorneys for Criminal Justice, and the Arizona Public Defender Association. The relatively small number of criminal bills passed with significantly lower offense levels reflects the benefit of this approach.

Last, but not least, the legislature began to look at sentencing alternatives in light of the prison crisis in Arizona via a committee chaired by Representative Bill Konopnicki (R - Safford). The state’s prison crisis did not go unnoticed by the bi-partisan organization, Families Against Mandatory Minimums (FAMM), which released a detailed report on the prison crisis in Arizona as it relates to our sentencing scheme, including the impact on minority populations within the state. Although Representative Konopnicki’s sentencing bills were mostly unsuccessful, the process was hugely educational and offers some hope for future efforts addressing recidivism, the impact of convictions on defendants and their families, public safety and the state as a whole, including the budget. Some successes included: a pilot program for release into transitional programs for low level offenders, an Alcohol Detox Study Committee to review federal and state laws and identify potential treatment models, and a review of services currently provided within the state.

All of the special session and regular session bills as chaptered are available in electronic format on the MCPD webpage and on the

legislative track of the 2004 APDA Conference CD. As always, if you require assistance locating the new statutes, researching statutory changes or testimonial history, please do not hesitate to contact Kathleen Carey at (602) 506-3057.

The following are summaries of some of the noteworthy bills enacted during this last session:

TITLE 5 – AMUSEMENTS AND SPORTS

Section 5-395.03 – Test for alcohol concentration or drug content; refusal, civil penalty. Within ten days of a boating while intoxicated conviction, judgment or forfeiture of bail, the court is required to transmit an abstract of the case to the Dept. of Transportation. Adds assessments non-waivable assessments to OUI operators refusals for breath, blood or urine test similar to DUI convictions added during the special session to be credited to the prison construction and operations fund. (HB2184, Chapter 254)

TITLE 13 – CRIMINAL CODE

Section 13-119 – Sex offenders; identification; monitoring. The authority for DPS to charge sex offender monitoring fees is repealed. A new section is added that imposes a \$250 assessment on persons convicted of any offense for which the person would be required to register as a sex offender pursuant to A.R.S. 13-3821. Upon conviction of for any offense which requires registration, the court shall order an additional \$250 assessment to be paid. The assessment is not subject to surcharges and cannot be waived by the court. Upon the person’s initial registration and every year after, the person shall obtain a new nonoperating identification license or a driver’s license from MVD and shall carry one of the valid identification forms. The identification is valid for one year from issuance and must be updated with a proof of address and a new photograph to be made available to DPS or any law enforcement agency. Failure to comply with the registration requirements remains a

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# Impact of Community Notification Upon Sex Offender Re-Integration

A Criminal Defense Perspective on a Legislative Policy Issue

By Paul J. Prato, Chief Trial Deputy

## SEX OFFENDER HOUSING AS A PUBLIC POLICY ISSUE

A criminal justice policy issue that came to the forefront of the legislative agenda last session and is likely to be found on that agenda again in the next legislative session is the housing of registered sex offenders who are on probation or parole. The policy decisions that are made on this issue will significantly impact the ability of convicted sex offenders to re-integrate into the community as law-abiding citizens, who no longer pose a threat to public safety. To the extent that this policy negatively impacts on that ability the threat to the public safety will not decrease. Conversely, to the extent that this policy positively impacts on that ability the threat to public safety will decrease.

The number of released offenders is not an insignificant one. Today, there are over 265,000 convicted sex offenders under the jurisdiction of corrections agencies in the United States.<sup>1</sup> There are approximately 9,000 registered sex offenders in Arizona. They come from all walks of life, representing all socio-economic groups, and any race. They can be male or female, rich or poor, employed or unemployed, educated or uneducated.<sup>2</sup> The fact is that most convicted sex offenders will be released into the community at some point, either immediately following sentencing or after a period of incarceration in a jail or a prison. Some will be subject to community supervision by a probation officer or parole officer until they complete their probationary term or parole term.

In Arizona, a person convicted of any of a broad array of sexual offenses is required to register as a sex offender in the county in which he

or she resides.<sup>3</sup> In addition to registering as a sex offender, Arizona community notification laws require that the community in which the offender resides, or will reside, be notified of his or her presence in the community. Community notification laws are distinct from sex offender registration laws, which require convicted sex offenders to notify local police of their place of residence. Community notification laws require dissemination of identifying information about sex offenders released into the community to citizens and community organizations.<sup>4</sup>

The broadcasting of this information to the community has proved to have the unintended consequence of making it difficult, if not impossible, for offenders to find suitable places to live. When a core need, such as housing, is denied, the offender can be thrust into a survival mode that results in a preoccupation with coping instead of treatment or self-improvement. The result is that the offender's sense of security and self-confidence come under siege, increasing the likelihood of the offender returning to an antisocial lifestyle.<sup>5</sup> If a convicted sex offender returns to an antisocial lifestyle a public safety and public policy issue is created.

Modifying Arizona's broad community notification law to lessen its negative impact upon registered sex offender's ability to find suitable housing will help well-intentioned registered sex offenders accomplish their goal of successful reintegration into society. This article examines the existing law and its impact on sex offender housing and suggests alternative community notification models that may provide the desired result of assisting sex offenders in their reintegration efforts.

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## A LEGISLATIVE ROLE FOR THE CRIMINAL DEFENSE BAR

Traditionally, the criminal defense community has exerted its influence on criminal justice policy after the fact using the litigation tools provided by the federal and state constitutions, statutory law, and the rules of evidence in the adversarial courtroom setting. In this reactive role the criminal defense bar has made significant contributions to the development of the substantive and procedural criminal law and the constitutional protections afforded to all of us by both the federal and state constitutions. However, as the criminal justice policy issues become more complex it is imperative that the criminal defense community become more proactive and a part of the legislative process just as the prosecution community has become a part of the legislative process. The community is best served when legislative policy-making decisions are made after a full hearing of all possible solutions to an issue on its agenda. Absent the perspective that the criminal defense community brings to criminal justice policy issues such a hearing is impossible. The result is that well-intentioned public policy decisions impacting the criminal justice system are subsequently derailed by court decisions because of constitutional inadequacies that input from the criminal defense bar may have avoided without undermining the public policy goal.

