

## METHAMPHETAMINE OFFENDER REGISTRIES: ARE THE RIGHTS OF NON-DANGEROUS OFFENDERS COOKED?

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### I. INTRODUCTION

Patrick never imagined he would be a recovering drug addict and convicted felon. Five years ago, he had a promising career as an accountant. Recently married, he eagerly anticipated starting a family. Patrick's future seemed bright. During a weekly poker game, Patrick's friends convinced him to try methamphetamine (meth). After reluctantly snorting a line of meth, he quickly experienced an intense, euphoric rush. Within a month, Patrick snorted meth a few times a week. When snorting no longer provided the high he craved, Patrick began smoking meth. When that rush wore off, he injected it. Patrick's weight dropped dramatically. He appeared to age years within a matter of months. Hyperactivity, anxiety, insomnia, and hallucinations soon followed. He became violent, striking his wife on numerous occasions. Patrick's employer fired him due to his erratic behavior and poor job performance. Patrick eventually abandoned his wife and moved into a fellow meth user's apartment. They constructed a laboratory in their bathroom to produce and sell their own meth. During a routine maintenance check, Patrick's landlord discovered the laboratory and reported Patrick's suspicious activity to the police.

Convicted of manufacturing and selling meth, Patrick served four years in prison and received three years probation. During incarceration, he entered rehabilitation and is now drug-free. He continues to seek treatment to avoid relapse and is ready to start his life over. He lives with his parents but is looking for a job and an apartment.

Patrick lives in a state that has witnessed a dramatic increase in meth use and production. Law enforcement, health care providers, social workers, and politicians have struggled to address this problem. Patrick's state has enacted legislation to reduce meth production and has pumped millions of dollars into

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law enforcement and public awareness campaigns. Patrick's state recently passed legislation creating an online meth offender registry. This registry will provide information about individuals convicted of meth-related crimes. Proponents of this registry believe it will provide the public with a useful tool to identify potentially dangerous offenders.

Patrick has applied for several jobs and has completed a rental application. His potential employers and landlord, aware of the significant meth problem in their state, intend to use the state's new online meth offender registry when making employment and housing decisions. Patrick has explained his criminal history and successful rehabilitation to his potential employers and landlord. He fears that his inclusion on the registry will nonetheless prevent him from obtaining a job and an apartment.

Meth is a dangerous drug that poses a significant challenge to legislators, social service providers, health care professionals, and the criminal justice system. In states with legitimate meth crises, registries create a unique opportunity for employers, landlords, and the general public to protect themselves against the dangerous effects of meth use and production. This legislation, however, significantly impacts the lives of offenders and must include provisions allowing non-dangerous individuals like Patrick the opportunity to avoid the stigma that follows registration.

Part II of this article provides background information about meth use and production, highlights the current debate concerning whether meth has created an epidemic in this country, and introduces recent meth offender registry legislation. Part III illustrates why meth offender registries present ex post facto concerns and their effect on registrants' employment, privacy rights, and housing opportunities. Part III explores the legal rights available to registrants negatively impacted by registries. Part IV examines why offenders likely have no procedural due process right to avoid registration with current meth offender registries. Part IV also identifies sex offender registry legislation that appropriately provides non-dangerous offenders with opportunities to avoid registration. Finally, Part V proposes that states implement similar measures to create accurate meth offender registries that allow non-dangerous meth offenders an opportunity to avoid registration.

## II. BACKGROUND

### A. *What is Methamphetamine?*

Methamphetamine, commonly known as "speed," "meth," or "crystal," is a highly addictive stimulant, available in many forms, that can be snorted, swallowed, injected, or smoked.<sup>1</sup> Like cocaine, meth releases dopamine, a neurotransmitter that produces the pleasurable "rush" associated with meth

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1. NAT'L INST. ON DRUG ABUSE, NIH PUBL'N NO. 06-4210, RESEARCH REPORT SERIES: METHAMPHETAMINE ABUSE AND ADDICTION 1, 3 (Sept. 2006) [hereinafter NIDA].

abuse.<sup>2</sup> Meth differs from other stimulants because the human body metabolizes it more slowly.<sup>3</sup> This slowed metabolism creates a longer period of stimulation followed by more devastating “crashes.”<sup>4</sup> This dangerous cycle of “rushes” and “crashes” leads to increased meth abuse.<sup>5</sup> Meth abuse creates significant physical problems, including rapid heart rate, irregular heartbeat, strokes, increased blood pressure, skin abscesses, and irreversible brain damage.<sup>6</sup> Abusers demonstrate violent behavior, paranoia, anxiety, confusion, depression, hallucinations, and insomnia.<sup>7</sup> These psychotic symptoms can persist months or even years after meth abuse ends.<sup>8</sup> Meth abuse during pregnancy may result in complications, including premature delivery and potential developmental problems for the child.<sup>9</sup> Meth abuse is highly linked with HIV, hepatitis C, and other sexually transmitted diseases.<sup>10</sup>

### **B. How is Methamphetamine Produced?**

Producers “cook” meth using common household items and easily obtained chemicals, including over-the-counter cold medications.<sup>11</sup> Producers manufacture meth in clandestine laboratories ranging in size from “super labs,” which produce ten pounds or more of the drug per production cycle, to small “box labs” that produce as little as an ounce of the drug.<sup>12</sup> Law enforcement officers have seized meth labs in isolated rural locations, commercial areas, private residences, motels, boats, automobiles, and even in luggage.<sup>13</sup> Signs of residential meth labs include unusual odors, excessive trash, obscured windows, evidence of chemical waste or dumping, frequent visitors at unusual times, excessive security measures, and secretive or unfriendly occupants.<sup>14</sup>

Meth production involves the use of highly volatile chemicals that can

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2. *Meth Treatment Programs: Hearing Before the Subcomm. on Criminal Justice, Drug Policy, and Human Res. of the H. Comm. on Gov't Reform*, 109th Cong. (2006), available at 2006 WLNR 11343267 [hereinafter Volkow] (statement of Nora D. Volkow, M.D., Dir., Nat'l Inst. on Drug Abuse).

