

ORIGINAL

IN THE SUPREME COURT OF OHIO

ROMAN CHOJNACKI

Appellant

Case Nos. 2008-0991 &  
2008-0992

vs.

RICHARD CORDRAY, Ohio Attorney  
General in his Official Capacity

Appellee

On Appeal from the Warren County Court  
of Appeals Twelfth Appellate District  
Court of Appeals  
Case No. CA 2008-03040

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BRIEF OF AMICI CURIAE CUYAHOGA COUNTY PUBLIC DEFENDER, FRANKLIN  
COUNTY PUBLIC DEFENDER, LAKE COUNTY PUBLIC DEFENDER, MONTGOMARY  
COUNTY PUBLIC DEFENDER, STARK COUNTY PUBLIC DEFENDER, AND  
AMERICAN CIVIL LIBERTIES UNION  
IN SUPPORT OF APPELLANT ROMAN CHOJNACKI

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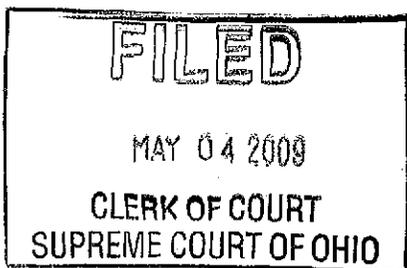
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## SUMMARY OF ARGUMENT

This Court accepted the instant case to decide whether the denial of counsel in a proceeding challenging the application of the Adam Walsh Act (“AWA” or “Senate Bill 10”) is a final appealable order. After briefing and argument on this question, this Court ordered the parties to submit supplemental briefing on the following two questions:

1. Whether sex offender reclassification proceedings conducted pursuant to [Senate Bill 10] are criminal or civil proceedings; and,
2. Whether sex offenders are entitled to the appointment of counsel for [Senate Bill 10] reclassification proceedings if those proceedings are civil in nature.

In the context of this case, “sex offenders” are individuals who were previously classified under Megan’s Law after the opportunity for a hearing and with the benefit of counsel and who have been administratively *reclassified* pursuant to the Adam Walsh Act.

While amici agree with appellant Chojnacki that sex offender reclassification proceedings are punitive in both intent and effect and therefore criminal in nature, amici elect to address the second question with the instant brief. Whether or not reclassification proceedings are criminal or “civil in nature,” reclassified sex offenders are entitled to counsel as a matter of constitutional due process and equal protection as well as pursuant to 120.16.<sup>1</sup>

As an initial matter, reclassified *indigent* sex offenders are entitled to the appointment of counsel pursuant to R.C. 120.06 and R.C. 120.16. Moreover, this right of counsel is required, as a matter of due process and equal protection, for numerous reasons, including: 1) The State has

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<sup>1</sup> For the sake of simplicity, amici focus their subsequent statutory discussion on R.C. 120.16, which concerns the appointment of counsel through a county public defender system. However, the same argument applies to counties who provide legal representation through the state public defender, a joint county public defender system, or a system of privately appointed counsel. See R.C. 120.04-.06, R.C. 120.13-.18, R.C. 120.23-.28, and R.C. 120.33.

created a substantive right to a hearing for a reclassified sex offender to challenge the application of the Adam Walsh Act which must therefore comport with due process; 2) The reclassification proceeding is, if not criminal, quasi-criminal in nature as the classification is a direct result of a criminal conviction; 3) Reclassification of individuals previously classified under Megan's Law has the consequence of imposing serious burdens and restrains on an individual's liberty and property rights; 4) The reclassification proceeding involves complex legal issues that the average *pro se* litigant could not reasonably address; 5) There is a significant risk that the Adam Walsh Act will be misapplied to reclassified sex offenders if they are denied the right to counsel; and 6) Individuals classified for the first time under the Adam Walsh Act have the benefit of counsel as their classification proceeding occurs at the time of sentencing

Before addressing the legal basis for a right to counsel if the reclassification proceedings are deemed technically civil, amici offer some context on the statewide impact of the administrative reclassification of over 20,000 sex offenders by Senate Bill 10 and the challenges involved with litigating issues created by this massive reclassification.

#### **BACKGROUND**

Under Ohio's Megan's Law, sex offenders generally had their sex offender classification determined at a judicial hearing in which the State bore the burden of proof and they enjoyed a statutory right to counsel. Both the state and the offender had the right to appeal the resulting judicial determination. Many of the classification decisions were a part of a negotiated plea agreement. If the State elected to forgo a hearing, the individual was classified under the least restrictive tier of sex offenders, i.e. as sexually oriented offenders. These Megan's Law classifications had been in place for individual sex offenders for as many as 10 years when the Adam Walsh Act was enacted in July 2007.

With the AWA, the General Assembly upset settled classification decisions which were based on the risk each individual presented to the community, and replaced them with classifications which ignored those prior determinations and which were tied directly to the offense of conviction. These changes occurred administratively, without notice or a judicial hearing. Although reclassified sex offenders have a limited statutory right to contest the retroactive application of the AWA, they must do so within a strict 60-day filing deadline. Moreover, sex offenders, who received inadequate notice regarding how to file and where to file these challenges, face the daunting prospect of navigating a vaguely-defined litigation process that has been implemented inconsistently across the various counties of Ohio. If sex offenders do not challenge the ramifications of their already-implemented change in their registration status in the manner prescribed by a particular county court of common pleas, they face the risk of having procedurally defaulted their opportunity to challenge the AWA's application to themselves.

With respect to the reclassification proceedings, the AWA does not expressly provide for a right to counsel; however, it does not expressly foreclose one either.

#### **I. Statewide Effect of Senate Bill 10 Reclassification**

Ohio's Adam Walsh Act fundamentally transformed Ohio's sex offender classification process and offender registration requirements, notification requirements, and residency restrictions. The AWA explicitly provides that these changes are to be applied retroactively to individuals whose classification was previously governed by Ohio's Megan's Law. The retroactive reclassifications occurred administratively without any hearing and resulted in a substantial increase in the burdens and obligations endured by those individuals previously

classified under Ohio's Megan's Law. In order to demonstrate the significance of the change, amicus provide a summary of the effects of reclassification below.

Under Ohio's Megan's Law, sex offenders were predominately classified at the lowest (least restrictive) level. Specifically, adult sex offender classifications were comprised as follows:

- 77% sexually-oriented or child-victim offenders (17,356 individuals);
- 2% habitual sex or child-victim offenders without notification (510 individuals);
- 2% habitual sex or child-victim offenders with notification (395 individuals);
- 18% sexual predators or child-victim predators (4115 individuals).<sup>2</sup>

Accordingly, most classified offenders had to register annually for ten years without community notification. See generally former O.R.C. 2950.04, 2950.05, 2950.06, 2950.07. Only 20% of registered adult sex or child-victim offenders under Ohio's Megan's law faced community notification.

The administrative reclassification of sex offenders pursuant to the Adam Walsh Act changes this picture dramatically. Under the Adam Walsh Act, most adult sex offenders fall under the higher (more restrictive) levels:

- 13% Tier I sex offenders and child-victim offenders (2842);
- 33% Tier II sex offenders and child-victim offenders (7492);
- 54% Tier III sex offenders and child-victim offenders (12,006).<sup>3</sup>

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<sup>2</sup> These figures are based on discovery provided by the Ohio Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio) and do not include 85 individuals classified as "aggravated sexually oriented offenders." Counsel for amici Cuyahoga County Public Defender and the ACLU were counsel in *Doe v. Dann* as well.

Thus, almost 90% of reclassified sex offenders have to register every 180 days for 25 years or every 90 days for life. See generally O.R.C. 2950.04, 2950.05, 2950.06, 2950.07. These changes also mean that 7167 reclassified sex offenders are subject to community notification, *for the first time*, as a direct result of their reclassification under the AWA.<sup>4</sup>

In addition, if the AWA is determined to apply retroactively in its entirety, all reclassified sex offenders face more expansive restrictions on where they can lawfully reside. Cf. former R.C. 2950.031 and current R.C. 2950.034. For example, in Franklin County, sex offenders would be effectively banned from 60% of all residential property in Franklin County, and more than 80% of property in high-poverty areas is covered by the restrictions. See *Assessing Housing Availability under Ohio's Sex Offender Residency Restrictions* (Mar. 25, 2009), Red Bird, S., Ohio State University (prepared for the Franklin County Public Defender).

Many reclassified sex offenders have also been misclassified by the Attorney General under the AWA. It is impossible to have definite numbers regarding the total number of misclassified individuals. However, Amicus Cuyahoga County Public Defender has represented sexual registrants in approximately 460 reclassification cases. In approximately 19% of these cases (87 of 460), individuals have raised arguments that they have been misclassified under the AWA and should either have been placed in a lower tier or not classified at all under the AWA. While most of these cases are still being litigated or have been stayed pending this Court's decision on the constitutionality of the AWA, trial courts have determined that twelve of these

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<sup>3</sup> These figures are based on discovery provided by the Ohio Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio) and do not include 890 cases that have been "stayed by Court" or 824 juvenile offenders.

<sup>4</sup> This figure is based on discovery provided by the Ohio Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio).

individuals should not be classified at all under the Adam Walsh Act, and that several other individuals should have had their classification lowered.

## **II. Provisions for Challenging Application of the Act and the Imposition of Community Notification**

For reclassified sex offenders, the AWA includes a provision for challenging the application of the AWA in general and a provision for challenging the imposition of community notification in particular. However, the Act places the onus on reclassified sex offenders to pursue these challenges and forces them to comply with the Act's provisions unless and until their challenges succeed.

First, in O.R.C. 2950.031(E) and O.R.C. 2950.032(E), the Ohio General Assembly established a procedure for challenging the retroactive application of the AWA. O.R.C. 2950.031(E) provides, in relevant part, that an offender "may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008."<sup>5</sup> These challenges must be filed, within 60 days of receiving the registered reclassification letter in "the court of common pleas, or for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or is temporarily domiciled."<sup>6</sup> O.R.C. 2950.031(E). If an offender does not request a hearing within the "applicable sixty-day period," he or she waives his or her right to a hearing and is "bound by the determinations of the attorney general" regarding his or her reclassification and associated duties. O.R.C. 2950.031(E).

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<sup>5</sup> R.C. 2950.032(E) also provides similar procedures for individuals who received notice of their reclassification from the Department of Rehabilitation and Corrections or the Department of Youth Services.

<sup>6</sup> The only exception to filing in county of residence is for individuals who work or go to school in Ohio but who do not reside there. O.R.C. 2950.031(E).

Even those individuals who file timely challenges to the application of the Adam Walsh Act must nonetheless comply with the provisions of the Adam Walsh Act unless and until their challenge to the Act succeeds. O.R.C. 2950.031, R.C. 2950.032, and 2950.033(B).

Second, the AWA includes a provision by which newly classified Tier III Sex Offenders can remove the requirement of community notification. O.R.C. 2950.11(F). Under the Adam Walsh Act, a Tier III Sex Offender is not subject to the requirement of community notification if a court:

[F]inds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment.

O.R.C. 2950.11(F)(2). Put another way, a Tier III Sex Offender is not subject to community notification requirements unless he or she would have been subject to those requirements under Ohio's Megan's Law. Despite a clear likelihood of success on the issue of community notification, these individuals nonetheless face community notification until such time as they take affirmative action pursuant to O.R.C. 2950.11(F) and receive a ruling from some unspecified court.

Unfortunately, these individuals do not receive notice of their right to such a hearing and the statute does not advise them when, where, and how to request such a hearing.

### **III. Reclassification Letters Sent By the Ohio Attorney General**

The AWA provides that the reclassification of individual sex offenders was to be accomplished by the Attorney General without a hearing and prior to providing notice to the affected individuals. O.R.C. 2950.031(A)(1) and 2950.032(A).

The AWA only requires notice be sent to sex offenders *after* they have been reclassified. O.R.C. 2950.031(A)(2) and 2950.032(A)(2). Specifically, the AWA provides that the attorney general, department of rehabilitation and corrections, and/or the department of youth services

shall notify the offender of the following: 1) The changes to Chapter 2950 made by the AWA; 2) The individual's new classification under the AWA; 3) Their right to hearing to challenge the AWA, the procedures for requesting a hearing, and the period of time within which the request must be made.<sup>7</sup> O.R.C. 2950.031(A)(2). For those individuals who are not incarcerated, this notification must be made by registered letter sent to "the last reported address of the person and, if the person is a delinquent child, the last reported address of the parents of the delinquent child." R.C. 2950.031(A)(2).

Pursuant to these provisions, the Ohio Attorney General sent reclassification letters to reclassified sex offenders informing them of their new classification and new registration duties, and advising them of the following:

**Right to Contest application of new classification and registration requirements**

Under Ohio Revised Code §2950.031(E), you have the right to challenge the new classification and registration requirements. You have sixty (60) days after receipt of this letter to file a petition in the Court of Common Pleas in the county where you reside in Ohio, or if you reside outside the state, the county in which you work or attend school. You must also send a copy of the petition to the county prosecutor in that county. If you fail to file your petition within the sixty (60) day period, you have waived your right to contest the application of the new classification and registration requirements. You are required to comply with the new registration requirements unless otherwise modified by Court order.