To fulfill its responsibility in the legislative arena, the criminal defense bar must be alert to criminal justice policy issues that are currently on the legislative agenda or likely to be on the legislative agenda in the future. These issues should be identified and researched so when the opportunity arises the legislature will have the benefit of the criminal defense perspective. If the criminal defense bar earns the reputation for offering viable solutions to criminal justice issues at the legislative policymaking level, to accompany its reputation for protecting constitutional rights in the courtroom, it is more likely that it will be invited to the legislative table as an equal participant with other stakeholders.

In the legislative arena the primary tools are debate, negotiation and compromise. For this legislative process to result in the best possible criminal justice policy for a given issue at this time in our history, the debate, negotiation and compromise must occur in an environment of informed discussion with all stakeholders represented. All points of view must be respected which requires that criminal defense presence is not marked by an adversarial attitude. The criminal defense community's presence must be an informed one that addresses criminal justice policy issues from the global perspective of what is best for the community in general. At the policy making level, we must maintain a global perspective while maintaining at the litigation level our traditional role of zealously defending our constitutional guarantees one client at a time. These roles are not mutually exclusive.

The public policy issue represented by community notification laws and the re-integration of well-intentioned sex offenders into the community is one that the criminal defense bar can most effectively have a positive impact on at the legislative level and not the courtroom level.

## EXISTING COMMUNITY NOTIFICATION REQUIREMENTS

Arizona's community notification law requires criminal justice officials to actively and widely release sex offender information to the public. The probation agency or parole agency responsible for supervision of a convicted sex offender must provide the Arizona Department of Public Safety with the offender's identifying information, a risk assessment of the offender, and the offender's release date from confinement, or date of sentence if the offender is placed on probation without jail time.<sup>6</sup> The Department of Public Safety, in turn, is required to forward this information to the sheriff of the county where the offender is registered. The sheriff is required to forward this information to the chief law enforcement officer in the community where the offender resides, and that local law enforcement agency must

notify the community of the offender's presence in accordance with established community notification guidelines.<sup>7</sup>

No one method of notification is required by Arizona law so each local police department is free to decide how to make the required notification. In Mesa, Arizona, for example, the Mesa Police Department surveyed the community and found that door-to-door notification was the method preferred by residents. Five detectives are assigned to conduct this door-to-door notification. Community action grant officers and bicycle officers assist with this notification process as well as neighborhood block watch captains, volunteers, probation officers and treatment providers. If it is determined during the door-to-door process that a citizen has any intention to harm or harass an offender a Mesa Police Department detective visits the citizen and warns that vigilante activity will be prosecuted. Community meetings are also held at which law enforcement officers, probation officers, and treatment providers "educate the public and media about sexual assault statistics and facts and offer guidance on protection from sexual assault."<sup>8</sup>

Whatever method of notification is chosen by the local police department it must be consistent with community notification guidelines as set forth in A.R.S. § 13-3826. The community notification guidelines provide differing levels of notification depending on the risk level of a particular sex offender. Level three is the highest risk level and provides the most stringent notification requirements:

[T]he notification shall be made to the surrounding neighborhood, area schools, appropriate community groups and prospective employers. The notification shall include a flyer with a photograph and exact address of the offender as well as a summary of the offender's status and criminal background. A press release and a level three flyer shall be given to the local electronic and print media to enable information to be placed in a local publication.<sup>9</sup>

Risk level two, which is the next most serious risk level, provides for the following notification requirements:

[T]he notification may be made to the immediate neighbors, schools, appropriate community groups and prospective employers. The notification may include a flyer with a photograph and address or the general area where the offender will be residing as well as a brief general summary of the offender's status and criminal background.<sup>10</sup>

The lowest risk level is level one and it provides for the following notification requirements:

[T]he local law enforcement agency that is responsible for notification shall maintain information about the offender. The local law enforcement agency may disseminate this information to other law enforcement agencies and may give notification to the people with whom the offender resides.<sup>11</sup>

The Department of Public Safety must also maintain an internet sex offender web page to provide sex offender information to the general public.<sup>12</sup> The following information must appear on the web site for level two and level three sex offenders: the offender's name, address, and date of birth; a current photograph; the offense committed and the notification level. Also the offender's non-operating identification license or driver license photograph must be included on the web site.<sup>13</sup>

Community notification laws are the result of the public's fear of strangers lurking in the shadows or lying in wait to attack vulnerable women and children. New Jersey enacted a community notification law following the rape and murder of seven-year-old Megan Kanka by a twice-convicted child molester who lived on her block. Megan's parents believed that if they had known a pedophile lived nearby, this crime would never have happened. "Megan's death gave new momentum to the concept of community notification—that residents should be warned when a sex offender moves into their neighborhood."<sup>14</sup> Megan's Law, the

first amendment to the Jacob Wetterling Act (which required all states to establish stringent registration programs for sex offenders), “mandates all states to develop notification protocols that allow public access to information about sex offenders in the community.”<sup>15</sup>

While crimes such as Megan’s death tragically do occur, they do not represent the majority of sexual crimes committed in the United States. The Center for Sex Offender Management, a collaborative effort of the Office of Justice Programs, the National Institute of Corrections, and the State Justice Institute, reports:

Statistics indicate that the majority of women who have been raped know their assailant. A 1998 National Violence Against Women Survey revealed among those women who reported being raped, 76% were victimized by a current or former husband, live-in partner, or date (citation omitted). Also, a Bureau of Justice Statistics study found that nearly 9 out of 10 rape or sexual assault victimizations involved a single offender with whom the victim had a prior relationship as a family member, intimate, or acquaintance (citation omitted).