3. NIDA, *supra* note 1, at 4. Smoking meth produces an eight to twenty-four hour high compared to the twenty to thirty minute high that follows smoking of cocaine. *Id.* Twelve hours after use, the human body only metabolizes fifty percent of meth used. *Id.* at 3. In contrast, the human body can metabolize fifty percent of consumed cocaine in only one hour. *Id.*

4. Volkow, *supra* note 2.

5. *Id.*

6. NIDA, *supra* note 1, at 4-6; Volkow, *supra* note 2.

7. NIDA, *supra* note 1, at 5; Volkow, *supra* note 2.

8. NIDA, *supra* note 1, at 5.

9. NIDA, *supra* note 1, at 6; Volkow, *supra* note 2.

10. NIDA, *supra* note 1, at 6; Volkow, *supra* note 2.

11. NAT'L DRUG INTELLIGENCE CTR., U.S. DEP'T OF JUSTICE, PROD. NO. 2004-L0559-001, METHAMPHETAMINE LABORATORY IDENTIFICATION AND HAZARDS FAST FACTS (Dec. 2003), available at <http://www.usdoj.gov/ndic/pubs/7/7341/7341p.pdf>.

12. *Id.*

13. *Id.*

14. *Id.*

ignite or explode if improperly handled.<sup>15</sup> The inherently dangerous nature of meth production poses a risk to producers and anyone in areas surrounding a meth lab.<sup>16</sup> Even when producers avoid fire or explosion, laboratories create other dangers.<sup>17</sup> Exposure to chemicals used in production, through skin contact, inhalation, or digestion, can cause dizziness, nausea, respiratory problems, chemical burns, and internal organ damage.<sup>18</sup> Meth production also threatens the environment.<sup>19</sup> Producers that dump meth-created chemical waste risk contaminating soil and water supplies.<sup>20</sup>

### C. *Is There a Methamphetamine Epidemic in the United States?*

Politicians, law enforcement, the media, and policymakers often argue that meth has created an epidemic in our country. Minnesota Governor Tim Pawlenty labeled meth as “one of the nastiest, most addictive and most harmful drugs ever to hit Minnesota.”<sup>21</sup> Bush Administration Deputy Drug Czar Scott Burns characterized meth as a “uniquely destructive drug” and stated that synthetic drugs like meth “pose a unique challenge, and constitute an emerging problem.”<sup>22</sup> A 2006 survey conducted by the National Association of Counties revealed that counties report meth as their primary drug problem.<sup>23</sup> In 2006, the PBS program *Frontline* devoted a series of news reports to investigate why it believed meth use has “spiraled out of control and [become] the fastest growing drug-abuse problem in America.”<sup>24</sup> The media has also fueled interest by producing highly emotional stories that reveal meth’s negative impact on children.<sup>25</sup> In March 2006, President Bush signed the Combat

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15. *Id.*

16. *Id.*

17. NAT’L DRUG INTELLIGENCE CTR., U.S. DEP’T OF JUSTICE, PROD. NO. 2004-L0559-001, METHAMPHETAMINE LABORATORY IDENTIFICATION AND HAZARDS FACTS (Dec. 2003), available at <http://www.usdoj.gov/ndic/pubs7/7341/7341p.pdf>.

18. *Id.*

19. *Id.*

20. *Id.* Meth production creates substantial chemical waste. *Id.* Every pound of meth produced results in five to seven pounds of chemical waste. *Id.*

21. Press Release, Office of the Governor, Tim Pawlenty, Pawlenty Creates Online Meth Offender Registry and Announces Other Measures to Battle Meth (July 27, 2006) (on file with the Office of the Governor, Tim Pawlenty).

22. *Fighting Meth in the Heartland: Hearing Before the H. Subcomm. on Crim. Justice, Drug Policy and Human Res.*, 109th Cong. (2005), available at 2005 WL 1794759 (statement of Scott M. Burns, Deputy Dir., State and Local Affairs, Office of Nat’l Drug Control Policy).

23. NAT. ASSOC. OF COUNTIES, THE METH EPIDEMIC IN AMERICA: THE CRIMINAL EFFECT OF METH ON COMMUNITIES 3-5 (July 18, 2006). Five hundred counties in forty-four states reported that the number of meth-related crimes continues to increase, meth has increased the workload of public safety staff, and a high proportion of inmates face incarceration because of meth-related crimes. *Id.*

24. *The Meth Epidemic* (PBS *Frontline* television broadcast Feb. 2006), available at <http://www.pbs.org/wgbh/pages/frontline/meth/>.

25. See, e.g., Erin Hoover Barnett, *Child of the Epidemic*, THE OREGONIAN, Oct. 7, 2004, at A01 (recounting the story of 15 year-old MaKayla and how her mother’s meth addiction has shattered her life); LeAnn Holt, *More N.M. Kids Living in Meth Nightmare*, ALBUQUERQUE

Methamphetamine Epidemic Act of 2005, which addresses meth use, production, and trafficking.<sup>26</sup> This legislation restricts the sale of ingredients used in meth production, provides funding to communities in “Hot Spots” where the drug is particularly burdensome, provides services for children affected by the drug, and strengthens criminal penalties for those who produce and traffic meth.<sup>27</sup>

Although many believe a meth epidemic exists in this country, others argue that the impact of meth is overstated. In June 2006, The Sentencing Project, a non-profit research group, issued a report criticizing the characterization of meth use as an epidemic.<sup>28</sup> The Sentencing Project concluded that media reports about meth are anecdotal, misleading, and exaggerate the prevalence, addictiveness, and effects of meth use.<sup>29</sup> The Sentencing Project asserted that meth use remains rare in the United States, the overall rate of meth use has stabilized, meth use among high school students has decreased, and drug treatment is effective for addicts.<sup>30</sup> A dramatic decrease in domestic meth production is another indicator that some have exaggerated meth’s impact.<sup>31</sup> However, increased production in Mexico has offset this recent decline and will continue to provide a steady stream of the drug to the United States.<sup>32</sup>

#### ***D. The Regional Impact of Methamphetamine***

While the controversy over meth’s national impact endures, statistics demonstrate that meth remains a regional problem in the United States. In 2006, law enforcement reported 1,288 meth lab incidents in Missouri, 778

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JOURNAL, Oct. 23, 2005, at A1 (describing the story of Kim, a woman serving seven years in prison after her five month-old son rolled off a bed and onto a space heater while Kim remained passed-out during a meth-induced stupor); John Schultz, *Meth Linked to 12% of Children in Missouri Foster Care System*, KAN. CITY STAR, Feb. 7, 2006 (reporting that the Missouri Department of Social Services found that 12 percent of the 11,000 children in Missouri custody live away from their homes because of meth).

26. Combat Methamphetamine Epidemic Act of 2005, Pub. L. No. 109- 177, tit. VII, 120 Stat. 192 (codified as amended in scattered sections of 21 U.S.C.A. §§ 801 *et seq.* (2006)).