The reclassification letter does not define "county of residence" and does not indicate whether the petition should be filed as a criminal or civil matter. This reclassification letter also fails to provide reclassified sex offenders with sufficient information about the AWA so that they can determine whether or not they have been misclassified. The reclassification letters simply inform individuals of their new classification and do not advise them what offenses fall into

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<sup>7</sup> There is additional information that must be provided to individuals whose obligations under the prior version of Chapter 2950 were "scheduled to terminate on or after July 1, 2007 and prior to January 1, 2008." R.C. 2950.031(A)(2)(d).

which tier. Because the letter provides no information about the classification of specific offenses, reclassified sex offenders lack sufficient information to question the Attorney General's determination and to argue that they have been misclassified. Those that have been misclassified are left to discover the error, often while indigent and incarcerated, and figure out how and where to challenge it.

With respect to community notification, the notices provided different information to each level of offender. For Tier I Sex Offenders, the notice did not say anything about community notification. For Tier II Sex Offenders, the notice informed them that “[i]f you were previously subject to community notification prior to January 1, 2008, pursuant to Ohio Revised Code § 2950.11, that requirement remains in effect.” The information provided to Tier II Sex Offenders is incorrect because there is no provision in the Adam Walsh Act for community notification of Tier II Sex Offenders. For Tier III Sex Offenders, the notice informed them that:

As a Tier III Sex Offender, you are subject to the community notification requirements under Ohio Revised Code § 2950.11. If you were previously not subject to community notification prior to January 1, 2008, pursuant to Ohio Revised Code § 2950.11(F)(2), the Court may make a determination that removes this requirement.

Although the notice suggests the possibility that a Court may remove the notification requirement, it does not advise individuals that they must affirmatively seek that relief or how to do so.

#### **IV. Handling of AWA Petitions Varies By County**

Because the AWA is vague regarding the procedure for challenging an individual's reclassification under the AWA, the procedures established by counties throughout Ohio have varied. While some counties require that the petition be filed as a new civil action, other counties will accept petitions filed in their original criminal case. See AWA County Survey conducted by the Ohio Public Defender (“OPD AWA Survey”) available at <http://www.opd.ohio.gov/>

AWA\_Attorney\_Forms/AWA\_SB10\_County\_Survey.pdf. While some counties have not required filing fees for the petitions, other counties have imposed filing fees ranging from \$0 to \$350. See OPD AWA Survey. While some counties provide for the random assignment of petitions challenging reclassification, other counties provide that a reclassification petition should be assigned to the judge who handled the original criminal case, or to a single judge assigned to handle all of the petitions filed in that county. See OPD AWA Survey.

Moreover, because the AWA does not define the term “reside,” it is unclear whether an incarcerated individual receiving a reclassification letter should file his or her petition in the county of incarceration or the county of residency prior to incarceration. As a result of the confusion created by the statute, some county prosecutors have filed motions to dismiss petitions filed as new civil actions; while other county prosecutors have filed motions to dismiss petitions filed under their original criminal case. In relation to the incarcerated petitioners, some prosecutors are moving to dismiss the petitions as being filed in the wrong county.

For the purpose of this case, the most significant inconsistency relates to the appointment of counsel for indigent petitioners. In Cuyahoga County, trial courts take have taken one of four different approaches to a request for counsel. Some trial courts appoint counsel in every case. Some trial courts deny counsel in every case. Some trial courts deny counsel but refer petitioners to the public defender for “advice.” And some trial courts have not ruled on the requests for counsel.

This inconsistency regarding the appointment of counsel is not limited to Cuyahoga County. See OPD AWA Survey. In seventeen counties, trial courts generally appoint counsel to

represent indigent petitioners.<sup>8</sup> In at least two other counties (Hamilton and Lawrence), trial courts sometimes appoint counsel. In the remaining counties, trial courts have generally denied indigent petitioners' requests for counsel.

#### **LAW AND ARGUMENT**

Even if reclassification proceedings under the Adam Walsh Act are deemed civil and remedial rather than criminal and punitive, appellant Chojnacki is nonetheless entitled to counsel at AWA reclassification hearings pursuant to 120.16.<sup>9</sup>

Chojnacki is likewise entitled to the appointment of counsel as a matter of state and federal due process and equal protection. Although counsel is generally not afforded to indigent litigants in civil cases, state and federal due process requires it where the interests and rights involved are substantial and where the complexity of the proceedings is such that the litigants are unlikely to adequately identify potentially meritorious legal issues, much less present arguments that will enable courts to decide those issues through a meaningful adversarial process.

Reclassification proceedings held pursuant to R.C. 2950.031 and R.C. 2950.032 implicate substantial rights and involve complex legal issues such that due process requires the appointment of counsel for indigent petitioners. Moreover, state and federal equal protection principles require the appointment of counsel in reclassification proceedings because newly classified offenders enjoy the benefit of appointed counsel at classification proceedings which occur as a part of a criminal sentencing hearing.

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<sup>8</sup> The seventeen counties include Auglaize, Brown, Clark, Clermont, Fairfield, Fayette, Franklin, Guernsey, Holmes, Logan, Medina, Montgomery, Ottawa, Preble, Putnam, Stark, and Wayne.

<sup>9</sup> As noted supra at fn.1, reclassified sex offenders' right to counsel could, depending on the type of appointed counsel system in a particular county, also be found in See R.C. 120.04-.06, R.C. 120.13-.18, R.C. 120.23-.28, and R.C. 120.33.

**I. R.C. 120.16 Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings.**

Reclassified sex offenders are also entitled to the appointment of counsel in R.C. 2950.031 and R.C. 2950.032 hearings pursuant to R.C. 120.16(A)(1) and R.C. 120.16(B).

R.C. 120.16 establishes the parameters for when an indigent person is entitled to the appointment of counsel through the County Public Defender system.<sup>10</sup> This statute provides, among other things, that the county public defender shall provide legal representation to indigent adults who:

- [A]re charged with the commission of an offense or act that is a violation of a state statute and for which the penalty or any possible adjudication includes the potential loss of liberty. . .

R.C. 120.16(A)(1). Such representation shall be provided “at every stage of the proceedings following arrest, detention, service of summons, or indictment.” R.C. 120.06(B). In other words, as explained by the Office of the Ohio Attorney General in Opinion 99-031 (hereinafter OAG 99-031), individuals are entitled to be represented by the county public defender: “(1) at every stage of a proceeding in which an indigent defendant is charged with the commission of an offense or act; (2) that is a violation of a state statute; and (3) for which the penalty or any possible adjudication includes the potential loss of liberty.” Sex offender reclassification hearings satisfy all three of these criteria.

**A. Sex offender reclassification hearings are “a stage of the proceedings following arrest, detention, service of summons, or indictment.”**

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<sup>10</sup> The statute is clear, however, that such legal representation is not necessarily limited to the appointment of county public defenders as “[n]othing in this section shall prevent a court from appointing counsel other than the county public defender or from allowing an indigent person to select the indigent person’s own personal counsel to represent the indigent person.” R.C. 120.16(E).

Under Ohio’s Adam Walsh Act, an individual’s classification is tied directly to the individual having been charged and subsequently convicted of a sexually oriented (or child-victim oriented offense). See generally R.C. 2950.01. A sex offender reclassification hearing “arises only” because a defendant was previously charged and convicted of a sexually oriented offense. OAG 99-031; R.C. 2950.031 and R.C. 2950.032. Thus, a sex offender reclassification hearing is a “stage of the proceedings following arrest, detention, service of summons, or indictment” for persons convicted of sexually-oriented offenses. Cf. OAG 99-031 (reaching that conclusion for a sex offender classification hearing under Megan’s Law).

**B. The commission of a sexually oriented offense constitutes a violation of a state statute.**

Each offense listed in 2950.01(A) as a “sexually oriented offense” and (C) as a “child-victim oriented offense” “constitutes conduct that is prohibited by a statute of the Revised Code.” OAG 99-031. “Accordingly, a person who commits one of those offenses commits an offense that ‘is a violation of a state statute.’” OAG 99-031 (quoting R.C. 120.16(A)(1)).

**C. A sexually oriented offense is a violation of a state statute for which the penalty includes the potential loss of liberty.<sup>11</sup>**

A court “may impose a prison [or jail] term” for every sexually oriented or child-victim oriented offense listed in R.C. 2950.01(A) and (C), pursuant to R.C. 2929.14 and R.C. 2929.21. OAG 99-031. Moreover, every reclassified sex offender faces the possibility of further incarceration if he or she fails to comply with the registration and verification requirements of

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<sup>11</sup> While amici maintain that the potential loss of liberty contemplated by R.C. 120.16 includes more than simply potential incarceration, it is unnecessary for this Court to address the scope of that provision because the possibility of incarceration clearly constitutes the potential loss of liberty.

the AWA.<sup>12</sup> R.C. 2950.99. Accordingly, a sexually oriented offense “is a violation of a state statute for which the penalty includes the potential loss of liberty.” OAG 99-031.

#### **D. Conclusion**

Thus, as concluded by the Ohio Attorney General in the context of Ohio’s Megan’s Law, a sex offender reclassification hearing is “a stage in a proceeding that is instituted against a defendant charged with the commission of a violation of a state statute for which the penalty includes the potential loss of liberty.” OAG 99-031. In the Ohio Attorney General’s opinion, individuals are entitled to counsel at sex offender classification proceedings, pursuant to R.C. 120.16, regardless of whether they are deemed civil in nature. OAG 99-031. Amici agree.

#### **II. State and Federal Due Process Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings.**

As a matter of state and federal due process, indigent petitioners challenging their reclassification under Senate Bill 10, pursuant to R.C. 2950.031 and R.C. 2950.032, are entitled to the appointment of counsel.

R.C. 2950.031(E) and R.C. 2950.032(E) create a substantive right to a hearing at which reclassified sex offenders can challenge their administrative reclassification under Senate Bill 10. Both sections provide that reclassified sex offenders “may contest as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will

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<sup>12</sup> The possibility of *future* criminal penalties for non-compliance with the registration duties of the AWA provides yet another basis for requiring the appointment of counsel at reclassification hearings. In Lake County, domestic relations judges appoint counsel, pursuant to R.C. 120.16, for indigent individuals at *civil* show cause hearings. The justification for appointing counsel for a technically civil hearing is that the individual could face potential jail time if he or she failed to comply with an order issued as a result of the show cause hearing.

be implemented on January 1, 2008.” R.C. 2950.031(E) and R.C. 2950.032(E). Having afforded reclassified sex offenders a statutory right to a hearing to challenge their classification, that hearing must be conducted within the strictures of state and federal due process. *See Wolff v. McDonnell* (1974), 418 U.S. 539, 556-58 (explaining that a “state-created right” entitles an individual pursuing that right to the protections of the due process clause).

The “fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). It is well-established that:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law.

*Powell v. Alabama* (1932), 287 U.S. 45, 68-69. Recognizing that reality, both this Court and the United States Supreme Court have held, in several different civil contexts, that due process can require the appointment of counsel for indigent litigants. *See e.g. State ex rel. Heller v. Miller* (1980), 61 Ohio St. 2d 6, paragraph two of the syllabus (state and federal due process and equal protection requires the appointment of counsel in parental termination proceedings); *In re Fisher* (1974), 39 Ohio St. 2d 71, 77-82 (due process requires the appointment of counsel in civil commitment proceedings); *In re Gault* (1967), 387 U.S. 1, 35-37 (due process requires the appointment of counsel at juvenile delinquency proceedings); *Gagnon v. Scarpelli* (1973), 411 U.S. 778, 790 (due process may require, on a case-by-case basis, the appointment of counsel at a probation and/or parole hearing); *Lassiter v. Dep’t of Social Services* (1981), 452 U.S. 18, 31 (due process may require, on a case-by-case basis, the appointment of counsel for parents in a proceeding involving the termination of parental rights). The common thread in these cases is that counsel is required because of the nature and character of the interests involved and because

the effectiveness of the hearing may “depend on the use of skills which the [litigant] is unlikely to possess.” *Gagnon*, 411 U.S. at 786-87.

Although the basic contours of the process required by the Due Process Clause are clear, the precise procedural protections vary depending on the particular situation involved. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). Specifically, in ascertaining the dictates of due process in particular cases, this Court must consider the following three factors: 1) the private interest that will be affected by the official action; 2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; 3) the Government’s interest, including the function involved and the fiscal and administrative burdens, that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 334-35.

Here, as discussed below, due process requires that indigent petitioners be appointed counsel at reclassification hearings held under R.C. 2950.031(E) and R.C. 2950.032(E).

#### **A. Private Interest**

The interest of the reclassified sex offenders involves not being erroneously subjected to new and/or extended obligations as a registered sex offender under the AWA. Although the effect of the AWA may vary for particular offenders, the AWA requires, as a general rule, most offenders to register more frequently and for longer periods of time than they did under Megan’s Law. Reclassified sex offenders may also face significantly more burdensome residency restrictions. Moreover, at least 7000 reclassified sex offenders will face community notification as a direct result of the application of the Adam Walsh Act and each of these individuals is entitled to pursue relief from such notification pursuant to R.C. 2950.11(F)(2). Finally,

numerous individuals have colorable claims that the AWA, even if constitutional, has been misapplied to them. To the extent that the AWA should not be applied or has been misapplied to reclassified sex offenders, they will suffer significant irreparable harm.