\* \* \* \*

Approximately 60% of boys and 80% of girls who are sexually victimized are abused by someone known to the child or the child’s family. (Citation omitted). Relatives, friends, baby-sitters, persons in positions of authority over the child, or persons who supervise children are more likely than strangers to commit a sexual assault.<sup>16</sup>

Nonetheless the myth persists that “[m]ost sexual assaults are committed by strangers.”<sup>17</sup>

Statistics aside, sensationalized sexual offense cases, such as Megan’s, understandably shock and anger society with a resultant public response that is often more emotional than logical. Many legislative actions regarding sex offenders, such as broad community notification laws, are the result an “emotional

public response to violent crime rather than from research showing that these laws would make any positive difference in correcting the problem and reducing crime.”<sup>18</sup> To date there is little, if any, published evidence that Megan’s law is having any impact on reducing child sexual abuse. A major limitation of community notification laws are that they focus on the relatively rare form of sexual assault where strangers victimize children, “when all available evidence shows that child sexual assault victims are most likely to be victimized by those they know and that the most frequent victims of sexual violence are young adult women.”<sup>19</sup>

Communities with notification laws can do little more to protect themselves than can uninformed communities:

If individuals fear abductions from playgrounds or attacks in parking lots, knowing the identity of a sex offender cannot help them to be more vigilant in watching their children or escorting their friends to their cars. Although avoiding a particular individual may create a sense of security, community notification laws do not protect residents from the unregistered or first-time offender. People must still be cautious in supervising and educating their children and in protecting themselves in public.<sup>20</sup>

The value of broad community notification laws as a crime prevention tool is problematic. What is not problematic is the negative impact these laws have on the well-intentioned registered sex offender’s ability to find suitable housing in the community. Notification laws awaken a community’s fear of sex offenders, transforming that fear from an abstract anxiety to an identifiable threat that focuses upon the fear that particular sex offender will attack again.<sup>21</sup> The laws have an unintended consequence of interfering with the offender’s ability to successfully reintegrate into society. Community notification has resulted in community pressure upon property managers, and even family members, resulting in their withdrawing support for the provision of housing.<sup>22</sup> “There have been instances of neighborhoods joining

together to keep registered offenders out of their community.”<sup>23</sup> This fear may be attributed in large part to the misconception that most sex offenders re-offend, when the research shows that “recidivism rates for sex offenders are lower than for the general criminal population.”<sup>24</sup> Misconceptions and myths about sexual offenders can only be corrected through community education at both the community level and the individual level.

A local example of the impact of fear generated by the knowledge that registered sex offenders are living in the community occurred in Phoenix when it was discovered that eighteen sex offenders were living at an apartment complex in north central Phoenix. The public outcry from the impacted neighborhood was loud and frightened:

I’m shocked that placement of these individuals could be in a highly residential area, said Mary Crozier, who has three small children. I understand everybody has rights, but we also need to protect the children of our neighborhood.

I think there are other areas of Phoenix where people on probation or parole could get on with their lives and not be a danger to us.

\* \* \* \*

I bought in this neighborhood for the school district, and now I worry about my kids playing in the front yard and walking down the street, Kathryn Johnson said. Are they safe?

\* \* \* \*

Still, Joe Ostroski, who has lived in the neighborhood three years, said sex offenders should be more evenly disbursed throughout the community. It’s ridiculous that they’re disbursed all in one location, Ostroski said.<sup>25</sup>

This emotional, but not to be unexpected, reaction to what has been described as “sex offender clusters”—sex offenders living together or in close proximity to each other—occurred

because of a misconception that in such an environment sex offenders are more likely to commit new offenses thereby posing an increased danger to the community.<sup>26</sup> The fact is that there is no data to support such a linkage.<sup>27</sup>

At a public meeting to discuss the “sex offender cluster” issue Mayor Gordon said: “We are here tonight because what’s happened here in this neighborhood and this community is unacceptable[.]”<sup>28</sup> Phoenix Police Chief Hurtt assured residents that “officers would step up patrols in the neighborhood and would review sex-offender notifications to make sure everybody was notified who should have been.”<sup>29</sup> Chief Hurtt continued, “We are here to serve you and to make sure you, your children, your families, your businesses, your places of worship are safe[.]”<sup>30</sup> This official hysteria in reaction to the neighborhood hysteria occurred despite assurances from Maricopa County Adult Probation Officer Marty Soto “that `sex offenders have a `short leash` and are required to participate in treatment and undergo annual polygraph tests.”<sup>31</sup>

Mayor Gordon followed-up with his “Six Point Action Plan to Stop Sex Offender Clusters.”<sup>32</sup> The mayor has a plan to cure a social problem for which no empirical evidence exists to support the conclusion that there is a problem. Phoenix City Councilman Claude Mattox offered his thoughts: “I don’t think until recently we realized how many sex offenders there actually are out there,’ . . . I think we’ve either lived denying it or just not recognizing the severity of the situation.”<sup>33</sup> Council Greg Stanton: “We’re not trying to deny any individual a place to live,’ . . . [b]ut . . . it is unfair that any one particular neighborhood should have to deal with kind of `hyper clustering.”<sup>34</sup>

Next to address the “problem” was the Arizona Legislature. A bill was introduced in the Senate requiring “courts to order sex offenders, as a condition of their probation, to not reside in a residential structure in which three or more sex offenders on probation reside or in a residential structure that is within 1,320 feet of another residential structure in which another

sex offender on probation resides.”<sup>35</sup> Another bill proposed expanding “the definition of slum property to include residential rental property with more than three persons posted on the DPS sex offender website and prescribes a civil penalty for landlords with property classified as slum property under the new definition.”<sup>36</sup> State Representative John Nelson accurately noted the dilemma the “sex offender cluster” issue presents: “This is a tough issue because there are those that want to see clusters because they are easier to control, . . . And there are those who don’t want clusters because it creates too much of a problem for neighborhoods.”<sup>37</sup>