27. *Id.* For a general discussion of this legislation, see Press Release, Office of Nat’l Drug Control Policy, President Bush Signs USA Patriot Act: Anti-Meth Provisions Take Aim at Methamphetamine Production, Trafficking, Use (Mar. 9, 2006), available at <http://www.whitehousedrugpolicy.gov/news/press06/030906.html>.

28. RYAN S. KING, THE SENTENCING PROJECT, THE NEXT BIG THING? METHAMPHETAMINE IN THE UNITED STATES 1-3 (June 2006), available at [http://www.sentencingproject.org/Admin/Documents/publications/dp\\_nextbigthing\\_meth.pdf](http://www.sentencingproject.org/Admin/Documents/publications/dp_nextbigthing_meth.pdf).

29. *Id.* at 3.

30. *Id.* at 2-3.

31. U.S. DRUG ENFORCEMENT ADMIN., MAPS OF METHAMPHETAMINE LAB INCIDENTS (2006), available at [http://www.usdoj.gov/dea/concern/map\\_lab\\_seizures.html](http://www.usdoj.gov/dea/concern/map_lab_seizures.html) (finding that the number of meth laboratory incidents in the United States decreased from 17,356 in 2003 to 7,347 in 2006).

32. NAT’L DRUG INTELLIGENCE CTR., NATIONAL DRUG THREAT ASSESSMENT 2005 SUMMARY REPORT (Feb. 2005), available at <http://www.usdoj.gov/ndic/pubs11/13846/meth.htm>.

incidents in Illinois, 737 incidents in Indiana, and 401 incidents in Tennessee.<sup>33</sup> In contrast, the number of incidents in Northeastern states remains negligible.<sup>34</sup> Even The Sentencing Project recognized that meth is a regional problem and measures to combat the drug should focus on states where it poses an actual threat.<sup>35</sup> In states where meth use and production pose a legitimate threat, the creation of tempered legislation, including meth offender registries, is important.

### *E. Methamphetamine Offender Registries*

To combat meth's impact, states have responded by adopting an abundance of measures. These measures include: regulation of chemicals used in production, heightened punishment for meth-related crimes, facilitation of meth lab cleanups, increased protection of victimized children, and improved funding for drug rehabilitation.<sup>36</sup> Recently, states have further strengthened their anti-meth arsenals through the introduction of meth offender registries. Like sex offender registries, meth offender registries offer the public basic information about those convicted of meth-related crimes. States believe these registries will provide the public with information to protect itself against the dangers of meth use and production.<sup>37</sup> Property owners can search registries to ensure they do not sell or rent to meth manufacturers and distributors. Employers may rely on registries when making decisions to ensure workplace productivity and safety. The impact of meth offender registries is far-reaching because the general public will likely utilize registries to monitor the criminal background of neighbors, co-workers, and anyone deemed suspicious.

In 2005, Tennessee introduced the Tennessee Meth Offender Registry Database, the country's first meth offender registry.<sup>38</sup> This online database discloses an offender's name, date of birth, offense committed, county of

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33. U.S. DRUG ENFORCEMENT ADMIN., *supra* note 31.

34. *Id.* (finding that in 2006, law enforcement reported 38 incidents in New York, five incidents in Vermont, four incidents in Maine, and three incidents in Connecticut).

35. See KING, *supra* note 28, at 3 (“[w]e urge vigilance in tempering our national response to methamphetamine, keeping the focus local and providing federal funding to augment evidence-based treatment protocols that have been demonstrated successful in a number of jurisdictions.”).

36. Note, *Cooking Up Solutions to a Cooked Up Menace: Response to Methamphetamine in a Federal System*, 119 HARV. L. REV. 2508, 2513-16 (2006).

37. See, e.g., 31 Minn. Reg. page no. 186 (Aug. 7, 2006) (purpose of Minnesota's meth offender registry is to “provide citizens with useful information on persons convicted of manufacturing or selling meth in their communities and allow members of the public to better protect themselves and their communities”); H.B. 3121, 50th Leg., Reg. Sess. (Okla. 2005) (purpose of Oklahoma's meth offender registry is to “educate[] the public about the dangers of meth manufacture and abuse”); H.B. 1418, 148th Gen. Assem., Reg. Sess. (Ga. 2006) (purpose of Georgia's meth offender registry is to create public awareness “to reduce and prevent the operation of clandestine meth laboratories and the contamination of private property by such laboratories, especially in residential areas”).

38. TENN. CODE ANN. § 39-17-436 (2006). The Tennessee Meth Offender Registry Database is available online at <http://www.tennesseeanytime.org/methor/>.

commission, and date of conviction.<sup>39</sup> It does not, however, include an offender's address, place of employment, or photograph. Registration is limited to individuals convicted of selling and producing meth.<sup>40</sup> Additionally, offenders remain on the database for seven years following conviction.<sup>41</sup> In 2006, Illinois and Minnesota approved similar online registries.<sup>42</sup> Montana includes meth producers on its online Sexual and Violent Offender Registry.<sup>43</sup> Legislation for similar provisions is either pending or has unsuccessfully been introduced in Arkansas,<sup>44</sup> Georgia,<sup>45</sup> Hawaii,<sup>46</sup> Kentucky,<sup>47</sup> Missouri,<sup>48</sup> Oklahoma,<sup>49</sup> Oregon,<sup>50</sup> and Washington.<sup>51</sup>

### III. IMPACT OF REGISTRIES ON OFFENDERS AND THE LEGAL RIGHTS OF REGISTRANTS

Only a few states have proposed meth offender registries. As the focus on meth increases in our country, states will continue to develop these registries. Although registries serve a legitimate purpose in areas affected by meth, they will undoubtedly impact the lives of offenders. Registries raise ex post facto concerns and will affect registrants' employment opportunities, privacy, and ability to obtain and maintain housing. Faced with these obstacles, registrants will likely challenge the legality of registries. The lack of litigation involving meth offender registries makes predictions of these challenges difficult. Sex offender registries, which are similar in content and stated purpose, have been substantially litigated. Examination of these decisions is helpful and logical when predicting how courts will respond to attacks on meth offender registries.

#### A. *Ex Post Facto* Concerns

Critics argue that meth offender registries represent vindictive legislation designed to impose additional punishment on meth offenders, a group society

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39. § 39-17-436(c).

40. § 39-17-436(a).

41. § 39-17-436(e).