**B. Risk of Erroneous Deprivation and Probable Value of Substitute Procedural Safeguards**

The risk of erroneous application of the Adam Walsh Act is exceedingly high if reclassified sex offenders are denied the right to counsel at reclassification hearings. Reclassified sex offenders have four basic arguments that the AWA, in part or in its entirety cannot be applied to them: 1) Its retroactive application violates several substantive state and federal constitutional rights; 2) Its retroactive application constitutes a breach of plea agreements previously entered into with the State; 3) Its community notification provisions should not be applied to any reclassified sex offender who was not subject to community notification under Ohio's Megan's Law; and 4) It has been misapplied by the Attorney General in classifying them. Given the breadth and complexity of these issues, appointed counsel is invaluable to avoid the misapplication of a very complex law.

The AWA clearly contemplates that reclassified sex offenders may have legitimate claims regarding the retroactive application of the AWA. See O.R.C. 2950.031(E), 2950.032(E), and 2950.11(F). However, indigent sex offenders are unlikely to successfully litigate these claims absent the appointment of counsel. This is particularly true given the inadequate notice<sup>13</sup>

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<sup>13</sup> Under the AWA, the Attorney General reclassifies individuals without giving them notice or an opportunity to be heard. It is only after reclassification that any notice of their right to challenge the reclassification is attempted. O.R.C. 2950.031(A)(2) and 2950.032(A)(2). Although the Attorney General is statutorily required to advise petitioners of "the procedures for requesting a hearing," O.R.C. 2950.031(A)(2)(c), the notice provided by the Attorney General is woefully inadequate as it fails to:

afforded sex offenders about the reclassification hearings and the short time period available for requesting such a hearing.

Even for those reclassified sex offenders who successfully navigate the procedural obstacles associated with filing some sort of challenge to their reclassification,<sup>14</sup> they are unlikely to properly identify and litigate all of the complex legal issues present in their particular case.<sup>15</sup> Every reclassified sex offender could raise numerous complex constitutional arguments

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- Advise reclassified offenders whether their petitions should be filed as a civil or criminal matter and/or as new case or under the original criminal case.
  - Define “county where you reside” which serves as the proper venue for filing a petition.
  - Advise reclassified sex offenders what types of challenges can be raised in their petition.
  - Provide reclassified sex offenders with sufficient information about the AWA so that they can determine whether or not they have been misclassified.
  - Advise reclassified sex offenders whether they are entitled to counsel to contest the application of the AWA.
  - Advise reclassified sex offenders whether or not they must pay a filing fee to contest the application of the AWA.

<sup>14</sup> As a consequence of this inadequate notice, indigent reclassified sex offenders have had their petitions dismissed when they filed under their original criminal case and incarcerated reclassified sex offenders have had their petitions dismissed when they filed in their county of residence prior to involuntary incarceration. Moreover, some reclassified sex offenders who have filed petitions as new civil actions have also faced motions to dismiss from county prosecutors.

<sup>15</sup> The complexity of Senate Bill 10 is beyond dispute. Indeed, the Ohio Attorney General’s Office recently acknowledged, in its amicus brief before this Court in *In re Smith*, Case No. 2008-1624, that it had misinterpreted the law as it applied to juveniles. (Br. at 11-12) (explaining that it had incorrectly interpreted the juvenile AWA provisions as eliminating judicial discretion regarding a juvenile offender’s classification). Both the Second and Eighth District Courts of Appeals have lamented about the complexity of the Adam Walsh Act. *Gildersleeve v. State*, Cuyahoga App. No. 91515-91519 and 91521-91532, 2009 Ohio 2031, ¶ 56 (explaining that the community notification provisions under the Senate Bill 10 are “wrought

regarding the retroactive application of the AWA. These constitutional issues include claims that the retroactive application of the law violates the Ex Post Facto Clause of the United States Constitution, the Retroactivity Clause of the Ohio Constitution, the Double Jeopardy and Due Process Clauses of both the United States and Ohio Constitutions, separation of powers principles, and the constitutional prohibition on cruel and unusual punishment. See e.g. *State v. Bodyke*, S.Ct. Case No. 2008-2502 (accepted for briefing on 4/8/09).

Moreover, reclassified sex offenders may have additional claims depending on the particular circumstances of their case. For instance, every reclassified sex offender who entered into a plea agreement with the State of Ohio has a claim that the State's reclassification constitutes a breach of contract and a constitutional impairment on the obligation of contracts. See e.g. *State v. Bodyke*, S.Ct. Case No. 2008-2502. Moreover, all reclassified Tier III sex offenders, at least 7000 individuals, have extraordinarily strong claims that they should not, pursuant to O.R.C. 2950.11(F)(2), be subject to community notification. Indeed, some such individuals have, with the assistance of counsel, successfully raised such arguments with the assistance of counsel. See e.g. *Gildersleeve v. State*, Cuyahoga App. No. 91515-91519 and 91521-91532, 2009 Ohio 2031, ¶ 77 (holding that Tier III sex offenders who were not subject to community notification under Megan's Law are "exempt from community notification under the AWA"); *Dionte Goss v. State of Ohio*, Cuyahoga County Common Pleas CV-08-646052 (O'Donnell, J, presiding; 9/8/08 Journal Entry); *State v. Toles*, Franklin County Common Pleas 00CR-02 875, at 30-39 (Schneider, J. presiding; 9/9/08 Decision).

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with confusion."); *In re S.R.B.*, Miami App. No. 08-CA-8, 2008 Ohio 6340, ¶ 6 (describing the enactment of Senate Bill 10 as resulting in "a confusing array of very poorly worded statutory provisions.") At the time the instant brief was filed, the Eighth District had announced its decision in *Gildersleeve*, but had not yet journalized it. See Eighth Dist. Loc. R. 22.

Finally, the assistance of counsel is necessary to prevent numerous reclassification errors. With the assistance of counsel, individuals have successfully argued that the Adam Walsh Act does not apply to them at all because: 1) they were not, in fact, convicted of a sexually oriented or child-victim oriented offense; 2) their offense was not a sexually oriented or child-victim oriented offense prior to the enactment of the AWA; 3) their offense fits within one of two statutory exceptions established by the AWA in R.C. 2950.01(B)(2);<sup>16</sup> 4) they had no duty to register under Megan's Law despite having a conviction for a sexually oriented offense; 5) their duty to register under Megan's Law expired prior to the effective date of the AWA; and 6) their out-of-state conviction had been expunged.

Similarly, many reclassified sex offenders have had their classifications reduced because the Attorney General misclassified these offenders by, among other things: 1) relying on a charge that had been reduced or dismissed; 2) misinterpreting the Ohio equivalent of out-of-state convictions; and 3) misapplying the law for individuals convicted of gross sexual imposition, unlawful sexual conduct with a minor, kidnapping, and felonious assault.

Such misclassification errors, which were made by experienced lawyers at the Attorney General's Office who were intimately familiar with the law, are unlikely to be discovered by indigent laypersons without the assistance of counsel. This is particularly true as the "notice"

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<sup>16</sup> R.C. 2950.01(B)(2) provides that an individual who commits a sexually oriented offense is not a "[s]ex offender" if "the offense involves consensual sexual conduct or consensual sexual contact" and either of the following applies:

- (a) The victim of the sexually oriented offense was eighteen years of age or older and at the time of the sexually oriented offense was not under the custodial authority of the person who [committed] the sexually oriented offense.
- (b) The victim of the offense was thirteen years of age or older, and the person who [committed] the sexually oriented offense is not more than four years older than the victim.

provided by the Ohio Attorney General of an individual's reclassification does not provide sufficient information (such as the statutory classification level for each offense) to enable laypersons to determine whether they have been misclassified. Simply put, most indigent sex offenders lack sufficient knowledge to question the Attorney General's reclassification determinations. Without counsel, it is likely that a significant number of individuals will fail to properly identify and present misclassification arguments and will therefore be bound by the erroneous classification. *See* R.C. 2950.031(E) (explaining that the failure to raise a misclassification issue in a petition constitutes waiver such that the individual is "bound by the determinations of the attorney general" regarding his or her reclassification and associated duties).

The value of substitute procedural safeguards (i.e. the appointment of counsel) is equally apparent. The appointment of counsel will ensure that the statutory procedures established by the Ohio General Assembly for challenging the application of the Adam Walsh Act are meaningful. Counsel will enable reclassified sex offenders to present the many complex issues presented by the retroactive application of the Adam Walsh Act and will ensure that resulting reclassification, if any, is consistent with their constitutional, contractual, and statutory rights. Even if the constitutional and contractual arguments challenging the retroactive application of the Adam Walsh Act fail, this additional procedure (appointment of counsel) will ensure that at least 7000 individuals are not be improperly subject to community notification and that Ohio's sex offender registration system is not riddled with misclassification errors.

### **C. Public Interest**

"In striking the appropriate due process balance the final factor to be assessed is the public interest." *Matthews*, 424 U.S. at 347.

The State's interest is disserved if the AWA is improperly applied to reclassified sex offenders. *See Goss v. Lopez* (1975), 419 U.S. 565, 579; *see also Morrissey*, 408 U.S. at 484. As with parolees, “[s]ociety has a stake in whatever may be the chance of restoring [registered sex offenders] to normal and useful li[ves] within the law.” *Morrissey*, 408 U.S. at 484. Society has a further interest in treating reclassified sex offenders with basic fairness as fair treatment will increase the likelihood of compliance with the law and “enhance the chance of rehabilitation by avoiding reactions to arbitrariness.” *Id.* This Court has already cautioned that if sex offenders are overrepresented in the most restrictive classification:

[W]e run the risk of ‘being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law. This result could be tragic for many.’

*State v. Eppinger* (2001), 91 Ohio St. 3d 158, 165 (citation omitted).

Moreover, one of the State's purported purposes in enacting sex offender registration legislation is to provide information to the general public about sex offenders. *See generally* R.C. 2950.02. This purpose is frustrated when the information provided is inaccurate. As such, the public has an interest in procedural safeguards that ensure that the AWA is correctly and fairly applied to registered sex offenders previously governed by Ohio's Megan's Law.

Although the financial cost of a particular procedural safeguard is not a “controlling factor,” the Government's interest in conserving fiscal and administrative resources is “a factor that must be weighed.” *Matthews*, 424 U.S. at 348. In this case, the additional procedural safeguard of appointed counsel may actually conserve fiscal and administrative resources of the State of Ohio. States that have study this issue have determined that the implementation and the administration of the enhanced registration requirements necessary for compliance with the federal Adam Walsh Act is extraordinarily costly. In Virginia, officials determined that

compliance with the federal AWA would cost \$12.4 million *for the first year alone*. See *High Cost of the Adam Walsh Act*, Justice Policy Institute.

The fiscal and administrative burden on local sheriff's offices associated with the implementation of the AWA has been well-documented. On January 21, 2008, the Cleveland Plain Dealer quoted an officer with the Cuyahoga County Sheriff's Sex Offender Registration Unit lamenting the resources dedicated to the implementation of the AWA: "It's a disaster for us... I think many people didn't think this all the way through." and "I'm sitting here most of the day trying to bail out a sinking ship." Rachel Dissel & Gabriel Baird, THE PLAIN DEALER, January 21, 2008, at A3. If it is ultimately determined that the AWA does not apply, in whole or in part, to all or some of the more than 20,000 reclassified sex offenders across Ohio, counties will have wasted significant financial and personnel resources in an unnecessary attempt to comply with the burdensome law. For instance, in Richland County, the average cost of a single community notification mailing is \$152 (with mailings in highly populated areas costing as much as \$400 per mailing).<sup>17</sup> Given that approximately 7000 Tier III sex offenders are likely to be exempted from notification if they properly present their claims with the assistance of counsel, the State could save millions of dollars by not sending out improper notifications. Moreover, because a significant number of individuals have been overclassified as Tier II or Tier III sex offenders, the State will likewise experience a reduced fiscal and administrative burden individuals are properly classified.

In short, the public's interest, like the interest of the reclassified sex offenders, weighs in favor of affording counsel to reclassified sex offenders to ensure that the AWA is properly applied.

### III. State and Federal Equal Protection Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings.

As a matter of state and federal equal protection, indigent petitioners challenging their reclassification under Senate Bill 10, pursuant to R.C. 2950.031 and R.C. 2950.032, are entitled to the appointment of counsel. Specifically, the denial of counsel to *reclassified* sex offenders would violate their equal protection rights because *newly* classified sex offenders enjoy the benefit of appointed counsel. In addition, because several counties and specific trial courts are appointing counsel for petitioners, those individuals who have been denied counsel merely due to their county of residence are being denied equal protection.

The Equal Protection Clause of the Fourteenth Amendment “is essentially a direction that all persons similarly situated should be treated alike.” *Cleburne v. Cleburne Living Center, Inc.* (1985), 473 U.S. 432, 439; see also *Plyler v. Doe* (1982), 457 U.S. 202, 216. The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.” *Cleburne*, 473 U.S. at 440; see also *Department of Agriculture v. Moreno* (1973), 413 U.S. 528, 534. Similarly, the due process clause requires state legislation to “rationally advance[] some legitimate governmental purpose.” *Reno v. Flores* (1993), 507 U.S. 292, 306; *Bolling v. Sharp* (1954), 347 U.S. 497, 499-500 (explaining that “[l]iberty under the law extends to the full range of conduct which an individual is free to pursue”); see also *Fabrey v. McDonald Village Police Dep’t* (1994), 70 Ohio St. 3d 351, 354.