This outcry from the general public, city leaders, and state legislators occurred because one landlord rented to eighteen convicted and registered sex offenders, fifteen of who were under the close supervision of probation officers.<sup>38</sup> These known offenders had not committed any new offenses that arguably could be used to justify the community reaction. Their only “offense” was living in the same apartment complex. A similar issue arose in Washington when it was discovered that fifty of fifty-five units of an apartment complex, located in a run-down, sparsely residential area in downtown Spokane, “housed serial rapists, pedophiles, child molesters and other convicted sex offenders released from prison.”<sup>39</sup> The owner of the apartment complex acknowledged the “sick stuff” these people had done, but defended her actions stating that she was “actually making the community safer by finding them a place to live while making it easier for police and others to keep an eye on them.”<sup>40</sup> Washington correction officials agreed with the owners reasoning noting that “[r]esearch demonstrates that sex offenders are safer when you house them together[.]”<sup>41</sup>

## ALTERNATIVE SOLUTIONS COMPARED

Community notification laws are a part of our legal landscape and they are here to stay despite the absence of empirical evidence that they effectively serve to prevent new crimes by

known sex offenders. The problem facing policy makers is to devise a community notification process that provides, to a reasonable degree, information to the affected community on a registered sex offender without unduly invading the privacy interests of the registered sex offender’s attempt to reintegrate into the community. An essential component of successful reintegration is the ability to find a suitable place to live within the community. A successful community notification law does not unduly interfere with the offenders’ ability to find suitable housing in the community.

This article presents three alternatives that incorporate the basic principles of broad community notification present under current Arizona law:

*Alternative One: Maintain the status quo.* Aggressive, broad based notification to all members of the community in which the offender resides without consideration of the negative impact that notification has upon the offender’s ability to find suitable housing.

*Alternative Two: Limited Citizen Internet Access and Required Notification of Parole or Probations Officers.* Citizens are granted access to online sex offender information on a need to know basis. Parole and probations officers with knowledge of the offenders’ offense patterns conduct all community notification, at the local level.

*Alternative Three: Community Notification used as Sex Offender Management Tool.* Broad community notification is not made unless the offender fails to comply with the terms of release imposed as a condition of parole or probation.

## SELECTION CRITERIA

A successful legislative solution to the sex offender-housing problem created by community notification laws must satisfy the following criteria:

\* Consistent with Arizona’s expressed public

policy favoring a broad notification model.

\* Consistent with the goal of reintegrating well-intentioned offenders into the community.

\* Educates the community as to the myths and facts about sex offenders that citizens need to know in order to protect themselves, and their families while unduly impeding upon the offenders' efforts at successful reintegration.

\* Aids parole and probation agency with sex offender management.

\* Ameliorate the sex offender community-housing problem.

## OUTCOME PROJECTIONS AND TRADEOFFS

### *Alternative One: Maintain the Status Quo.*

Arizona's current community notification law provides for very broad and extensive notification requirements that are triggered automatically upon an offenders locating in a community. It also provides for general education to the community through online resources and local police notification procedures. Because the officer making the notification is not required to have specific information on the offending patterns and behavior patterns of the offenders, the local community is deprived valuable pieces of information.

The benefit of Arizona's broad notification approach is that vulnerable populations, or their caregivers, are almost assuredly put on notice that a known sex offender is residing in the locality. More problematic is whether this knowledge, unaccompanied by education for its use, makes the community a safer place to live. For example, if the offender's prior victim was a child to whom the offender was a stranger, then making notification to child-care facilities, schools, and parents may help prevent future child victims. On the other hand, if the offender's victim was a relative then community notification is unlikely to serve a general public

safety purpose.

Community notification information has the potential to create a false sense of security in the community. "[C]ommunity notifications can create a false sense of security in communities by leading residents to conclude that now that they know about the SOs [sex offenders] in their midst, they no longer have to worry about the problem."<sup>42</sup> Since most sex offenders have not been identified, and since most are not strangers to their victim, people must remain vigilant, resisting the temptation to merely focus their attention on the known sex offender. The known sex offender in the community is less likely to represent a threat because of the close supervision he or she is under, than the unknown sex offender.

Another downside for society-at-large is the community fear engendered by broad community notification laws impedes the ability of well-intentioned offenders to obtain suitable housing that can serve as a base from which they can work to reintegrate into society. A sex offender forced to live on the streets is much harder to keep track of; is more likely to give up on treatment programs; and is less likely to adhere to other release terms. The offender who feels boxed in a hopeless situation is more likely to re-offend. Even if the offender does not re-offend, feelings of hopelessness may lead to a revocation of his or her release and a return to incarceration. Either outcome results in a "lose-lose" scenario for both the offender and society-at-large.

Set forth below are the grades for the Maintaining the Status Quo Model, applying the identified selection criteria:

### *Alternative Two: Limited Citizen Internet Access to Sex Offender Information/Community Notification by Parole or Probation Officers.*

Under Arizona's current community notification law anyone with access to the Internet can "surf" the Arizona Department of Public Safety's "Sex Offender InfoCenter" for information about registered sex offenders living anywhere in

the state. A danger inherent in this method of notification is that citizens do not receive the professional support or education necessary to enable them to make proper use of this information. Citizens are better served by notification if they are educated as to the risk of re-offending posed by different types of offenders and how they can act to better protect themselves and their families. The use of websites creates a risk of outdated or incorrect information subjecting innocent citizens to stigma or harassment.<sup>43</sup>

The above described dangers can be minimized if internet access is modified to reflect an “at risk” model of notification. Under this model, internet access would be limited to very specific inquiries about a person living at a specific address, using a specific birth date, or other highly specific identification information. As a pre-requisite to

access, the person seeking to make an inquiry would have to establish that a reasonable suspicion exists and that a specific individual poses a risk to a vulnerable person or persons. This type of access might be modeled after the telephone request model used in California. In California, people can call a “900” number to request information about a specific person, but the caller must show that he or she has a reasonable suspicion that a child is at risk. The caller must also provide very specific identifying information before the caller is given information about the registered sex offender.<sup>44</sup> The caller can be given an orientation over the telephone that covers the information necessary for the caller to make effective use of the sex offender information on the website. The orientation information can also be mailed to the caller.