42. 730 ILL. COMP. STAT. 180/10 (2006) (this registry identifies individuals convicted of manufacturing meth); 31 Minn. Reg. page no. 186 (Aug. 7, 2006) (this registry identifies persons convicted of the manufacture or sale of meth). The Illinois Methamphetamine Manufacturer Database is available online at <http://www.isp.state.il.us/meth/>. The Minnesota Methamphetamine Offender Registry is available online at <https://mor.state.mn.us/OffenderSearch.aspx>.

43. MONT. CODE ANN. §§ 46-23-502 to -520 (2006). The Montana Sexual and Violent Offender Registry is available at <http://doj.mt.gov/svor/search.asp>.

44. H.B. 2309, 86th Gen. Assem., Reg. Sess. (Ark. 2007).

45. H.B. 793, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

46. H.B. 1874, 23rd Leg., Reg. Sess. (Haw. 2006).

47. H.B. 426, 2006 Leg., Reg. Sess. (Ky. 2006).

48. S.B. 660, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

49. S.B. 165, 51st Leg., Reg. Sess. (Okla. 2007).

50. H.B. 2703, 73rd Leg. Assem., Reg. Sess. (Or. 2005).

51. H.B. 3004, 59th Leg., Reg. Sess. (Wash. 2006).

views as particularly dangerous.<sup>52</sup> These critics argue that registries constitute punishment in violation of the Ex Post Facto Clause.<sup>53</sup> The Ex Post Facto Clause forbids any law “which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.”<sup>54</sup> This prohibition serves two important purposes. First, it ensures that legislative acts “give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.”<sup>55</sup> Second, it prevents arbitrary, vindictive, and retroactive legislation as a means of retribution against unpopular or disfavored groups.<sup>56</sup> For legislation to be ex post facto “it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it.”<sup>57</sup>

Meth offender registries risk constituting retroactive punishment forbidden by the Ex Post Facto Clause. In Minnesota, for example, Governor Pawlenty ordered that state law enforcement, using “public criminal history data . . . [identify] persons convicted in Minnesota for felony level crimes involving the manufacture or sale of methamphetamine.”<sup>58</sup> Governor Pawlenty’s executive order does not reference dates of conviction and thus appears to include offenders convicted prior to creation of Minnesota’s meth offender registry.<sup>59</sup> In all states, registration stigmatizes offenders and can produce considerable social, personal, and professional disadvantages for registrants. Considering the popular belief that meth’s impact is epidemic, it seems probable that some legislators may view registries as just desserts for a group deserving of additional punishment. However, when faced with ex post facto challenges of meth offender registries, courts will likely find no constitutional violations.

In *Doe v. Otte*, sex offenders challenged the constitutionality of the Alaska Sex Offender Registration Act, enacted after their convictions, claiming it violated the Ex Post Facto Clause.<sup>60</sup> Notwithstanding the Alaska

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52. See Donna Leinwand, *Backers Call Meth Registries a Safety Measure*, USA TODAY, Aug. 23, 2006, at 3A.

53. U.S. CONST. art. I, § 10, cl. 1.

54. *Weaver v. Graham*, 450 U.S. 24, 28 (1981) (citations omitted).

55. *Id.* at 28-29.

56. *Id.* at 29; *Doe v. Pataki*, 120 F.3d 1263, 1273 (2d Cir. 1997) (citations omitted).

57. *Weaver*, 450 U.S. at 30.

58. 31 Minn. Reg. page no. 186 (Aug. 7, 2006).

59. Compare TENN. CODE ANN. § 39-17-436(a) (2006) (explicitly requiring registration only for persons convicted after March 30, 2005, the date Tennessee enacted its meth offender registry).

60. 259 F.3d 979, 982 (9th Cir. 2001), *rev'd* 538 U.S. 84 (2003). In an Ex Post Facto Clause analysis, courts first examine legislative intent to determine if a measure imposes punishment or if it creates a regulatory scheme that is civil and nonpunitive. *Smith v. Doe*, 538 U.S. 84, 92 (2003). If legislative intent is punitive, a measure violates the clause. *Id.* Legislation designed to protect the public health and safety demonstrates civil and nonpunitive legislative intent. *Id.* at 93. If legislative intent is civil and nonpunitive, the analysis does not end. See *Otte*, 259 F.3d at 986. Courts then apply the *Mendoza-Martinez* seven factor test to examine whether a measure nonetheless has a punitive effect that constitutes an ex post facto violation. *Id.* This test

Legislature's non-punitive intent, the Ninth Circuit held that the Act constituted an ex post facto violation.<sup>61</sup> The court found the Act excessively burdensome because it required in-person registration at a police station four times each year, for at least fifteen years, and in some cases for life.<sup>62</sup> Focusing on the Act's failure to provide a mechanism for non-dangerous, rehabilitated offenders to avoid inclusion, the court stated, "[a]n offender cannot escape the Act's grasp no matter how clearly he may demonstrate that he poses no future risk to anyone, and no matter how final the judicial determination that he has been successfully rehabilitated."<sup>63</sup> The court noted that the Act exposed registrants to "world-wide obloquy and ostracism" and the Act's retributive and deterrent effects were excessive.<sup>64</sup> The Ninth Circuit's decision represented hope for registrants that other courts might recognize the inherent unfairness of certain registries.

In *Smith v. Doe*, the United States Supreme Court overruled the Ninth Circuit's decision in *Otte*.<sup>65</sup> The Court downplayed the Ninth Circuit's assertion that registries encumbered registrants' housing and employment opportunities, noting that the Act did not lead to "substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords."<sup>66</sup> It disagreed with the Ninth Circuit's determination that the Act's registration requirements were excessively burdensome, stating "offenders subject to the Alaska statute are free to move where they wish and to live and work as other citizens, with no supervision."<sup>67</sup> The Court also minimized the Act's deterrent effects.<sup>68</sup>

The Court held that the most significant factor in favor of the Act was its rational purpose of protecting the public from sex offenders.<sup>69</sup> It agreed with the Alaska State Legislature's findings that a sex offense conviction provides

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examines: 1) whether the sanction involves an affirmative disability or restraint; 2) whether it has historically been regarded as a punishment; 3) whether it comes into play only on a finding of scienter; 4) whether its operation will promote the traditional aims of punishment--retribution and deterrence; 5) whether the behavior to which it applies is already a crime; 6) whether an alternative purpose to which it may rationally be connected is assignable to it; and 7) whether it appears excessive in relation to the alternative purpose assigned. *Id.* at 986-87 (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963)). If, after examining these factors, a court finds a provision's measures are punitive, an ex post facto violation occurs. *Id.* at 986.