Similar to its predecessor, the Adam Walsh Act provides that an offender’s classification occurs at his or her sentencing hearing. Pursuant to R.C. 2950.03(A)(2) and (B)(1), individuals

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<sup>17</sup> This figure is based on discovery provided by the Richland County Sheriff in *Doe v. Dann*,

sentenced “on or after January 1, 2008” of a sexually oriented or child-victim oriented offense are notified of their classification and registration duties by the trial court “at the time of sentencing.” At sentencing, indigent offenders are obviously represented by court-appointed counsel who can and should raise misclassification and constitutional arguments regarding the application of the Adam Walsh Act. Indeed, if the offender’s counsel fails to raise such issues in the trial court at the time of the offender’s sentencing and classification, those issues are arguably forfeited on appeal. *See e.g. State v. Turner*, Montgomery App. No. 22777, 2008 Ohio 6836, ¶¶ 23-24; *State v. Riddle*, Cuyahoga App. No. 90999, 2009 Ohio 348, ¶ 9.

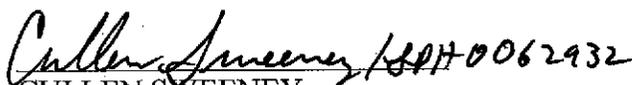
Because newly classified offenders enjoy the benefit of counsel at the time of their classification (as do many reclassified offenders depending on where they live), the denial of counsel to reclassified sex offenders violates their equal protection rights. Individuals reclassified by the Adam Walsh Act and individuals newly classified by the AWA are similarly situated and there is no rational basis for treating them differently with respect to the process provided to ensure the correct application of the AWA. Therefore, reclassified sex offenders *in all counties* must enjoy that same right to counsel at reclassification hearings held pursuant to R.C. 2950.031 and 2950.032.

## CONCLUSION

Whether or not the AWA is punitive, Chojnacki and other reclassified sex offenders are entitled to counsel at sex offender reclassification hearings as a matter of state statutory law and state and federal constitutional law.

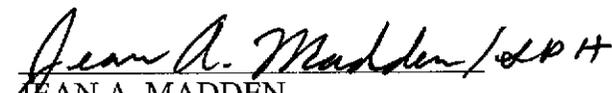
The Adam Walsh Act radically alters individual's obligations under Ohio's sex offender laws. As Adam Walsh classifications are an outgrowth of criminal law and have consequences that often burden a registrant for life, the stakes are both high and complex. In making the sweeping changes with the AWA, the Ohio General Assembly explicitly recognized that reclassified sex offenders may have legitimate claims regarding the complex laws application by affording them a right to a reclassification hearing. Such reclassification hearings will be of little utility if reclassified sex offenders are denied the assistance of counsel. Thus, indigent individuals facing Adam Walsh classification should be extended right to counsel.

Respectfully submitted,

  
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**SERVICE**

A copy of the foregoing Brief of Amici Curiae was served by ordinary mail upon Benjamin Mizer, Office of the Ohio Attorney General, 30 East Broad Street, 17<sup>th</sup> Floor, Columbus OH 43215 and Sarah M. Schregardus, Office of the Ohio Public Defender, 250 E. Broad Street, Suite 1400, Columbus OH 43215 on this 4<sup>th</sup> day of May, 2009.

*Cullen Sweeney / #PH 0062932*  
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## LEXSEE 1999 OHIO AG LEXIS 31

## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO

## OPINION No. 99-031

*1999 Ohio Op. Atty Gen. 206; 1999 Ohio Op. Atty Gen. No. 31; 1999 Ohio AG LEXIS 31*

April 29, 1999

**SYLLABUS:**

[\*1]

Pursuant to *R.C. 120.16* and *R.C. 2950.09*, a county public defender is required to represent an indigent defendant at a hearing to determine whether the defendant is a sexual predator for purposes of the provisions of *R.C. Chapter 2950*, unless the defendant waives his right to counsel or the court pursuant to *R.C. 120.16(E)* appoints counsel other than the county public defender or allows the defendant to select his own personal counsel to represent him.

**REQUESTBY:**

James F. Stevenson, Shelby County Prosecuting Attorney, Sidney, Ohio

**OPINIONBY:**

Betty D. Montgomery, Attorney General

**OPINION:**

You have requested an opinion whether a county public defender is required to represent an indigent defendant at a hearing to determine whether he is a sexual predator for purposes of the provisions of *R.C. Chapter 2950*. Information in your letter indicates that in Shelby County legal representation of indigent defendants is provided by a county public defender pursuant to the provisions of *R.C. 120.13-18*. n1

n1 A county may provide legal representation to indigent defendants through the state public defender, *R.C. 120.04-06*, a county public defender system, *R.C. 120.13-18*, a joint county public defender system, *R.C. 120.23-28*, or a system of appointed counsel, *R.C. 120.33*.

[\*2]

*R.C. Chapter 2950* sets forth provisions for the registration of sexual predators and for community notification regarding sexual predators who are about to be or have been released from imprisonment, a prison term, or other confinement and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood. n2 *R.C. 2950.04* requires a sexual predator to register with the sheriff of the county in which he resides or is temporarily domiciled for more than seven days. As part of the registration, a sexual predator is required to provide the county sheriff with his current residence address, the name and address of his employer, if he is employed at the time of registration or if he knows at the time of registration that he will be commencing employment with that employer subsequent to registration, and any other information required by the Bureau of Criminal Identification and Investigation. *R.C. 2950.04(C)*. n3 In addition, a sexual predator who is required to register pursuant to *R.C. 2950.04* is required to provide written notice of any residence address change to the county sheriff with whom he most recently registered, *R.C. 2950.05*, [\*3] and to periodically verify his current residence address with the county sheriff with whom he most recently registered, *R.C. 2950.06*.

n2 R.C. Chapter 2950 also contains provisions pertaining to the registration of habitual sex offenders and other offenders who have committed sexually oriented offenses and community notification regarding the release of habitual sex offenders.

n3 The registration form to be signed by a sexual predator must include his photograph. *R.C. 2950.04(C)*.

*R.C. 2950.09* sets forth the procedures for classifying a defendant as a sexual predator for purposes of R.C. Chapter 2950. n4 In this regard, *R.C. 2950.09(A)* provides:

If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is a sexually violent offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually violent offense, the conviction of [\*4] or plea of guilty to the specification automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to a sexually oriented offense in another state, or in a federal court, military court, or an Indian tribal court and if, as a result of that conviction or plea of guilty, the person is required, under the law of the jurisdiction in which the person was convicted or pleaded guilty, to register as a sex offender until the person's death and is required to verify the person's address on at least a quarterly basis each year, that conviction or plea of guilty automatically classifies the offender as a sexual predator for the purposes of this chapter, but the offender may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section.

n4 *R.C. 2950.01(E)* provides that, for purposes of R.C. Chapter 2950, unless the context clearly requires otherwise, the term "sexual predator" means a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses."

[\*5]

*R.C. 2950.09(B)(1)* authorizes a judge to conduct a hearing to determine whether a defendant who, on or after January 1, 1997, was sentenced for a sexually oriented offense that is not a sexually violent offense or for a sexually oriented offense that is a sexually violent offense and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the sexually violent offense is a sexual predator. Under *R.C. 2950.09(C)(2)*, a court, upon the recommendation of the Department of Rehabilitation and Correction, may conduct a hearing to determine whether a defendant in the custody of the Department for the commission of a sexually oriented offense committed prior to January 1, 1997, is a sexual predator. Accordingly, pursuant to divisions (B)(1) and (C)(2) of *R.C. 2950.09*, a court is authorized to conduct a hearing to determine whether a defendant who has been convicted of, or pleaded guilty to, a sexually oriented offense is a sexual predator for purposes of R.C. Chapter 2950.

At such a hearing, a defendant has a statutory right to be represented by counsel. *R.C. 2950.09(B)(1), (C)(2)*; *State v. Cook*, 83 Ohio St. 3d 404, 407, 423, 700 N.E.2d 570, 575, 586 (1998), [\*6] cert. denied, 119 S. Ct. 1122 (1999); see also *State v. Cady*, 3-98-14, 1998 Ohio App. LEXIS 5491 (Crawford County Nov. 5, 1998) (a hearing to determine whether a defendant should be classified as a sexual predator does not comport with the dictates of due process unless the defendant is represented by counsel at the hearing or informed of his right to counsel under *R.C. 2950.09(C)(2)* and waives such right). Moreover, if the defendant is indigent, he has a statutory right to have counsel appointed to represent him at such a hearing. *R.C. 2950.09(B)(1), (C)(2)*; *State v. Cook*, 83 Ohio St. 3d at 423, 700 N.E.2d at 586.

*R.C. 2950.09* does not expressly require a county public defender to provide legal representation to an indigent defendant at a hearing to determine whether the defendant is a sexual predator for purposes of R.C. Chapter 2950. Nevertheless, it is a general rule that whenever an indigent defendant is constitutionally or statutorily entitled to court-appointed legal representation, the representation is provided through one of the systems established by R.C. [\*7] Chapter 120. See 1997 Op. Atty Gen. No. 97-040; 1985 Op. Atty Gen. No. 85-090; 1984 Op. Atty Gen. No. 84-023. R.C. Chapter 120 authorizes a county to provide legal representation for indigent defendants through the state public defender, *R.C. 120.04-.06*, a county public defender system, *R.C. 120.13-.18*, a joint county public defender system,

*R.C. 120.23-28*, or a system of appointed counsel, *R.C. 120.33*. 1997 Op. Att'y Gen. No. 97-040 at 2-234 n.1; 1984 Op. Att'y Gen. No. 84-023 at 2-72.

As indicated previously, your county provides legal representation to indigent defendants pursuant to the county public defender system. Under a county public defender system, the county public defender is vested with the responsibility for providing legal representation to indigent defendants. *See R.C. 120.15-17*. *R.C. 120.16* sets forth the circumstances under which a county public defender is required to provide legal representation to indigent defendants, stating in pertinent part:

(A)(1) The county public defender shall provide legal representation to indigent adults and juveniles who are charged with *the commission of an offense or act that is a violation of a state statute and* [\*8] *for which the penalty or any possible adjudication includes the potential loss of liberty and in postconviction proceedings as defined in this section.*

(B) The county public defender shall provide *the legal representation authorized by division (A) of this section at every stage of the proceedings* following arrest, detention, service of summons, or indictment. (Emphasis added.)

Accordingly, pursuant to *R.C. 120.16(A)(1)* and (B), a county public defender is required to provide legal representation (1) at every stage of a proceeding in which an indigent defendant is charged with the commission of an offense or act, (2) that is a violation of a state statute, and (3) for which the penalty or any possible adjudication includes the potential loss of liberty. Let us therefore examine each of these criteria and determine whether they are present in the case of a hearing that is held by a court to determine an indigent defendant's sexual predator status.

As provided in *R.C. 2950.09*, a hearing to determine whether a defendant is a sexual predator is conducted by a court after a defendant is convicted of, or pleads guilty to, a sexually oriented offense. It is axiomatic that [\*9] before a defendant may be convicted of, or plead guilty to, a sexually oriented offense, the defendant must be charged with the commission of a sexually oriented offense. *See generally Ohio R. Crim. P. 5(A)* (at a defendant's initial appearance, a judge or magistrate must inform the defendant of the nature of the charge against him); *Ohio R. Crim. P. 7(B)* (an indictment or information shall contain a statement that the defendant has committed a public offense specified in the indictment or information). Charging a defendant with a sexually oriented offense thus is a condition precedent to the holding of a hearing to determine whether the defendant is a sexual predator. Further, such a hearing arises only because a defendant who is charged with the commission of a sexually oriented offense is convicted of that offense or a lesser-included sexually oriented offense. Therefore, a hearing to determine whether a defendant is a sexual predator is a "stage of the proceedings following arrest, detention, service of summons, or indictment" for persons convicted of such offenses. *R.C. 120.16(B)*.

As used in *R.C. 2950.09*, unless the context clearly requires otherwise, "sexually oriented [\*10] offense" means any of the following offenses:

- (1) Regardless of the age of the victim of the offense, a violation of *section 2907.02, 2907.03, or 2907.05 of the Revised Code*;
- (2) Any of the following offenses involving a minor, in the circumstances specified:
  - (a) A violation of *section 2905.01, 2905.02, 2905.03, 2905.04, n5 2905.05, or 2907.04 of the Revised Code* when the victim of the offense is under eighteen years of age;
  - (b) A violation of *section 2907.21 of the Revised Code* when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;
  - (c) A violation of division (A)(1) or (3) of *section 2907.321 or 2907.322 of the Revised Code*;
  - (d) A violation of division (A)(1) or (2) of *section 2907.323 of the Revised Code*;
  - (e) A violation of division (B)(5) of *section 2919.22 of the Revised Code* when the child who is involved in the offense is under eighteen years of age.