In addition, the current law should be amended

CRITERIA	GRADE	NOTES
Consistent with existing broad notification public policy.	A	Broad dissemination insures that parents and caregivers for children will receive notification of offenders’ presence in the community.
Consistent with reintegration goal for well-intentioned offenders.	D	Unintended consequence of making it difficult, if not impossible, for the offender to find suitable house runs counter to the reintegration goal.
Community education regarding myths and facts about sex offenders.	B	Online information while helpful is general and does not permit for specific questions by citizens. Use of police officers or other not familiar with the specific behavior patterns of the offenders deprives community of necessary information.

to require that a parole or probation officer from the responsible supervising agency make community notification, both general and face-to-face, about the offender or offenders living in the community. These officers can provide information to the community about sexual offenders in general, the sex offending behavior of the identified offenders, and what steps the community members can take to best protect themselves. These officers would also serve as a community resource. The officers should be given the discretion to tailor the notification to fit the specific offender's offending patterns.<sup>45</sup>

The officers are in the best position to provide the community information pertaining to the supervision procedures used for sex offenders that are living in the community. For example, the community in which a sex offender, who is under the supervision of the Maricopa County Adult Probation Department, resides, would probably be comforted knowing the following:

In Maricopa County, Arizona, the Adult Probation Department has teamed probation officers with SO [sex offender] surveillance officers. The surveillance officers work full-time in the community and are assigned flexible and rotating shifts, allowing officers to be in the community seven days a week and 24 hours a day. Surveillance officers monitor SOs' whereabouts and activities in the community; verify addresses; assure that residences are in compliance with program standards and regulations; and communicate often with probation and parole officers and treatment providers. They have access to considerable technology to maintain close contact with their colleagues and the department's dispatcher, and to assure their own safety while in the field.<sup>46</sup>

This model, in addition to reassuring the community that the offender is on a "short-leash", also provides the community with a name, and a face to go with that name, who members can contact with specific questions or with information about the behavior of a specific individual offender.

The above chart includes the grades for the Limited Internet Access/Parole or Probation Officer Notification Model, applying the identified selection criteria:

*Alternative Three: Community Notification as Parole and Probation Agency Management Tool.* Under this model, broad community notification is triggered only by the offender's non-compliance with supervision conditions, registration requirements, or if the offender absconds from the jurisdiction. This includes opening access to sex offender information that is maintained by the Arizona Department of Public Safety in the online database. Under this model a need-to-know bases is presumed. This approach serves two purposes: it informs the community of dangerous behavior by particular offenders, and it helps keep sex offenders in compliance through the threat of public exposure.<sup>47</sup> A study conducted by the American Probation and Parole Association concluded that:

The *threat* of community disclosure is the greatest contribution of notification as a tool for managing sex offenders in the community. That is, an immense value of the law is that the *threat* of notification can act as a catalyst for sex offenders to participate actively in treatment, remain employed, and comply with special conditions of their community placement. Notification becomes one more tool, along with curfews, the polygraph, and special restrictions, to manage sex offenders in community settings."<sup>48</sup>

This model provides the community with the specific information when that information is needed most. It identifies offenders who are likely to pose a risk to the community so that the community can protect itself.

This model protects the privacy of the well-intentioned offender, who is in compliance with release requirements. This earned right of privacy permits the parole or probation compliant offender to live a life in the community free from the stigma of the sex offender label.

CRITERIA		NOTES
Consistent with existing broad notification public policy.	A	Broad dissemination of information is the same the status quo model.
Consistent with reintegration goal for well-intentioned offenders.	B	Parole and probation officers may be ameliorate the unintended consequences on sex offender housing by providing individualized information about the specific offenders. Still a problem, but not as great.
Community education regarding myths and facts about sex offenders.	B	Limiting online access on a need-to-know basis helps protect the privacy of sex offenders necessary for reintegration. Also telephone information about the use of that information, while not as effective as face-to-face communication, is better than no opportunity to the caller to ask specific questions.

This offender is more likely to find suitable housing that will provide the offender with a stable environment in which to continue treatment and progress toward reintegration. This model also removes the dangers inherent in the false sense of security often fostered by community notification laws.

Set forth below are the grades for the Community Notification Sex Offender Management Tool Model, applying the identified selection criteria:

## CONCLUSION

A successful public policy for addressing the reintegration of a convicted sex offender into community life, while maintaining a high degree of public safety, can best be achieved by amending existing community notification law to provide for community notification as parole and probation management tool. This model balances the community public safety

interests with the offender's right to live in an environment free of hostility; an environment in which the offender is able to find suitable housing unhampered by his or her status as a sex offender. This model fosters an environment that encourages the well-intentioned offenders' reintegration efforts while addressing the communities need to be protected from the non-compliant offender, who actually poses a danger to the community.

The issue of successful re-integration of convicted sex offenders into society is one that we can all embrace—prosecutors and defense attorneys alike—because it enhances public safety. The prosecution is quick to present suggested solutions to the legislature from its perspective, it is now incumbent on the defense bar to present suggested solutions from its perspective. We cannot complain of a legislative policy decision on this issue if we collectively fail to give the legislature the benefit of our experience and knowledge on such issues.