61. *Id.* at 986, 993-95.

62. *Id.* at 994.

63. *Id.*

64. *Id.*

65. *Smith v. Doe*, 538 U.S. at 106.

66. *Id.* at 100.

67. *Id.* at 101.

68. *Id.* at 102 (stating that "[a]ny number of governmental programs might deter crime without punishment" and that "the mere presence of a deterrent purpose renders such sanctions 'criminal' would severely undermine the Government's ability to engage in effective regulation").

69. *Id.* at 103.

evidence of a “frightening and high” risk of recidivism and that sex offenders represent a dangerous class.<sup>70</sup> Finally, the Court held that the Act’s silence as to the dangerousness of offenders and the online availability of the registry were reasonable in light of the State’s nonpunitive objective of public safety.<sup>71</sup>

When faced with ex post facto attacks against meth offender registries, courts will likely rely on *Smith*. This reliance is understandable because the content and purpose of meth and sex offender registries are similar. Both provide information about offenders with an objective that dissemination will protect the public. The *Smith* Court vigorously adopted the Alaska Legislature’s finding that sex offenders constitute a unique and dangerous risk to society.<sup>72</sup> Meth offender registry litigation will likely focus on whether meth offenders also pose a similar risk to society. Considering the inherent dangers associated with meth use and production, the number of meth-related crimes in certain parts of the country, and the popular belief that a meth epidemic exists, courts are likely to hold that meth offender registries provide a rational means of protecting the public against a legitimate threat. Although meth offender registries pose significant disadvantages to registrants, any ex post facto claims against registries will likely fail.

### **B. Employment Concerns**

Because of legitimate concerns about the effect an employee’s criminal background may have on job performance and workplace safety, eighty percent of companies perform background checks on job applicants.<sup>73</sup> Meth offender registries represent another resource employers can use to examine the criminal histories of potential and current employees. Unlike background checks, which come at a cost to employers, meth offender registries are available online, making access free and rapid. Although registries act as an effective screening device for employers, use of registries may unfairly prejudice otherwise qualified registrants.

#### **1. Equal Employment Opportunity Commission Guidelines**

The Equal Employment Opportunity Commission (EEOC) provides a framework outlining the use of arrest and conviction records by employers. The EEOC suggests that employers not automatically disqualify applicants due to arrest and conviction records because these blanket policies often disproportionately exclude members of certain racial and ethnic groups.<sup>74</sup> The EEOC recognizes the utility of criminal background checks and recommends

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70. *Id.* (citations omitted).

71. *Id.* at 104-05.

72. *Id.* at 103.

73. Jon Bonné, *Most Firms Now Use Background Checks*, MSNBC.COM, Jan. 21, 2004, <http://www.msnbc.msn.com/id/4018280/> (citing results from a report by the Society for Human Resource Management).

74. E.E.O.C. Staff Advisory Ltr., Title VII Arrest & Conviction Records (Dec. 1, 2005), available at [http://www.eeoc.gov/foia/letters/2005/titlevii\\_arrest\\_conviction\\_records.html](http://www.eeoc.gov/foia/letters/2005/titlevii_arrest_conviction_records.html).

that discovery of arrest and conviction records should serve as a trigger for further inquiry into an employee or applicant's character or prior conduct.<sup>75</sup> An employer can deny employment if a criminal record demonstrates that an employee or applicant cannot be trusted to perform job-related duties.<sup>76</sup> If the conduct underlying a conviction is somehow job-related, an employer must examine all relevant factors before making its ultimate decision.<sup>77</sup> These factors include (1) the nature, number, and circumstances of the offense; (2) the length of time between conviction and employment; (3) the applicant's employment history; and (4) the applicant's rehabilitation efforts.<sup>78</sup>

The EEOC understands that an absolute bar from employment based on an applicant's criminal history is unfair. EEOC guidelines carefully balance the rights of employees and employers. For those applicants who have successfully rehabilitated themselves and can perform job duties, these guidelines provide protection. These guidelines also permit employers to refuse employment when an individual poses a legitimate safety risk or cannot perform job duties.

## 2. State Law

A number of states have enacted legislation that limits the use of arrest and conviction records by employers.<sup>79</sup> These statutes range from full prohibition of the use of criminal convictions to milder provisions that protect employer and employee interests.<sup>80</sup> Wisconsin, for example, has labeled employment decisions based on an individual's arrest or conviction record as discriminatory.<sup>81</sup> Wisconsin equates refusal to hire based on an arrest or conviction record with other acts of employment discrimination, including failure to hire based on race, sex, national origin, and age.<sup>82</sup>

Other states provide guidelines for employers' use of an applicant's criminal history record. Pennsylvania permits employers to rely on criminal history records when making employment decisions.<sup>83</sup> Pennsylvania law provides that an employer can consider convictions, but not arrest records, "only to the extent they relate to the applicant's suitability for employment in the position for which he has applied."<sup>84</sup> If an employer makes a decision based on an applicant's conviction record, that employer must notify the

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75. E.E.O.C. Notice, Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, N-91 5.061 (Sept. 7, 1990) available at <http://www.fadv.com/PDF/EEOCNOFRAME.pdf>.

76. *Id.*

77. E.E.O.C. Decision No. 81-15 (Feb. 2, 1981).

78. *Id.*

79. For an in-depth examination of these laws, see Jennifer Leavitt, *Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders*, 34 CONN. L. REV. 1281 (2002).

80. *Id.* at 1288-92.

81. WIS. STAT. § 111.321-.322 (2006).

82. § 111.321.

83. 18 PA. CONS. STAT. ANN. § 9125(a) (West 2006).