(3) Regardless of the age of the victim of the offense, a violation of *section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code*, or of division [\*11] (A) of *section 2903.04 of the Revised Code*, that is committed with a purpose to gratify the sexual needs or desires of the offender;

(4) A sexually violent offense; n6

(5) A violation of any former law of this state that was substantially equivalent to any offense listed in division (D)(1), (2), (3), or (4) of this section;

(6) A violation of an existing or former municipal ordinance or law of another state or the United States, a violation under the law applicable in a military court, or a violation under the law applicable in an Indian tribal court that is or was substantially equivalent to any offense listed in division (D)(1), (2), (3), or (4) of this section;

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(1), (2), (3), (4), (5), or (6) of this section. (Footnotes added.)

*R.C. 2950.01(D)*.

n5 *R.C. 2905.04* has been repealed. 1995-1996 Ohio Laws, Part IV, 7136 (Am. Sub. S.B. 2, eff. July 1, 1996).

n6 For purposes of *R.C. Chapter 2950*, "sexually violent offense" has the same meaning as in *R.C. 2971.01*. *R.C. 2950.01(H)*. *R.C. 2971.01(G)* defines "sexually violent offense" as "a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification." *R.C. 2971.01*, in turn, defines the terms "sexual motivation specification" and "violent sex offense" as follows:

(K) "Sexual motivation specification" means a specification, as described in *section 2941.147 of the Revised Code*, that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation.

(L) "Violent sex offense" means any of the following:

(1) A violation of *section 2907.02, 2907.03, or 2907.12* or of division (A)(4) of *section 2907.05 of the Revised Code*;

(2) A felony violation of a former law of this state that is substantially equivalent to a violation listed in division (L)(1) of this section or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in division (L)(1) of this section;

(3) An attempt to commit or complicity in committing a violation listed in division (L)(1) or (2) of this section if the attempt or complicity is a felony.

[\*12]

A review of the offenses included within *R.C. 2950.01(D)*'s definition of "sexually oriented offense," as used in *R.C. 2950.09(B)(1)* and (C)(2), discloses that a person who is convicted of, or pleads guilty to, one of those offenses has committed an offense that "is a violation of a state statute." *R.C. 120.16(A)(1)*. As defined in *Black's Law Dictionary* 1410 (6th ed. 1990), a "statute" is "an act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state." In Ohio, the legislative power of the state rests with the General Assembly. Ohio Const. art. II, § 1. The General Assembly thus is empowered to enact state statutes that prohibit certain specified conduct by persons and impose penalties for that conduct. *See id.* State statutes enacted by the General Assembly of a permanent and general nature are set forth in the Revised Code. *R.C. 1.01*.

Each offense listed in *R.C. 2950.01(D)* as a "sexually oriented offense," for purposes of *R.C. 2950.09(B)(1)* [\*13] and (C)(2), constitutes conduct that is prohibited by a statute of the Revised Code. n7 *See, e.g., R.C. 2903.01; R.C. 2903.02; R.C. 2903.04(A); R.C. 2903.11; R.C. 2905.01; R.C. 2905.02; R.C. 2905.03; R.C. 2905.05; R.C. 2907.02; R.C. 2907.03; R.C. 2907.04; R.C. 2907.05; R.C. 2907.21; R.C. 2907.321(A)(1), (3); R.C. 2907.322(A)(1), (3); R.C. 2907.323(A)(1), (2); R.C. 2919.22(B)(5); R.C. 2923.01; R.C. 2923.02; R.C. 2923.03.* Accordingly, a person who commits one of those offenses commits an offense that "is a violation of a state statute." *R.C. 120.16(A)(1)*.

n7 Pursuant to *R.C. 2950.01(E)(6)*, "sexually oriented offense" means "[a] violation of an existing or former municipal ordinance or law of another state or the United States, a violation under the law applicable in a military court, or a violation under the law applicable in an Indian tribal court that is or was substantially equivalent to any offense listed in division (D)(1), (2), (3), or (4) of this section." None of the violations listed in *R.C. 2950.01(E)(6)* is a violation of a statute of this state. However, since none of the violations listed therein will give rise to a hearing under *R.C. 2950.09(B)(1)* or (C)(2), such violations are not included within the definition of "sexually oriented offense," as used in the context of *R.C. 2950.09(B)(1)* and (C)(2).

[\*14]

Moreover, each offense enumerated in *R.C. 2950.01(D)* is classified as either a felony or misdemeanor. *See R.C. 2903.04(C); R.C. 2903.11(B); R.C. 2905.01(C); R.C. 2905.02(B); R.C. 2905.03(B); R.C. 2905.05(C); R.C. 2907.02(B); R.C. 2907.03(B); R.C. 2907.04(B); R.C. 2907.05(B); R.C. 2907.21(B); R.C. 2907.321(C); R.C. 2907.322(C); R.C. 2907.323(B); R.C. 2919.22(E); R.C. 2923.01(J); R.C. 2923.02(E); R.C. 2923.03(F); R.C. 2929.02.* Pursuant to *R.C. 2929.14* and *R.C. 2929.21*, respectively, a court may impose a prison term on a person convicted of, or pleading guilty to, a felony or misdemeanor. The penalty for each offense listed in *R.C. 2950.01(D)* as a "sexually oriented offense," for purposes of *R.C. 2950.09(B)(1)* and (C)(2), thus "includes the potential loss of liberty," *R.C. 120.16(A)(1)*, insofar as a prison term may be imposed on a person convicted of, or pleading guilty to, one of those offenses. Accordingly, for purposes of *R.C. 2950.09(B)(1)* and (C)(2), a sexually oriented offense is a violation of a state statute for which the penalty includes the potential loss of liberty.

In light of the foregoing, it is our conclusion that a hearing to determine whether a defendant is a sexual [\*15] predator is a stage in a proceeding that is instituted against a defendant charged with the commission of a violation of a state statute for which the penalty includes the potential loss of liberty. This conclusion should not be interpreted to suggest that the sexual predator hearing itself results in the imposition of punishment. Indeed, the Ohio Supreme Court has already ruled that *R.C. Chapter 2950* is "remedial, not punitive" in both its intent, *State v. Cook*, 83 *Ohio St. 3d* at 417, 700 *N.E.2d* at 581, and its effect, *id.* at 423, 700 *N.E.2d* at 585, and the registration and community notification provisions in *R.C. Chapter 2950* are specifically described as "not punitive" by the General Assembly, *R.C. 2950.02(B)*. Rather, this conclusion follows from the fact that *R.C. 120.16* requires a county public defender to provide legal representation at every stage of a proceeding in which an indigent defendant is charged with the commission of an offense or act that is a violation of a state statute and for which the penalty or any possible adjudication includes the potential loss of liberty. A sexual [\*16] predator hearing is one stage of such a proceeding, even though persons convicted of sexually oriented offenses face no potential loss of liberty at the sexual predator hearing. It follows, therefore, that a county public defender is required to represent an indigent defendant at a hearing to determine whether the defendant is a sexual predator for purposes of the provisions of *R.C. Chapter 2950*. n8

n8 In your letter, you state that *State v. Castro*, 67 *Ohio App. 2d* 20, 22, 425 *N.E.2d* 907, 909 (*Cuyahoga County 1979*), held that court appointed "counsel for postconviction proceedings is not a matter of right in Ohio, neither constitutional, nor statutory." Rather, "the appointment of counsel for postconviction proceedings is a matter of judicial discretion which may be exercised pursuant to the public defender statutes, specifically *R.C. 120.16* and *120.26*." *Id.* By its enactment of *R.C. 2950.09(B)(1)* and *R.C. 2950.09(C)(2)*, however, the General Assembly has granted a defendant a statutory right to be represented by counsel at a hearing held to determine whether the defendant is a sexual predator. In addition, a hearing to determine the sexual predator status of a sexually oriented offender is not a postconviction proceeding. Thus, the decision of the court of appeals in *State v. Castro* is inapposite and does not affect the conclusion we have reached in this opinion.

[\*17]

There are two exceptions, however, to the foregoing requirement. A county public defender is not required to provide legal representation to an indigent defendant when the indigent defendant has waived his right to legal counsel n9 or the court pursuant to *R.C. 120.16(E)* n10 has appointed counsel other than the county prosecuting attorney or allowed an indigent defendant to select his own personal counsel to represent him. See 1997 Op. Atty Gen. No. 97-040 at 2-237. Accordingly, pursuant to *R.C. 120.16* and *R.C. 2950.09*, a county public defender is required to represent an indigent defendant at a hearing to determine whether the defendant is a sexual predator for purposes of the provisions of R.C. Chapter 2950, unless the defendant waives his right to counsel or the court pursuant to *R.C. 120.16(E)* appoints counsel other than the county public defender or allows the defendant to select his own personal counsel to represent him.

n9 In *State v. Gibson*, 45 Ohio St. 2d 366, 345 N.E.2d 399 (1976), the Ohio Supreme Court held that a defendant may waive his right to legal counsel when he voluntarily, knowingly, and intelligently elects to waive such right.

[\*18]

n10 *R.C. 120.16(E)* states, in pertinent part, that nothing in *R.C. 120.16* "shall prevent a court from appointing counsel other than the county public defender or from allowing an indigent person to select the indigent person's own personal counsel to represent the indigent person."

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to *R.C. 120.16* and *R.C. 2950.09*, a county public defender is required to represent an indigent defendant at a hearing to determine whether the defendant is a sexual predator for purposes of the provisions of R.C. Chapter 2950, unless the defendant waives his right to counsel or the court pursuant to *R.C. 120.16(E)* appoints counsel other than the county public defender or allows the defendant to select his own personal counsel to represent him.

#### Legal Topics:

For related research and practice materials, see the following legal topics:  
Criminal Law & Procedure Guilty Pleas General Overview Criminal Law & Procedure Postconviction Proceedings Sex Offenders Public Health & Welfare Law Social Services Legal Aid

ASSESSING  
HOUSING  
AVAILABILITY  
UNDER OHIO'S SEX  
OFFENDER  
RESIDENCY  
RESTRICTIONS

*March 25, 2009*



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## EXECUTIVE SUMMARY

This study assesses some of the fundamental assumptions underlying residency restrictions and questions whether these laws have the desired effect. Previous research is tested and results are placed in a community context, in order to shed light on the true impact of residency restrictions on housing availability, given the economic realities faced by both offenders and general county residents. The study specifically asks whether such restrictions place a more substantial burden on the economically most vulnerable. The following conclusions are drawn:

1. Compared to the county as a whole, offenders are substantially more likely to live in lower-income neighborhoods. Nearly three-quarters live in areas where the number of individuals in poverty is above the county median, compared with only 38.77 percent of the county as a whole. An overwhelming majority (83%) live in areas where median rent is below the county median, compared with half of all county land as a whole.
2. Residency restrictions render substantial portions of the county 'off limits'. Overall, 59.53% of all residential parcels samples were restricted. When adjusted to include non-residential parcels, an estimated 65.32 percent of the county is unlivable under current restrictions.
3. The proportion of parcels restricted is directly related to economic factors of the area. Among high poverty areas, an astounding 80 percent of sampled parcels are within a prohibited buffer zone. Within all four economic variables, based on regression analysis and modeling, the proportion of parcels violating a residential buffer is highest in areas with worst economic conditions.
4. While housing in the county is available, albeit only moderately, the availability of *affordable* housing, given the economic conditions where offenders tend to reside, is much more significantly constrained. For example, when examined by income, less than 32% of parcels are estimated to be available in areas with the lowest median per-capita income, but more than 42 percent of all offenders live in these areas. This pattern is evident across all economic indicators.
5. This study was able to empirically demonstrate that there is no relationship between offender location and proportion of area homes with children. In fact, as the proportion of area homes with children increases, the likelihood of an offender residing in the area decreases.

6. Economic factors play an important role in predicting where offenders live. In areas with the lowest median income, nearly half (47.18%) of all offenders are living in prohibited areas. In other words, offenders living in poor areas are more likely to be in violation. This relationship is most likely the cumulative result of offender concentration and increased restrictiveness in such areas. To put it simply, offenders in such areas are in violation of residency restrictions because they cannot find housing (either because of economic restraints or due to other factors) that does not violate their restrictions.
7. There are practical implications to the high proportion of offenders who are violating current residency restrictions. Should county officials suddenly seek full enforcement of these restrictions, this would immediately displace 515 offenders, placing them at increased risk for homelessness or transience, given the limitations on affordable, available housing.

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## INTRODUCTION AND BACKGROUND

Lawmakers, confronted by sensationalized media accounts and panic-inspired public pressure for swift action, may create policies that, while publicly pleasing and powerfully symbolic, adapt poorly to social reality. This is a common criticism leveled at the growing number of laws governing the registration and monitoring of sex offenders (Levenson and Cotter 2005; Levenson and D'Amora 2007; Meloy, Saleh et al. 2007).

In 1994, the United States Congress passed the “Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act”, requiring all fifty states to create and maintain registries tracking those convicted of a specific sub-set of crimes (Wetterling Act 1994). This law is generally regarded as the first broad attempt at long-term identification and monitoring of convicted sex offenders and child victimizers, with an eye toward prevention of future such crimes (Meloy, Saleh et al. 2007).