ENDNOTES

<sup>1</sup> Center for Sex Offenders Management. An Overview of Sex Offender Management (July, 2002), p. 1, downloaded at <http://www.csom.org>.  
<sup>2</sup> Arizona’s Sex Offender InfoCenter. Sex Offender Facts and Characteristics. Downloaded at [www.azsexoffender.org/sexoffenderfacts.html](http://www.azsexoffender.org/sexoffenderfacts.html).  
<sup>3</sup> A.R.S. § 13-3821(A).  
<sup>4</sup> Center for Sex Offender Management. Community Notification and Education (April 2001).  
<sup>5</sup> Minnesota Department of Corrections. Safe Homes, Safe Communities, p. 3 (March 2001). Downloaded at [www.doc.state.mn.us](http://www.doc.state.mn.us).

<sup>6</sup> A.R.S. § 13-3825(A).  
<sup>7</sup> A.R.S. § 13-3825(B)(C).  
<sup>8</sup> Center for Sex Offender Management. Community Notification and Education, p. 12 (April 2001). Downloaded at [www.csom.org](http://www.csom.org). (hereinafter referred to as CSOM Notification).  
<sup>9</sup> A.R.S. § 13-3826(E)(1).  
<sup>10</sup> A.R.S. § 13-3826(E)(2).  
<sup>11</sup> A.R.S. § 13-3826(E)(3).  
<sup>12</sup> See [www.azsexoffender.org](http://www.azsexoffender.org).  
<sup>13</sup> A.R.S. § 13-3827(B)(D).  
<sup>14</sup> CSOM Notification, *ibid.*, p. 3. Downloaded at Resources at [www.atsa.com/researchComp.html](http://www.atsa.com/researchComp.html).  
<sup>15</sup> Lane Council of Governments. Managing Sex Offenders in the Community: A National Overview, p.

CRITERIA	GRADE	NOTES
Consistent with existing broad notification public policy.	A	"Using broad notification procedures only upon the occurrence of a triggering event better serves the public safety goals of notification and the spirit of notification laws. The rifle-like approach of this model, as opposed to the shotgun approach of the status quo model, is more likely to protect the community while protect the privacy of deserving offenders."
Consistent with reintegration goal for well-intentioned offenders.	A	By protect the privacy of the deserving offender successful reintegration is aided by the offender’s increased ability to find suitable housing.
Community education regarding myths and facts about sex offenders.	A	"Limiting general community notification and online information to offenders in a non-compliance status permits the community to focus on offenders who may actually pose a threat to the community, and it permits parole and probation agency officer to provide relevant educational information to the community."

12 (2003).

<sup>16</sup> Center for Sex Offender Management. Myths and Facts About Sex Offenders (August 2000) Downloaded [www.csom.org](http://www.csom.org), hereinafter referred to as CSOM Myths.

<sup>17</sup> CSOM Myths, *ibid.*

<sup>18</sup> Lane, *ibid.*, at p. 11.

<sup>19</sup> Lane, *ibid.*, at pp. 14-15.

<sup>20</sup> Abril R. Bedarf. Examining Sex Offender Community Notification Laws. 83 Cal. L. Rev. 885, 907 (1995).

<sup>21</sup> *Ibid.*, at 907.

<sup>22</sup> Minnesota Department of Corrections, *ibid.*, p. 3.

<sup>23</sup> CSOM, Community Notification, *ibid.*, p. 23.

<sup>24</sup> CSOM Myths, *ibid.*, p. 3.

<sup>25</sup> Judi Villa. Bill intends to eliminate clusters of sex offenders. The Arizona Republic (January 14, 2004). Downloaded February 16, 2004 at [www.azcentral.com](http://www.azcentral.com).

<sup>26</sup> *Ibid.*

<sup>27</sup> Information provided by Maricopa County Adult Probation Officer Rebecca Loftus, March 17, 2004.

<sup>28</sup> Villa, *ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> City of Phoenix. Mayor Gordon's Six Point Action Plan to Stop Sex Offender Clusters. (Downloaded February 15, 2004 at <http://phoenix.gov/MAYOR/crimpln.html>).

<sup>33</sup> Ginger D. Richardson. Sex offender clusters targeted. The Arizona Republic (February 13, 2004). Downloaded February 16, 2004 at [www.azcentral.com](http://www.azcentral.com).

<sup>34</sup> *Ibid.*

<sup>35</sup> Arizona State Legislature. Senate Fact Sheet for S.B. 1307, downloaded at <http://www.azleg.state.az.us>.

<sup>36</sup> Arizona State Legislature. House of Representatives Fact Sheet for HB 2418, *ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Villa, *ibid.*

<sup>39</sup> Ruben Rosario. Biting bullet on housing sex offenders. Pioneer Press, downloaded at [www.twincities.com](http://www.twincities.com). February 16, 2004.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Lane, *ibid.*, at 13.

<sup>43</sup> CSOM, Community Notification, *ibid.* at 15.

<sup>44</sup> Bedarf, *ibid.*, at 905.

<sup>45</sup> Lane, *ibid.* at 10-11.

<sup>46</sup> *Ibid.* at 7.

<sup>47</sup> CMOS, Community Notification, *ibid.*, at 16.

<sup>48</sup> Lane, *ibid.*, at 13.

*Continued on p.19*

Maricopa County  
2004 Combined Charitable Campaign

# A-Day-At-The-Races

October 20, 2004

Races begin at either 10:30a.m. or 12:30p.m.

MCPD Luhrs Building, Training Room



Don't miss the fun!

*Continued from Legislative Update, p.2*

class 4 felony with a failure to comply with the new identification card requirements a class one misdemeanor with a mandatory additional \$250 assessment to any other fines or penalties. (HB2452, Chapter 142)

Section 13-1707. Unlawful cross burning; classification. Creates a crime for cross or symbol burning as a class one misdemeanor if done with the intent to intimidate on another's property or on a highway of public place without permission. Intent must be proven by evidence independent of the act of burning the cross or symbol.