84. § 9125(b).

applicant of the conviction-based decision.<sup>85</sup>

Connecticut has enacted legislation that focuses on the use of conviction records by state employers. The Connecticut General Assembly has declared that the “public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens and that the ability of returned offenders to find meaningful employment is directly related to their normal functioning in the community.”<sup>86</sup> Generally, Connecticut law prohibits disqualification from a state job based solely on an applicant’s conviction record.<sup>87</sup> Connecticut law provides exceptions to this general rule that mirror EEOC guidelines.<sup>88</sup> State agencies may deny employment based on a conviction record only after considering several factors, including: (1) the nature of the crime and its relationship to the job position; (2) rehabilitation efforts of the applicant; and (3) the time elapsed since conviction.<sup>89</sup> If these factors demonstrate that an employee or applicant is not suitable for a position, employers may deny employment.<sup>90</sup>

### 3. The Americans with Disabilities Act

Although federal law does not prohibit adverse employment decisions based on an individual’s arrest or conviction record, Title I of the Americans with Disabilities Act (ADA)<sup>91</sup> may provide protection for meth offender registrants denied employment because of their history of drug abuse.<sup>92</sup> The ADA prohibits covered employers from making adverse employment decisions against “qualified individuals with disabilities” because of an individual’s disability.<sup>93</sup> The ADA does not protect current users of illegal drugs.<sup>94</sup> Individuals who have successfully completed drug rehabilitation, are currently participating in rehabilitation, or who are erroneously regarded as drug users may meet the ADA’s definition of a qualified individual with a disability.<sup>95</sup>

Meth offenders will need to jump numerous legal hurdles to prove employment discrimination under the ADA. Among other things, offenders must demonstrate that they qualify as disabled under the ADA<sup>96</sup> and can

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85. § 9125(c).

86. CONN. GEN. STAT. § 46a-79 (West 2006).

87. § 46a-80(a).

88. § 46a-80(b); *See* E.E.O.C., *supra* notes 74-78.

89. § 46a-80(b).

90. *Id.*

91. 42 U.S.C. §§ 12111-12117 (2000).

92. ADA claims are numerous and case law on this area is extensive. This section provides a broad overview of the ADA and how meth offenders might rely on it to pursue claims of employment discrimination.

93. § 12112(a).

94. § 12114(a).

95. § 12114(b).

96. Section 12102(2) requires that a meth offender demonstrate that his history of drug abuse or status as a recovered drug user constitutes a “physical or mental impairment that substantially limits one or more of [his] major life activities,” he has a “record of such an impairment,” or an employer “regard[s him] as having such an impairment.”

perform the essential functions of an employment position.<sup>97</sup> The ADA provides several defenses to employers that further complicate plaintiffs' claims.<sup>98</sup> Adverse employment decisions based solely on an individual's criminal history, rather than a disability, likely do not constitute employment discrimination under the ADA.<sup>99</sup>

Meth offender registries will affect registrants' ability to obtain and maintain employment. The law provides some protection for registrants against unfair employment practices. EEOC guidelines provide balanced protection that considers the interests of both employers and employees. State law may provide additional protection. Protection under the ADA is tenuous at best. Unfortunately, in some cases, qualified, rehabilitated registrants may have no legal recourse against employers unwilling to look past registrants' criminal histories.

### C. *Privacy Concerns*

Meth offenders will likely feel that worldwide, online dissemination of their criminal history and personal information is unfair. Sex offenders have attacked sex offender registries, complaining they violate constitutionally-protected privacy rights. In *People v. Cornelius*, convicted sex offenders argued dissemination of their current addresses, places of employment, and other personal information via an online registry violated their privacy rights.<sup>100</sup> Prior to the registry's introduction, the public accessed offender information by visiting courthouses directly or through telephone and written requests.<sup>101</sup> Offenders contended that convenient online access violated privacy rights by creating "wholesale dissemination" of personal information.<sup>102</sup> The court, in accord with other jurisdictions, held that the registry did not implicate privacy rights because "the posting of sex offender registration information on the Internet merely provides for a different kind of accessibility to substantially the same public information that has been historically available by other means."<sup>103</sup>

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97. § 12111(8).

98. *See, e.g.*, § 12113(a) (a qualification standard, test, or other criteria that may "screen out or otherwise deny a job to an individual with a disability" may not be discrimination if it "has been shown to be job-related and consistent with business necessity"); § 12113(b) (employers may argue that an adverse employment decision is lawful because the disabled individual "pose[s] a direct threat to the health or safety of other individuals in the workplace.").

99. *See* Quick v. Runyon, No. 96CV0474, 1997 WL 177858, at \*1 (E.D.N.Y. Mar. 25, 1997) (applicant's criminal history does not constitute a handicap under the Rehabilitation Act).

100. 821 N.E.2d 288, 297 (Ill. 2004).

101. *Id.*

102. *Id.* at 299 (citation omitted).

103. *Id.* at 303; *See also* Cutshall v. Sundquist, 193 F.3d 466, 481 (6th Cir. 1999) (Tennessee's online sex offender registry did not infringe on registrant's federal constitutional right of privacy); Akella v. Michigan Dep't of State Police, 67 F. Supp. 2d 716, 730 (E.D. Mich. 1999) (sex offenders "failed to articulate a constitutionally protected privacy interest in the dissemination of their home address"); Rowe v. Burton, 884 F. Supp. 1372, 1384 (D. Alaska

In *Smith v. Doe*, the United States Supreme Court's discussion of online dissemination of sex offender information favors this majority rule.<sup>104</sup> The Court, focusing on the importance of online dissemination of sex offenders' personal information, stated "[w]idespread public access is necessary for the efficacy of the scheme . . . ."<sup>105</sup> Courts will likely look to these decisions if offenders assert privacy challenges against meth offender registries. Although a meth offender registrant may believe online dissemination of personal information violates privacy rights, courts will likely disagree with this argument.

#### **D. Housing Concerns**

Meth offender registries provide information that can help the public protect itself against the many risks associated with meth production.<sup>106</sup> If a homeowner suspects a neighbor is manufacturing meth, reliance on a registry may confirm those suspicions. Armed with this information, a homeowner could appropriately report that neighbor to law enforcement.

Landlords will also rely on these registries. A landlord's refusal to rent to an applicant with a history of producing meth is understandable. In many cases, this decision could protect the safety of residents and the value of a landlord's property. For some rehabilitated meth offenders, registry inclusion could create an unfair stigma that makes housing acquisition difficult. Unfortunately, federal law provides minimal protection for these rehabilitated offenders.

The Fair Housing Act (FHA) prohibits discrimination in the sale or rental of housing because of a buyer or renter's handicap.<sup>107</sup> Courts have held that fully rehabilitated or in-recovery drug users can qualify as handicapped individuals under the FHA.<sup>108</sup> However, the FHA does not cover individuals currently using or addicted to illegal drugs.<sup>109</sup> The Fourth Circuit has stated that rehabilitated drug users have a right to housing and "should not be subject to housing discrimination based on society's accumulated fears and prejudices associated with drug addiction."<sup>110</sup>

The FHA provides defenses for housing providers. Housing providers may legally refuse to rent or sell to an individual that poses a "direct threat to

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1994) (stating that sex offenders' "residences, job locations, drivers license number, date of convictions, and nature of the convictions are also generally considered public information").