Since the Wetterling Act, the federal government and individual states have experimented with various of models of targeted recidivism prevention. The late 1990s saw the enactment of many state-level laws, indiscriminately referred to as “Megan’s Law”, providing for the public release of information about offenders (Tewksbury and Lees 2007). Today, all fifty states have substantial registration systems and, at last count, thirty states also have residency restrictions, laws that prevent sex offenders and child victimizers from living within a certain distance of prohibited locations (Meloy, Miller et al. 2007).

The first Ohio residency restriction took effect in 2003, barring “sexually oriented offenders” and “child-victim oriented offenders” from living within one thousand feet of a school (S.B. 5, 2003). The introductory section of S.B. 5 described its function as “prohibiting an offender who is subject to the law from establishing a residence within 1,000 feet of any school premises, [and] permitting landlords to evict such an offender from residential premises located within 1,000 feet of school premises” (S.B. 5, 2003). In 2005, the General Assembly expanded the law, granting county prosecutors and city attorney the right to file civil suits against offenders violating the restriction (H.B. 473, 2005).

In 2006, Ohio adopted the Federal Adam Walsh Child Protection and Safety Act, which in part expanded the thousand-foot residential restriction to include pre-schools and child care facilities (S.B. 10, 2007). In Columbus, Ohio’s capital city, this expansion doubled the number of protected areas. Offenders are now barred from living within one thousand feet of the county’s 397 elementary, middle, and high schools (Ohio Department of Education 2008), 388

licensed child care centers (Ohio Department of Job and Family Services 2008), and unknown number of pre-schools.

The enactment provisions of Ohio's Adam Walsh Act declare it to be "an emergency measure necessary for the immediate preservation of the public peace, health, and safety" and "crucially needed to provide increased protection and security for the state's residents" (S.B. 10, 2006). Similar justification has been used nationwide as other states adopt similar legislation.

Research on residency restriction has centered around the effect on released offenders and criminal justice practices and institutions (for a review, see Nieto and Jung 2006). However, little research to date has focused on the larger economic and housing effects of such laws in the community within which they are implemented. This research will examine the efficacy of sex offender registration laws within the community context, focusing on economic and geographic consequences, and correcting several methodological issues that have limited the applicability of earlier research.

## PREVIOUS RESEARCH

In 1995, the first state residency restrictions appeared on the books (Meloy, Miller et al. 2008). Such laws create exclusionary zones, designed to prohibit offenders from residing within a specified proximity of vulnerable populations (Levenson and D'Amora 2007). A survey of state policies revealed thirty states with current residency restrictions (Meloy, Miller et al. 2008). Of those that create an 'exclusionary zone' around schools, playgrounds, or other places where children tend to congregate, the most common (48%) restriction was 1,000 feet, followed by prohibitions of less than 1,000 feet (24%), 1,500 feet (8%), and 2,000 feet (2%)(Meloy, Miller et al. 2008). An additional unknown number of municipalities and local jurisdictions have their own residency requirements (Meloy, Miller et al. 2008).

The purpose of Ohio's restrictions is ostensibly to "protect the public from sex offenders and offenders against children, and in response to vicious attacks by violent predators" ("Adam Walsh Child Protection and Safety Act of 2006", 2006). Specifically, residency restrictions built on the assumption that proximity to potential victims, particularly in the school environment, facilitates recidivism.

However, no research has yet linked residency restrictions to reductions in recidivism or increases in community safety and protection. A review of 165 Florida offenders re-arrested for a repeat sex crime found that, after controlling for other risk factors, offender proximity to schools and day-care centers explained virtually none of the variation in sexual recidivism (Levenson, Zandbergen et al. 2008). After following 329 high-risk offenders over a two-year period, the Minnesota Department of Corrections found that residential factors showed no connection to victim choice for re-offense (Minnesota Department of Corrections 2003). No studies known to the author have yet addressed the effect of residency restrictions on non-sex crime re-offense.

A survey of 193 Florida residents found that the majority (58%) of community members support residency restrictions (Levenson, Brannon et al. 2007). However, despite this public support, legal scholars and social researchers have roundly criticized residency restrictions. Substantial criticism has been leveled at the assumptions underlying residency restrictions, arguing that such laws have no logical basis in practical fact. For example, restrictions are based on the assumptions that stranger-based assault is a common form of sex crime, that previously-identified offenders are responsible for most new sex crimes, and that where an offender "sleeps at night" has a direct effect on the commission of new crimes or chosen victims (Delson, Kokish et al. 2008). None of these are supported by demonstrable facts or

empirical evidence (Levenson, Brannon et al. 2007; Levenson and D'Amora 2007; Meloy, Miller et al. 2008). Even if such assumptions have merit, researchers also challenge the efficacy of restrictions, as applied, since those who victimized children are no more likely to be subject to housing restrictions than adult or noncontact offenders (Mercado, Alvarez et al. 2008).

Given the lack of empirical support for a recidivism reduction effect, offenders and their advocates argue that such expansive residency restrictions violate offender's constitutional rights (Gehring 2001), suggesting that such restrictions overreach so as to impair an offender's ability to live (for a discussion of constitutional issues, see Lester 2007).

Detractors also argue that residency restrictions cause substantial and unwarranted 'collateral damage' to offenders. Surveys of offenders and their families have found that registration and notification laws cause job loss, threats and harassment against offenders, offender property damage, and suffering among members of offenders families (Levenson and Cotter 2005; Tewksbury 2005; Levenson and Tewksbury 2009).

In addition to psychological and social consequences, residency restrictions can have direct economic and housing effects on offenders. Several Studies utilizing surveys of offenders have found that restrictions caused housing displacement and interruption. One such survey found that, as a result of such restrictions, 22% of offenders reported being unable to return to their home upon release from prison, an additional 36% were forced to move from a later address, and 54% reported difficulty finding affordable housing (Mercado, Alvarez et al. 2008). Other researchers found that, as the size of residential buffer zones increases, offenders' family members were more likely to experience housing displacement (Levenson and Tewksbury 2009).

Researchers have argued that, as a result, practical offender housing options are severely limited (Zandbergen and Hart 2006) and that difficulty in finding affordable housing presents a substantial barrier to successful re-entry (Bumby, Talbot et al. 2007). Some argue that substantial housing limitations may result in increased homelessness, transience, and instability (Levenson, Zandbergen et al. 2008), thus undermining the purpose of such laws by inadvertently exacerbating risk factors known to relate to recidivism, such as loss of stability, community support, and family support (Levenson and Cotter 2005; Bumby, Talbot et al. 2007; Levenson, D'Amora et al. 2007; Levenson, Zandbergen et al. 2008). Additionally, transience may decrease community safety by making post-release supervision difficult (Bumby, Talbot et al. 2007). One study found that vast majority (82%) of offenders questioned the efficacy of

residency restrictions to prevent re-offense (Mercado, Alvarez et al. 2008), and at least one advocacy group has called for a repeal of residency restrictions (Delson, Kokish et al. 2008).

Despite substantial research into the effects of residency restrictions on offenders and their families, little attention has been paid to the effects of such legislation on communities. Focusing on community notification, not residency restrictions, a survey of 588 households and businesses found limited evidence that placement of a sex offender in the area caused anxiety, anger and resentment among residents (Zevitz 2003). A few studies have found that, geographically, offenders tend to be clustered in poorer communities (Mustaine, Tewksbury et al. 2006; Hughes and Kadleck 2008). Hughes and Kadleck argue that this effect is connected to community notification and the result of affluent community members utilizing resources to drive out offenders (2008). However, their data does not support this contention, and in fact, Zevitz's review of neighborhood effects found no evidence of collective action (2003).

Mustaine and Tewksbury (2006) note that offenders tend to live in areas of high social disorganization and economic deprivation, though the authors suggest that it is not clear whether offenders choose to live in such areas to gain anonymity and a greater chance to reoffend, or because it is the only viable housing option.

Mustaine et al. (2006) found that the majority of offenders change residences following conviction, and that those who lived in more affluent neighborhoods at time of their arrest tended to have downward residential movement, moving to more socially disorganized locations, but this effect seems to be limited to urban offenders (Tewksbury, Mustaine et al. 2007). Unfortunately, no comparison group was utilized, so conclusions could not be drawn as to whether these findings are unique to sex offenders (compared to other offender groups), or the direct result of residency restrictions.

Others have found that, despite current restrictions, a substantial number of offenders continue to reside within residential buffer zones (Levenson and Cotter 2005; Tewksbury and Mustaine 2006; Grubestic, Mack et al. 2007). Early researchers argued that this proximity was the result of offenders seeking proximity to potential victims (Walker, Golden et al. 2001), but subsequent research has failed to support this view. Additionally, a link has been found between area economics and likelihood of buffer zone violation (Hughes and Burchfield 2008), though no explanation has yet been offered.

Previous studies encountered significant methodological obstacles. Surveys of offenders have been plagued by very low response rates (i.e. 9.5% (Mercado, Alvarez et al. 2008); 15.4%

(Tewksbury 2005)). Additionally, such surveys rely on offender understanding of complex legal realities and concepts such as 'grandfathering', yet no evidence has been presented to indicate that such an assumption is valid.

Studies of offenders based on residency information, rather than survey response, is less subject to methodological criticism, but has yet to yield substantial conclusions. For example, the clustering of offenders in poor locations has been noted, yet has never been placed into a community context (although Hughes and Kadleck (2008) make such an attempt). Additionally, the comparison groups utilized for such studies are frequently limited in their explanatory usefulness. Research by Tewksbury and Mustaine (Mustaine, Tewksbury et al. 2006; Tewksbury, Mustaine et al. 2007) has done the best job in this respect, but use of county and national averages for comparison purposes limits descriptive depth.

Similarly, the number of offenders violating buffer zones has been linked with economic variables (Hughes and Burchfield 2008), but without comparisons placing such data within a community context, possible explanations remain pure conjecture. Exploration of the reasons behind such results has significant potential for practical value. If it can be demonstrated that residency restrictions are disproportionately felt by those living in or near poverty, making them more susceptible to civil or prosecutorial action, such a demonstration would have significant importance for groups questioning the fairness and validity of such restrictions.

This study seeks to replicate and verify previous findings, correcting for specific methodological concerns, and then place such findings into a community context. Comparing previous research is empirically treacherous, as differing regulations, jurisdictions, definitions and enforcement methods create a minefield of confounding factors. A replication of previous work will not only lead robustness to previous conclusions, but also will allow for more direct comparisons and expand the conclusive power of such research, providing more definitive answers to the questions surrounding the impact of residency restrictions on offenders and communities.

Additionally, this study will examine one of the most basic, yet heretofore unaddressed assumptions underlying residency restrictions: that they limit proximity to potential child victims. This assumption is at the heart of the policy, but has yet to be assessed.

## **DATA AND METHODOLOGY**

The area selected for this study is Franklin County, Ohio. Franklin County is located in central Ohio and has an estimated total population of 1,109,535 (U.S. Census Bureau). Franklin county also includes the capital city of Columbus, estimated total population of 724,095 (65.26% of the county) (U.S. Census Bureau). The county contains approximately 518,000 housing units, approximately 52 percent of which are owner-occupied (U.S. Census Bureau). The county is also economically diverse with areas of low poverty, with fewer than two percent of individuals living below the poverty line, and areas of extreme poverty where more than 40 percent of individuals live in poverty (U.S. Census Bureau). Franklin County is also demographically similar to the country as a whole in many ways (U.S. Census Bureau).

### ***Parcel Data and Land Use Information***

To assess the availability of housing, data was collected on all land parcels located in the county from the County Auditor (Franklin County Auditor 2009). There are a total of 421,427 address parcels registered with the County Auditor, including vacant land, non-residential buildings, and residential addresses (made up of private residences, group homes, apartment complexes, etc.). Each street address is assigned a unique parcel number so that each parcel represents one household unit. For example each apartment within an apartment building is assigned its own parcel number.

A sample of 1,884 parcels was randomly selected, stratified proportionally across all 45 county zip codes (see Table 1). One parcel did not have a valid address, most likely an error in the Auditor's database, and was removed from further analysis, for a final sample of 1,883 parcels. To improve accuracy, the smallest geographic areas were oversampled.

This stratification process provides several benefits. First, stratification concentrates urban, suburban, and near-rural areas (no areas of Franklin County are strictly rural). Because the average distance between residential parcels and the nearest prohibited location (school, daycare, etc.) is likely larger in areas where the population is less concentrated, stratification reduces estimated variance of the number of prohibited locations within one-thousand feet, increasing precision ( $V[\text{Stratified}] = 0.000115734$ ,  $V[\text{SRS}] = 0.000467$ , Design Effect=0.247824924). Stratification also helps prevent a 'bad' sample that may miss parcels located in sparsely-populated areas.

Geographic dispersion of parcels is displayed in Figure 1. Color coding indicates division of areas into quartiles by number of parcels in each area.