Section 13-1802 – Theft; classification. Amends theft classification to include the crime of dog theft as a class 6 felony if the dog is stolen for the purpose of dog fighting in violation of A.R.S. 13-2910.01. Theft of any other property valued at less than \$250, including a dog stolen for any purpose other than dog fighting is still a class one misdemeanor. (HB2572, Chapter 181)

Section 13-2411 – Impersonating a peace officer; classification; definition. Adds a new section and criminalizing impersonating a police officer to a class 6 felony. A person commits the offense if, without lawful authority, pretends to be a peace officer and engages in any conduct with the intent to induce another to submit to the person's pretend authority or to rely on the person's pretended acts. It is not a defense if the agency the person pretended to represent does not in fact exist, or the law enforcement agency the person pretended to represent did not in fact possess the authority claimed for it. The offense was also added as an aggravating factor for purposes of sentencing under A.R.S. Section 13-710 and 13-702(A). (SB1127, Chapter 174)

Section 13-2317 – Money laundering; classifications; definitions. Expands the definition of racketeering to allow the Attorney General to pursue actions against individuals who acquire more than \$5,000 in a one month period for conduct in violation of the federal

Immigration and Nationality Act. (HB2091, Chapter 291)

Section 13-3101 – Definitions; prohibited possessor of weapons. Definition of prohibited possessor is expanded to include anyone who is a prohibited possessor under federal law (U.S.C. 922(g)(5), including any illegal immigrant who is illegally or unlawfully in the United States or who has been admitted to the U.S. under a non-immigrant visa. Some exemptions for those admitted under a non-immigrant visa include those admitted to the U.S. for the purpose of hunting with a valid hunting license, State Department designated foreign government representatives and competitive sporting participants. (SB1345, Chapter 134)

Section 13-3601 – Domestic Violence, definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report. Eliminates the 13-3601(m) diversion authority by courts after conviction. The bill sponsor's intent was to eliminate diversion for offenders after proceeding to trial. The testimony of the committee hearings and summaries indicate the intent was not meant to eliminate all diversion (i.e., pretrial diversion), however, existing statutes do not provide for diversion by county or state agencies. (HB2209, Chapter 52)

Note: Additional changes to A.R.S. 23-621 provide for receipt of unemployment benefits by a person who separated from employment is a victim of domestic violence and as a result of a documented case of domestic violence.

Section 13-3609 – Child Bigamy; classifications; definitions. A new section is added for the crime of child bigamy as a class 3 felony. An adult commits child bigamy by either having a spouse and marrying a child, marrying a child who already has a spouse, or facilitating the marriage between an adult and a child if either the adult or the child are already married. Excludes individuals that marry a child if that person's spouse has been absent for five successive years without knowledge of the missing spouse to be living or if the former marriage has

been pronounced void, annulled or dissolved. Definition of child is a person under the age of 18 pursuant to A.R.S. 1-215. (SB1335, Chapter 187)

Section 13-3723 – Obtaining utility service fraudulently; classification; definitions. Adds a new class 6 felony for the crime of obtaining utilities fraudulently. Five acts are specified in the statute (1) making or reconnecting to provide service without authorization; (2) preventing meters from measuring services; (3) tampering with utility provider property; (4) using, receiving or diverting services without authorization; and (5) diverting service by any means. (HB2217, Chapter 207).

Section 13-3825 – Community Notification. Community notification requirements are now required for sex offenders convicted prior to June 1, 1996 (i.e., pre-Megan’s law) retroactively in light of USSC opinion the notification requirements are not a violation of ex post facto clause of the Constitution in *Smith v. Doe 538 U.S. 84 (2003)*. (See 13-3826 for expanded Guideline Committee functions). (SB1291, Chapter 308)

Section 13-3826 – Community notifications guidelines committee; members; powers, duties; definitions. Modifies community notification requirements as applicable for level two sex offenders to the same requirements as level three sex offenders. Modifies committee membership to include a committee representative as recommended by the Arizona Public Defender Association (APDA). Charges committee with new functions for recommending changes to statutes, rules and procedures for the purpose of improving statewide application of community notification with recommendations to be reported to the Governor and Legislature December 15, 2004. (HB2602, Chapter 272).

Section 13-4438 – Victim Rights statement. A new section is added requiring judges of the superior court to read a victim rights statement at the beginning of the regular criminal docket on a daily basis.

## TITLE 31 – PRISONS AND PRISONERS

Section 31-402 – Powers of board; powers and duties of governor; powers and duties of executive director. Establishes a Community Accountability Program to reduce recidivism for non-violent offenders on community supervision or eligible for community supervision. Also amends 31-411 to allow the Board to place offenders on electronic monitoring devices and participating in the CAP only if the offender has violated a conditions without committing any new crimes (i.e., technical violations). (HB2646, Chapter 204)

## TITLE 28 – TRANSPORTATION

Section 28-1303 – Oversight council on driving or operating under the influence abatement. Re-enacts the previously lapsed DUI Abatement Council, changes membership and modifies some functions and/or purposes of the Council. An effort to provide for part of the administration costs of the Council to pay for the costs of publishing pictures and names of individuals convicted of DUI’s was unsuccessful. The Council now shares some resources of the Arizona Criminal Justice Commission. And to enter into interagency agreement with other agencies. Also requires some reporting of the Council’s activities to the legislature and quarterly reporting of grant recipients to the Council. (HB2184, Chapter 254)

Section 28-1381 – Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification. Ignition interlock device requirements are clarified as to when the device must be installed and provides for continued or renewed suspension of driving privileges for failure to comply with the IID requirements. (HB2628, Chapter 97)

Section 28-649 and 28- 672 – Interference with official traffic control and Accidents and moving violations; serious physical injury, death; penalties. Possession of a traffic preemption emitter capable of changing traffic controls is now a class one misdemeanor. Three civil traffic

violations were added which subjects individuals to a \$500 fine if the violation causes serious physical injury or a mandatory \$1,000 fine if the violation causes death. 28-792 – Failure to yield the right-of-way at a crosswalk; 28-794 – Failure to exercise due care to avoid a collision; and 28-797 (E) or (G) Speeding in a school crosswalk zone or failing to stop for children in a school crosswalk zone.