104. 538 U.S. at 99.

105. *Id.*

106. *See supra* Part II.A-B.

107. 42 U.S.C. § 3604(f)(1) (2000).

108. *See, e.g.,* United States v. So. Mgm't Corp., 955 F.2d 914, 922-23 (4th Cir. 1992) (recovering addicts and other former drugs users, who were sober for at least a year and lived in apartments that provided drug rehabilitation services, met the definition of "handicap" under the FHA).

109. 42 U.S.C. § 3602(h).

110. *S. Mgmt*, 955 F.2d at 923 (citation omitted).

the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”<sup>111</sup> Courts require housing providers offer “particularized proof” that an individual poses an actual, current threat to the safety of others.<sup>112</sup> “Generalized assumptions, subjective fears, and speculation are insufficient to prove the requisite direct threat to others.”<sup>113</sup> However, when housing providers assert a “direct threat” defense based solely on an applicant’s past criminal conduct, courts seem likely to hold that a provider has met its burden of “particularized proof.”<sup>114</sup>

In *Talley v. Lane*, a California housing authority refused to provide disability housing to an applicant based on his arrest and conviction record.<sup>115</sup> The applicant claimed the housing authority’s reliance on his criminal record was a pretext for disability discrimination.<sup>116</sup> The Seventh Circuit held that the housing authority had discretion to determine whether an applicant with prior convictions of property and assaultive crimes posed a direct threat to other tenants.<sup>117</sup> Thus, the court ruled that the housing authority’s consideration of the applicant’s prior criminal convictions was not a violation of the FHA.<sup>118</sup>

Based on this relaxed interpretation of the “direct threat” defense, an individual’s criminal history, without any proof of a current threat to others, may be sufficient to thwart an FHA claim. Courts have not yet addressed whether reliance on criminal registries by housing providers violates federal housing law. A registrant’s claim of discrimination under the FHA will likely be difficult to prove. In many instances, discriminatory housing decisions will remain unquestioned.

#### IV. THE RIGHTS OF NON-DANGEROUS REGISTRANTS

Online meth offender registries provide an efficient and convenient tool to promote public safety. Legislators’ desire to arm the public with information about dangerous meth producers and distributors is legitimate. However, as with any law, there are drawbacks to current meth offender legislation. For rehabilitated, non-dangerous offenders, these registries are harsh and unnecessary. Registries remain efficacious only when they include information about offenders that actually pose a threat to public safety. Meth offender registry legislation must include measures that protect the interests of offenders that successfully seek treatment, serve their time, and are now productive members of society.

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111. 42 U.S.C. § 3604(f)(9).

112. *See, e.g.,* Twp. of W. Orange v. Whitman, 8 F. Supp. 2d 408, 428 (D.N.J. 1998) (citations omitted).

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

114. *See, e.g.,* Talley v. Lane, 13 F.3d 1031 (7th Cir. 1994).

115. *Id.* at 1032-33.

116. *Id.* at 1033.

117. *Id.* at 1034.

118. *Id.*

### A. Due Process and Dangerousness in Sex Offender Registry Litigation

In *Doe v. Department of Public Safety*, convicted sex offenders challenged the constitutionality of Connecticut's "Megan's Law," which requires disclosure of sex offenders' personal information via an online registry.<sup>119</sup> Offenders argued that the Law violated their procedural due process rights by failing to provide them a hearing to evaluate their current dangerousness and determine the appropriateness of registry inclusion.<sup>120</sup> The Second Circuit found that the law's "extensive and onerous" registration requirements stigmatized offenders by implying that every registrant was "currently dangerous."<sup>121</sup> The court held that registrants were "entitled to the opportunity to have a hearing consistent with the due process principles to determine whether or not they are particularly likely to be currently dangerous before being labeled as such by their inclusion in a publicly disseminated registry."<sup>122</sup> This decision represented an important protection for non-dangerous offenders. Unfortunately, in *Connecticut Department of Public Safety v. Doe*, the United States Supreme Court reversed this decision.<sup>123</sup>

In *Connecticut Dep't of Pub. Safety*, the Court focused on the Law's express language.<sup>124</sup> The Court held that registrants' level of dangerousness was of "no consequence" under the Law because its registration requirements were based on "an offender's conviction alone," which offenders "already had a procedurally safeguarded opportunity to contest."<sup>125</sup> The Court concluded that Connecticut lawmakers wished to disclose information about all sex offenders, regardless of their current dangerousness.<sup>126</sup> Therefore, registrants had no right to a hearing on that issue.<sup>127</sup>

Lower courts sought to circumvent *Connecticut Dep't of Pub. Safety*. In *Espindola v. Florida*, a court found that Florida's sex offender registry unfairly branded an offender as a public danger, creating a stigma that damaged the offender's reputation and impacted his ability to obtain housing and employment.<sup>128</sup> Focusing on specific language in the Florida law, which stated that sexual predators "present an extreme threat to the public safety," the court distinguished *Connecticut Dep't of Pub. Safety*.<sup>129</sup> The court found that this language demonstrated that an offender's current "dangerousness" was material to the law.<sup>130</sup> In the absence of language providing offenders a

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119. 271 F.3d 38, 41, 42 (2d Cir. 2001).

120. *Id.* at 46.

121. *See id.* at 49, 57.

122. *Id.* at 62.

123. 538 U.S. 1, 4 (2003).

124. *Id.* at 6-8.

125. *Id.* at 7.

126. *Id.*

127. *Id.* at 7-8.

128. 855 So. 2d 1281, 1288-90 (Fla. Dist. Ct. App. 2003).

129. *Id.* at 1290 (citing FLA. STAT. ANN. § 775.21(3)(a) (West 2006)).