**Table 1: Total & Sampled Parcels by Zip Code**

Zip Code	Total Parcels	Sampled Parcels	Proportion Sampled	Strata Weight (W <sub>h</sub> )
43002	3,974	18	0.00453	220.778
43004	7,340	33	0.00450	222.424
43016	7,471	33	0.00442	226.394
43017	10,478	46	0.00439	227.783
43026	18,069	80	0.00443	225.863
43054	6,635	29	0.00437	228.793
43065	2,610	12	0.00460	217.500
43068	12,498	55	0.00440	227.236
43081	21,227	93	0.00438	228.247
43085	9,549	42	0.00440	227.357
43110	8,953	40	0.00447	223.825
43119	8,316	37	0.00445	224.757
43123	25,251	111	0.00440	227.486
43125	4,908	22	0.00448	223.091
43137	857	10	0.01167+	85.700
43140	126	10	0.07937+	12.600
43146	1,000	10	0.01000+	100.000
43201	8,771	39	0.00445	224.897
43202	5,765	26	0.00451	221.731
43203	3,668	16	0.00436	229.250
43204	14,947	66	0.00442	226.470
43205	5,680	25	0.00440	227.200
43206	10,477	46	0.00439	227.761
43207	18,766	83	0.00442	226.096
43209	9,535	42	0.00440	227.024
43210	160	10	0.06250+	16.000
43211	10,433	46	0.00441	226.804
43212	6,536	29	0.00444	225.379
43213	10,524	46	0.00437	228.783
43214	10,236	45	0.00440	227.467
43215	6,869	30	0.00437*	228.967
43217	196	10	0.05102+	19.600
43219	12,725	56	0.00440	227.232
43220	9,287	41	0.00441	226.512
43221	12,791	57	0.00446	224.404
43222	2,374	11	0.00463	215.818
43223	9,773	43	0.00440	227.279
43224	13,112	58	0.00442	226.069
43227	7,948	27	0.00340	294.370
43228	17,481	77	0.00440	227.026
43229	11,799	42	0.00356	280.929
43230	19,520	86	0.00441	226.977
43231	6,038	27	0.00447	223.630
43232	12,503	55	0.00440	227.327
43235	14,246	63	0.00442	226.127
<b>421,422</b>	<b>1,883</b>	<b>0.00447</b>		

\*Oversampled \*One Invalid Parcel Removed



**Table 2: Sampled Parcels by City**

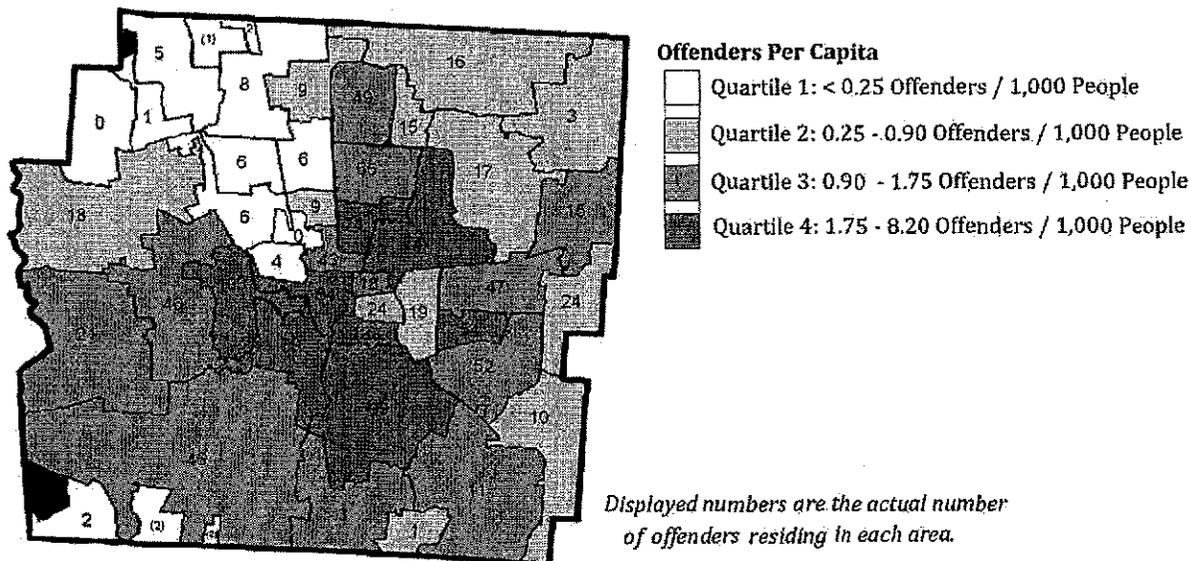
City	N	P	City	N	P
Bexley	17	0.90%	Lockbourne	1	0.05%
Blacklick	0	0.00%	Marble Cliff	1	0.05%
Brice	1	0.05%	Minerva Park	5	0.27%
Canal Winchester	16	0.85%	New Albany	15	0.80%
Carrousel	1	0.05%	Obetz	13	0.69%
Columbus	1367	72.60%	Orient	0	0.00%
Dublin	55	2.92%	Powell	0	0.00%
Gahanna	59	3.13%	Reynoldsburg	40	2.12%
Galloway	0	0.00%	Riverlea	2	0.11%
Grandview Heights	5	0.27%	Upper Arlington	62	3.29%
Grove City	56	2.97%	Urbancrest	10	0.53%
Groveport	12	0.64%	Valleyview	1	0.05%
Harrisburg	1	0.05%	Westerville	52	2.76%
Hilliard	38	2.02%	Whitehall	31	1.65%
			Worthington	22	1.17%
			<b>Total</b>	<b>1883</b>	

### **Sex Offender Data**

The Ohio Attorney General's office maintains a database of home addresses for all sex offenders residing within the state, searchable by county. Registered offender information includes the current living address for any offender not currently incarcerated. Under current registration and community notification laws, every sex offender or child-victim offender currently living, working, or attending school in Ohio is listed on a public database (found at <http://www.esorn.ag.state.oh.us/>). Members of the public can access an offender's address, demographic information, and photograph, by entering part or all of his name, or by searching for all sex offenders near a certain address.

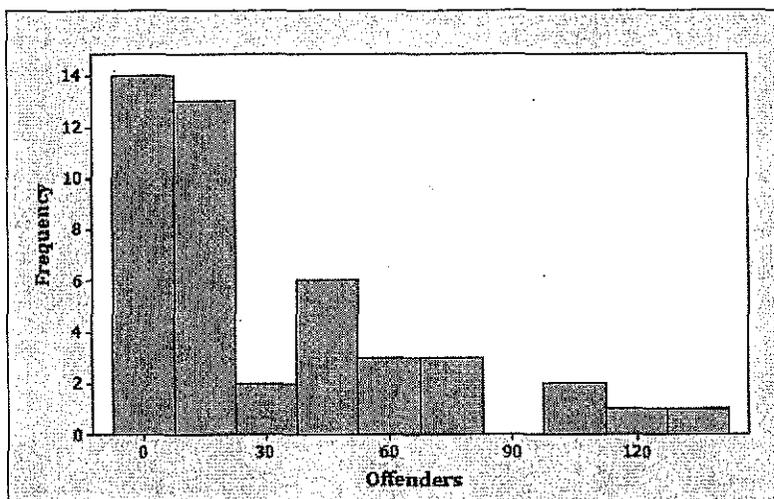
Currently, 1,561 offenders are registered within the county (Ohio Attorney General 2009). An additional 207 offenders work in the county but reside in neighboring counties, so these offenders were excluded from analysis. Overall, 133 (8.52%) sex offenders were registered at unlocatable addresses, most likely the result of typographic errors in the Attorney General's database. These invalid addresses were also excluded from analysis, leaving a total of 1,428 offender addresses. This is a much higher response rate than those obtained by survey studies, and should have dramatically decreased any resulting bias. A map of sex offender registered addresses is displayed in Figure 2. Color coding represents number of offenders per capita residing in the area.

**Figure 2: Number of Sex Offender Residences per Area**



Geographically, offenders seem to be clustered in areas near the middle of the county. This trend will be discussed later. The following analyses utilize binary logistic regression on observed proportions of offenders in tract areas. This is preferable as a dependent variable, because counts of offenders in various areas are highly skewed (see Figure 3).

**Figure 3: Histogram of Number of Offenders per Area**



**Prohibited Address Data**

Addresses from both parcel and sex offender data sets were entered into a database portal provided by the Franklin County Sheriff, which identifies any restricted facility (school, pre-school, or child care provider) within a thousand foot radius of any address. Addresses

were entered in the database and the number of prohibited items within the statutory one-thousand foot restriction were noted. Use of this system is particularly appropriate, as it is currently used by Franklin County as a first-stage enforcement tool. Offenders are notified of “violations” and directed to relocate based on outputs from this source.

### ***Economic and Geographic Data***

Economic census data was collected on the tract area surrounding each parcel. Tract information represents the smallest unit of analysis for which economic and geographic variables of interest are available. Information on area median per-capita income, number of individuals in poverty (poverty rate), median rent cost for renter-occupied units, and median single-family house value was collected for the Census tract area surrounding every sampled parcel. As residency restrictions are primarily designed to protect children, the proportion of households with children under age eighteen in each tract was also collected. Additionally, the total population and land area was collected, to produce population density per square mile.

## RESULTS

### *Description of County Housing Availability*

To determine type and location of housing available within the county, the randomly selected sampled parcels were divided into residential and non-residential land use. Residential land uses include single-family homes, multi-family homes, apartments, condominiums, trailers or modular homes, nursing homes or care facilities, motels, hotels, and programs designed to house ex-offenders. The county also classifies miscellaneous housing types as “other” residential units. The majority of sampled parcels were single-family homes (60.65%). Other common residence types included multi-family homes (4.04% of sample), apartments (1.81%), condominiums (13.75%), and other residential units (4.78%). Interestingly, sampled parcels also included one modular home, two motels, and two programs designed to help ex-offenders find housing (see Table 3).

Based on sample proportions and stratification design data, the weighted estimated proportion of county housing was calculated for each type of land use. An estimated 85.89 percent of county parcels are designated as residential ( $\hat{P}= 0.8589$ ,  $SE=.00775$ ), with a  $\pm 2\%$  margin of error ( $\alpha=.01$ ). Approximately 14 percent of county land parcels are non-residential ( $\hat{P}= 0.1400$ ,  $SE=.00773$ ), with a  $\pm 1.99\%$  margin of error ( $\alpha=.01$ ).

**Table 3: Estimated County Parcels by Land Use**

Land Use	Parcels in Sample	Sample Proportion	Estimated County Proportion	Standard Error	Margin of Error*
<b>Residential</b>	<b>1606</b>	<b>85.29%</b>	<b>85.89%</b>	<b>0.775%</b>	<b>±2.00%</b>
Single-Family House	1142	60.65%	61.89%	1.071%	±2.76%
Multi-Family House	76	4.04%	4.10%	0.444%	±1.14%
Apartment	34	1.81%	1.84%	0.307%	±0.79%
Condominium	259	13.75%	13.70%	0.774%	±1.99%
Trailer or Modular Home	1	0.05%	0.05%	0.054%	±0.14%
Nursing/Care Facilities	0	0.00%	N/A	N/A	N/A
Motel or Hotel	2	0.11%	0.12%	0.086%	±0.22%
Offender/Housing Programs	2	0.11%	0.11%	0.076%	±0.20%
Other Residential	90	4.78%	4.26%	0.454%	±1.17%
<b>Not Residential</b>	<b>277</b>	<b>14.71%</b>	<b>14.00%</b>	<b>0.773%</b>	<b>±1.99%</b>
<b>Total</b>	<b>1883</b>				<b>*<math>\alpha=.01</math></b>

*Economic & Geographic Factors for Sampled Parcels*

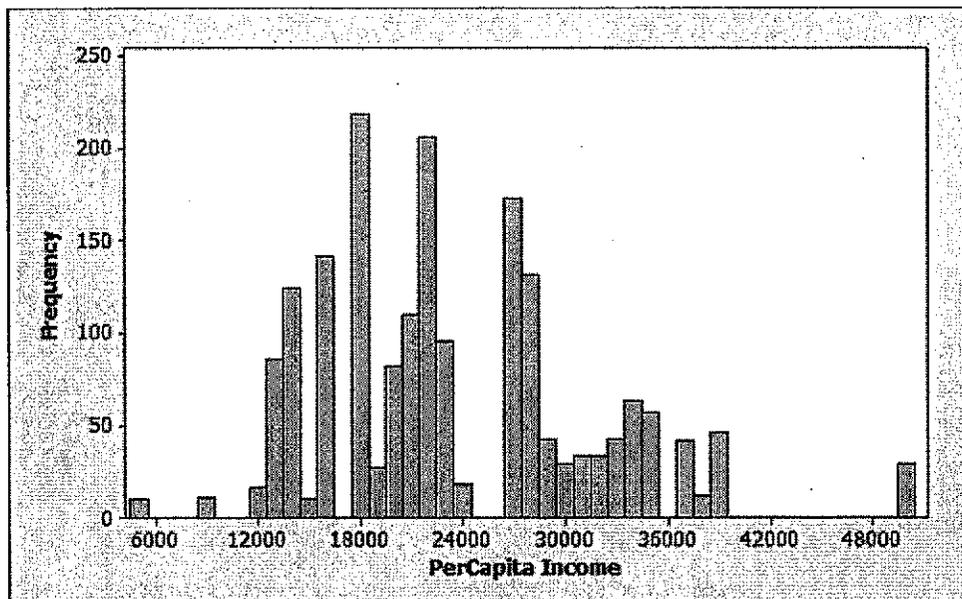
**Median Annual Per-Capita Income:** Per-capita income in the county ranges from \$5,369 to \$50,394, with a county median of \$26,473 (margin of error = +/- \$342) (U.S. Census Bureau). When parcels are displayed, for clarity purposes, grouped roughly into quartiles constructed from census data, 427 of the parcels sampled fall into the first quartile, 427 into the second quartile, 622 in the third quartile, and 427 in the fourth quartile (see Table 4). The distribution of parcels is somewhat normal, and not as skewed right as might be expected (see Figure 4).