## TITLE 39 – PUBLIC RECORDS, PRINTING AND NOTICE

### Section 39-121 – Definitions, maintenance of record, copies, printouts or photographs of public records; examination by mail; index.

Public agencies, upon request, are now required to provide an index of records that have been withheld from a public records request. Some exemptions as to release of indexes and/or agencies including the MVD, DPS, Dept. of Juvenile Corrections and DOC. (SB1269, Chapter 158)

Section 39-123 – Information identifying a police officer, justice, judge, public defender; or prosecutor; confidentiality. Provides for protections of peace officer's personnel file photographs from disclosure with some exceptions including, when the officer is charged with a complaint, information or indictment (misdemeanor or felony), to assist a person in identifying an officer for the purpose of complaints; some newspaper request restrictions for officers in undercover capacity or scheduled for undercover operations within 60 days of the request. Unauthorized release of the photograph along with other confidential information in the section is a class 6 felony.

## TITLE 42 – TAXATION

Section 42-301 through 42-3230. Distribution of Tobacco Products. Establishes several requirements for delivery and sales of tobacco including age verification, shipping, registration and reporting requirements with taxes imposed on sales. Violations by adults are a class 5 felony with violations by minors of this title guilty of a petty offense.

(SB1353, Chapter 311).

## TITLE 25 – MARITAL AND DOMESTIC RELATIONS

[Provided in light of Collateral Consequences for Criminal convictions of parents seeking custody or other remedies in family courts.]

Section 25-318, 25-323, 25-403 and 25-406 – Dissolution of marriage; misconduct. The court may now consider criminal convictions of a spouse when the victim is the other spouse and/or child in determining dissolution of marriage and maintenance orders. The Court must also make a specific finding that there is no significant risk before granting a person sole or joint custody or visitation time with a child to a registered sex offender or a parent convicted of killing the child's parent. However, the statute does allow the court to take into consideration testimony or evidence the parent was the victim of domestic violence by the murdered parent. Additional members added to the Domestic Relations Committee and requirements of the Committee to develop minimum training standards for individuals conducting court ordered investigations regarding custody. (HB2348, Chapter 320)

Section 42-1122 – Setoff for debts to state agencies and courts; revolving funds; definitions. Directs the Department of Revenue to provide the court with home address and taxpayer identification numbers used by individuals on probation and on absconder status regardless of whether or not the individual is subject to a refund. The intent is to provide the probation department with additional resources to locate probationers on absconder status. (HB2225, Chapter 161)

*Continued from Impact of Community Notification, p. 14*



# Writers' Corner

## Client

*Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including A Dictionary of Modern Legal Usage, The Winning Brief, A Dictionary of Modern American Usage, and Legal Writing in Plain English. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at [www.us.oup.com/us/apps/totd/usage](http://www.us.oup.com/us/apps/totd/usage). Garner's Modern American Usage can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.*

Part A: And “customer.”

By definition, a “client” is one who engages the services of a professional, whereas a “customer” gives custom or trade to a business, often on a regular basis. An accountant or a lawyer has “clients”; a grocery store or telephone company has “customers.”

Yet the line of demarcation between these two words has shifted considerably in recent years. By the 1980s, Massachusetts bureaucrats had begun calling welfare recipients their “clients.” By the 1990s, things had gotten worse. For example, the Sunday Times writes of two prostitutes: “Both women took clients to their flats.” John Davison & Michael Durham, “Prostitutes Go in Fear of London ‘Ripper,’” Sunday Times (London), 18 Aug. 1991, Sec. 1, at 5.

The bad trend continues — e.g.: “Yesterday’s manslaughter conviction marks the first time in Norfolk County history that a drug dealer has been held accountable for contributing to a client’s [read customer’s] death.” Dave Wedge, “Man Jailed for Supplying Fatal Drug Dose,” Boston Herald, 28 June 2002, News Section, at 28.

Part B: Plural Form: “clients”; “clientele”; “clientage”; “clientelage”; “clientry.”

“Clients” is the best choice because it is the least pretentious and most common. “Clientele” has degenerated somewhat in meaning, having been widely used in nonprofessional contexts — e.g.: “Ella B. Sunshine operated a thriving business as a custom dressmaker for an exclusive clientele in Greater Cleveland for 25 years.” “Ella B. Sunshine, 99, Custom Dressmaker,” Plain Dealer (Cleveland), 27 Jan. 1995, at B11. Indeed, the profession to which “clientele” is perhaps most often used today is the oldest one — e.g.: “Police said the alleged sex-for-sale operation used Asian prostitutes and served an exclusively Asian clientele.” Peyton Whitely, “Global Links Sought in Alleged Sex Ring,” Seattle Times, 1 Feb. 1995, at B3.

“Clientage,” “clientelage,” and “clientry” are needless variants of “clientele.”

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Drawn from Garner’s Modern American Usage (0-19-516191-2, Oxford University Press, Fall 2003)

# Jury and Bench Trial Results

## August 2004

Due to conversion problems, the Trial Results for this issue are not included in this electronic version. If you would like to view the Trial Results for this issue or for The Defense, please contact the Public Defender Training Division.

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# Death Penalty Seminar



December 2-3, 2004  
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More details coming soon...

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## *for The Defense*

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