130. *Id.*

hearing to determine their threat level, the court held that the law violated registrants' procedural due process rights.<sup>131</sup>

However, the Florida Supreme Court quickly overturned this decision.<sup>132</sup> Relying on *Connecticut Dep't of Pub. Safety*, the court downplayed the statutory language identified by the lower court.<sup>133</sup> It held that the only material fact under Florida's statute was an offender's previous conviction, which registrants had already received an opportunity to contest.<sup>134</sup>

The Eighth Circuit also reversed a lower court's post-*Connecticut Dep't of Pub. Safety* attempt to provide procedural due process safeguards for convicted sex offenders.<sup>135</sup> In *Doe v. Miller*, sex offenders challenged an Iowa law that prohibited offenders from residing within 2,000 feet of a school or child care facility.<sup>136</sup> Offenders demanded a hearing to determine their current dangerousness before application of the law's residential restrictions.<sup>137</sup> Relying on *Connecticut Dep't of Pub. Safety*, the Eighth Circuit held that the law did not violate offenders' procedural due process rights because the law's restrictions applied to all offenders, regardless of their current or future threat to the public.<sup>138</sup>

Current meth offender registry legislation lacks language providing registrants an opportunity to avoid inclusion due to non-dangerousness. Instead, legislation appears to cover all meth offenders, regardless of their current threat to public safety. Courts will likely rely on *Connecticut Dep't of Pub. Safety* and its progeny and determine that, absent express statutory language contemplating offenders' threat level to public safety, meth offenders have no procedural due process right to argue against registry inclusion. Meth offenders are left at the mercy of legislators to provide this necessary right.

### ***B. Massachusetts: An Example of Fair Sex Offender Registry Law***

Massachusetts has carefully balanced the public's need for information with the individual rights and circumstances of sex offenders. In its sex offender registry law, Massachusetts includes guidelines that provide non-dangerous offenders an opportunity to avoid public dissemination of their personal and criminal information. Massachusetts law establishes a sex offender registry board composed of seven members from varying backgrounds, including a chairman with "experience and knowledge in the field of criminal justice," mental health professionals with "special expertise in

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131. *Id.*

132. *Milks v. Florida*, 894 So. 2d 924, 925 (Fla. 2005).

133. *See id.* at 927-29.

134. *Id.* at 928.

135. *Doe v. Miller*, 298 F. Supp. 2d 844 (S.D. Iowa 2004), *overruled by* 405 F.3d 700, 708-09 (8th Cir. 2005).

136. 405 F.3d at 705.

137. *Id.* at 709.

138. *Id.*

the assessment and evaluation of sex offenders,” probation and corrections officers, and advocates for victims of sexual abuse.<sup>139</sup> This board “promulgate[s] guidelines for determining the level of risk of reoffense and the degree of dangerousness posed to the public or for relief from the obligation to register . . . .”<sup>140</sup> When determining a potential registrant’s recidivism risk, the board must consider: mental illness of offenders, age of offenders at the time of offense commission, time served and other criminal history factors that might indicate dangerousness, number of offenses, response to treatment, risk of recidivism, history of substance abuse, recent behavior, and review of victim impact statements.<sup>141</sup>

Massachusetts carefully classifies sex offenders according to their level of dangerousness and risk of reoffense.<sup>142</sup> Level three offenders pose a high risk of reoffense and “the degree of [their] dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination . . . .”<sup>143</sup> The board transmits level three offenders’ information to the public, law enforcement, municipalities, and postsecondary institutions.<sup>144</sup> Police departments in a level three offender’s community must notify organizations and individuals likely to encounter the offender.<sup>145</sup> Level two offenders pose a moderate risk of reoffense and “the degree of [their] dangerousness posed to the public is such that a public safety interest is served by public availability of registration information . . . .”<sup>146</sup> With these offenders, the board transmits information to the public and state agencies only.<sup>147</sup> In cases where “the risk of reoffense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served,” offenders are classified as level one offenders and avoid public dissemination of their personal information altogether.<sup>148</sup> The board only disseminates level one offender information to police departments and other state agencies where the offender lives, works, and attends institutions of higher learning.<sup>149</sup>

Massachusetts understands that some publicly-registered offenders can rehabilitate themselves. Accordingly, if a registered offender demonstrates he no longer poses a risk of reoffense or is not a danger to the public, the board may relieve the offender of the obligation to register.<sup>150</sup> Publicly-registered

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139. MASS. GEN. LAWS ch. 6, § 178K(1) (2006).

140. *Id.*

141. § 178K(1)(a)-(l).

142. *See id.*

143. § 178K(2)(c).

144. *Id.*

145. *Id.*

146. § 178K(2)(b).

147. *Id.*

148. § 178K(2)(a).

149. *Id.*

150. § 178K(2)(d). Massachusetts law limits an offender’s ability to avoid registry inclusion. Massachusetts law bars sexually violent predators and those convicted of multiple sex offenses from asserting this right.

offenders carry the burden of proving that they are no longer dangerous.<sup>151</sup>

## V. CONCLUSION

Meth offender registries will have a dramatic impact on the lives of registrants. They affect offenders' ability to obtain housing and employment. They further amplify the stigma associated with meth use. The online availability of registrants' information, although already part of the public record, makes access immediate and widespread. Considering the country's negative view of meth offenders, these registries have a veneer of vindictiveness and anger. The law provides some protection for offenders if these registries lead to unlawful conduct. Even if registry users act in ways that do not violate the law, in many cases, registry use will nonetheless carry harsh consequences.

The public has a right to access some information about certain offenders. This right, however, is not absolute. Registries should focus on those offenders that pose the greatest risk to the public—manufacturers and distributors. If states expand legislation to include individuals convicted of low-level distribution and meth possession, registries will become bloated and useless. Also, only those states grappling with meth abuse should adopt these measures.

States must include provisions to ensure registries accurately include information about those individuals who truly pose a risk to society. Current meth legislation includes no express provisions granting rehabilitated offenders an opportunity to argue against inclusion. Absent this type of express language, courts are not likely to grant non-dangerous offenders an opportunity to avoid inclusion. States must provide this important right.

States should follow the lead of Massachusetts when formulating meth offender registry laws. Massachusetts' sex offender registry law correctly balances the public's right for information with the rights of offenders. States should establish boards, consisting of members that represent law enforcement, victims of meth crimes, and offenders, to determine if an offender merits registry inclusion. These boards should carry broad discretionary power to make decisions they deem necessary to protect the rights of the public and offenders.

As in Massachusetts, these boards should carefully classify offenders according to their risk of reoffense and dangerousness. Individual offenders deserve a case-by-case examination of their particular circumstances. Already registered offenders must have the right to present their case to a board if their circumstances change and they no longer pose a threat to the public. Registrants should bear the burden of establishing exclusion.

Meth offender registries, if implemented properly, will be important tools

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151. *Id.*

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to the public and law enforcement. Current meth offender legislation represents a knee-jerk, inadequate response to a legitimate, regional problem in this country. States must keep in mind the individual rights of offenders and provide protection for those who are rehabilitated and non-dangerous. If not, meth offender registries will remain inaccurate and unfair.