The number of county parcels within each income group was estimated. In the largest quartile, an estimated 33.03 percent of county land parcels ( $\hat{P}= 0.3303$ ,  $SE=0.01082$ ), fall between \$26,474 and \$28,958 per-capita income. An estimated 44.29 percent ( $n=824$ ,  $\hat{P}= 0.4429$ ,  $SE=0.0191$ ) of county residences are in an area where the per-capital income is below the county median.

**Table 4: Estimated County Parcels by Income**

Quartile	Per-Capita Income	Parcels in Sample	Estimated County Proportion	Standard Error	Margin of Error*
First Quartile	Less than \$17,851	407	21.61%	0.947%	±2.44%
Second Quartile	\$17,851 - 26,473	427	22.68%	0.963%	±2.48%
Third Quartile	\$26,474 - 28,958	622	33.03%	1.082%	±2.79%
Fourth Quartile	Greater than \$28,959	427	22.68%	0.963%	±2.48%
<b>Total</b>		<b>1883</b>			<b>*α=.01</b>

**Figure 4: Distribution of Sampled Parcels by Income**



**Individuals Living in Poverty:** The county's area poverty rate ranges from 1.70% to 46.30%, with a county median of 12.40% (U.S. Census Bureau). Of the parcels sampled, 739 fell into the first poverty quartile, 414 into the second, 471 in the third, and 259 in the fourth (see Table 5). The distribution of parcels by poverty rate is highly skewed to the right (Figure 5).

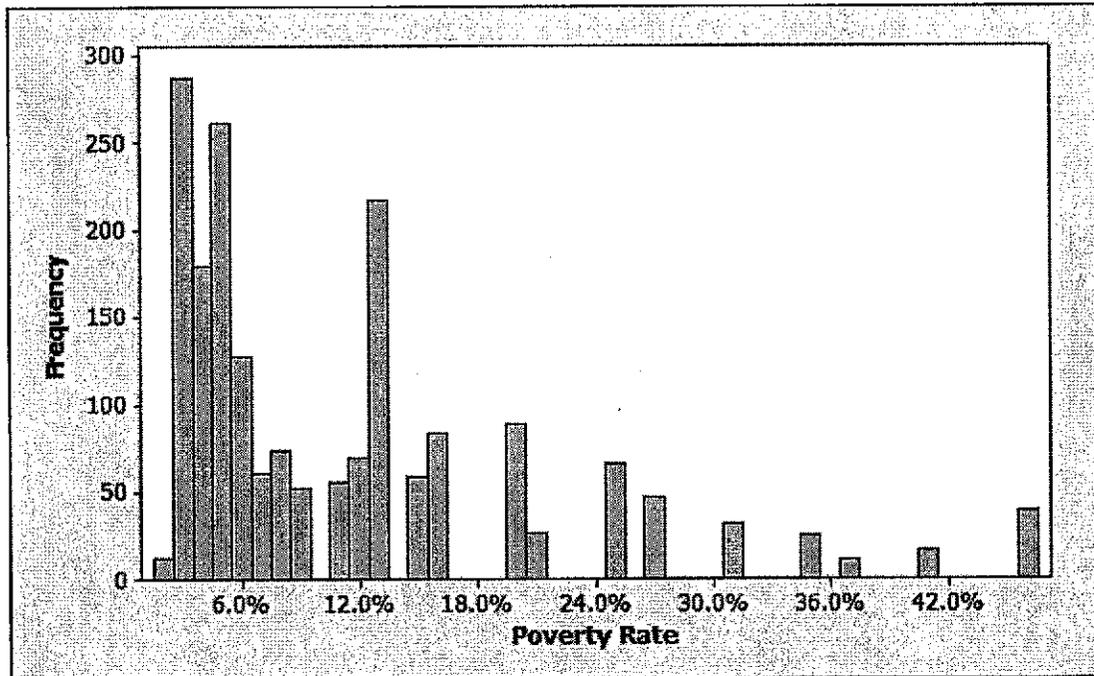
The number of county parcels within each quartile was estimated. The largest quartile contains an estimated 39.25 percent of county land parcels ( $\hat{P}= 0.3925$ ,  $SE=0.01123$ ). An estimated 61.24 percent ( $\hat{P}= 0.6124$ ,  $SE=0.02076$ ) of land parcels are in areas where the poverty rate is below the county median.

**Table 5: Estimated County Parcels by Poverty Rate**

Quartile	Poverty Rate	Parcels in Sample	Estimated County Proportion	Standard Error	Margin of Error*
First Quartile	1.70% - 5.30%	739	39.25%	1.123%	±2.89%
Second Quartile	5.30% - 12.40%	414	21.99%	0.953%	±2.45%
Third Quartile	12.40% - 20.35%	471	25.01%	0.996%	±2.57%
Fourth Quartile	20.35% - 46.30%	259	13.75%	0.792%	±2.04%
<b>Total</b>		<b>1883</b>			

\* $\alpha=.01$

**Figure 5: Distribution of Sampled Parcels by Poverty Rate**



**Median Renter-Occupied Rent:** Area median rent ranges from \$352 dollars per month to \$995, with a county median of \$602 (margin of error = +/- \$5) (U.S. Census Bureau). Of the parcels sampled, 399 fall into the first quartile, 512 into the second quartile, 421 in the third quartile, and 541 in the fourth quartile (see Table 6). A distribution is pictured in Figure 6.

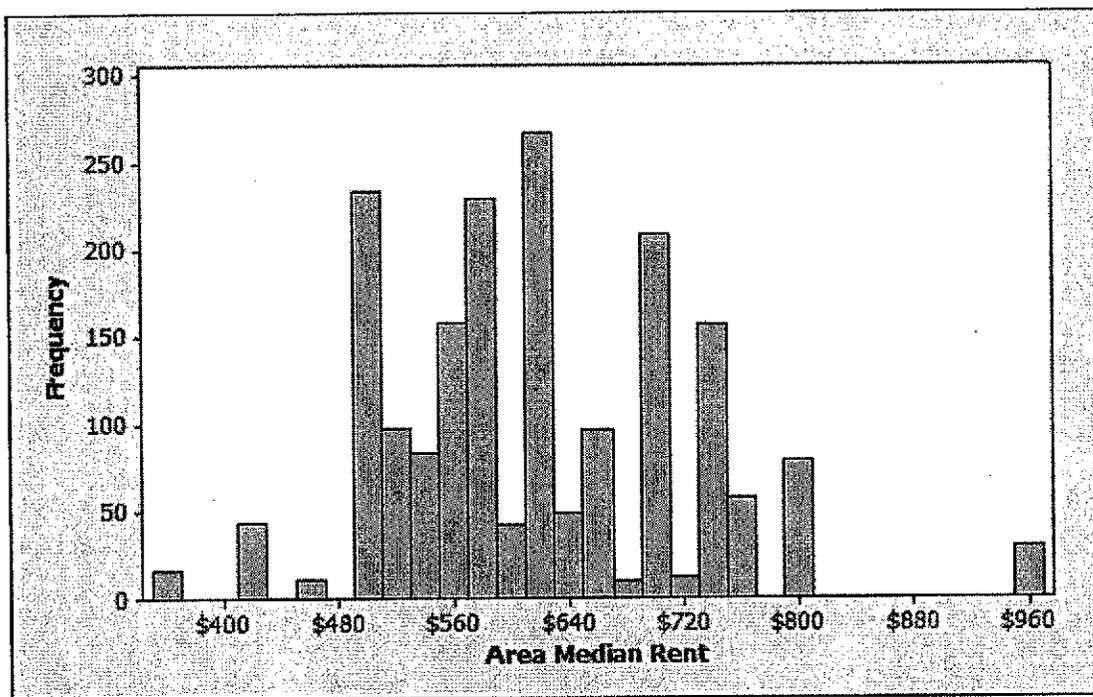
The number of county parcels within each quartile was estimated. Parcels are distributed into quartiles fairly evenly with the largest quartile contains an estimated 28.73 percent of county land parcels ( $\hat{P}= 0.2873$ ,  $SE=0.01041$ ). An estimated 48.38 percent ( $\hat{P}= 0.4838$ ,  $SE=0.01963$ ) of parcels are in areas where area rent is below the county median.

**Table 6: Estimated County Parcels by Median Rent**

Quartile	Median Area Rent	Parcels in Sample	Estimated County Proportion	Standard Error	Margin of Error*
First Quartile	Less than \$522	399	21.19%	0.940%	±2.42%
Second Quartile	\$522 - \$602	512	27.19%	1.023%	±2.64%
Third Quartile	\$602 - \$686	421	22.36%	0.958%	±2.47%
Fourth Quartile	Greater than \$686	541	28.73%	1.041%	±2.68%
<b>Total</b>		<b>1873<sup>+</sup></b>			<i>*<math>\alpha=.01</math></i>

<sup>+</sup> One tract is excluded from analysis

**Figure 6: Distribution of Sampled Parcels by Median Rent**



**Median Home Value:** Median area home values range from \$48,100 to \$287,300, with a county median of \$119,600 (margin of error = +/- \$1,296) (U.S. Census Bureau). The distributions of parcels by home values is not particularly symmetric (Figure 7).

Based on sampling weights, the number of county parcels within each quartile was estimated. For example, an estimated one-third of county land parcels ( $\hat{P}= 0.3330$ ,  $SE=0.01084$ ) fall into the third quartile. An estimated 43.50 percent ( $\hat{P}= 0.4350$ ,  $SE=0.01899$ ) of parcels are in areas where home values fall below the county median (see Table 7).

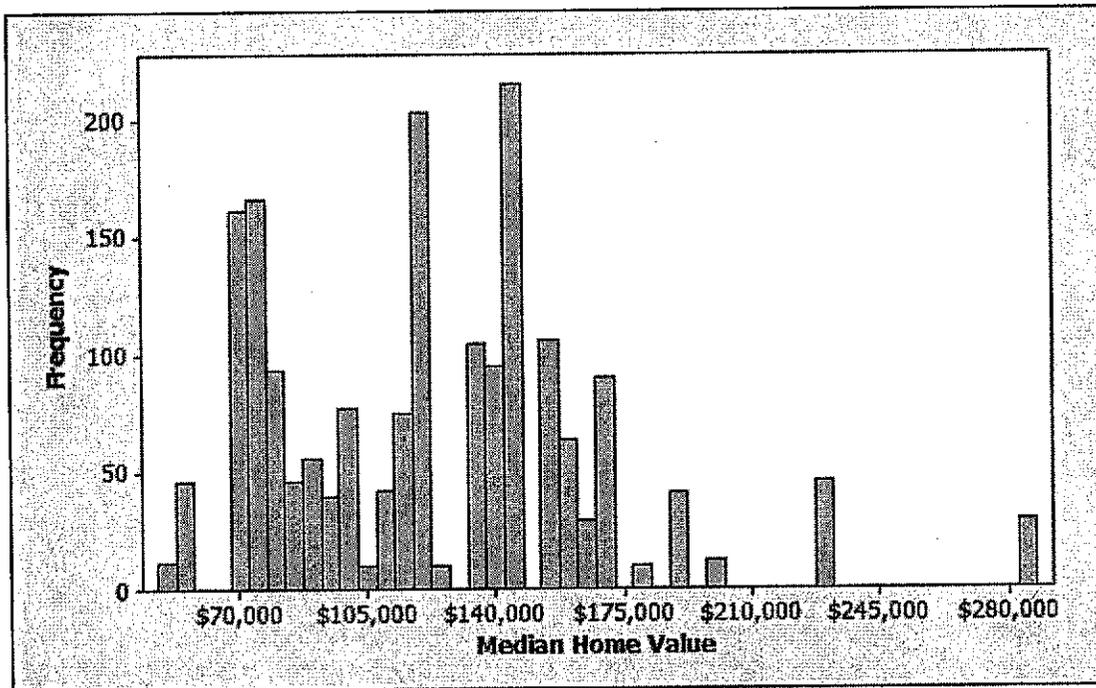
**Table 7: Estimated Parcels by Median Home Value**

Quartile	Median Home Value	Parcels in Sample	Estimated County Proportion	Standard Error	Margin of Error*
First Quartile	Less than \$80,200	411	21.83%	0.950%	±2.45%
Second Quartile	\$80,200 - \$119,600	410	21.77%	0.949%	±2.45%
Third Quartile	\$119,600 - \$149,750	627	33.30%	1.084 %	±2.79%
Fourth Quartile	Greater than \$149,750	425	22.57%	0.961%	±2.48%
		<b>Total</b>	<b>1873<sup>+</sup></b>		

\* $\alpha=0.01$

<sup>+</sup> One tract is excluded from analysis

**Figure 7: Distribution of Sampled Parcels by Home Value**



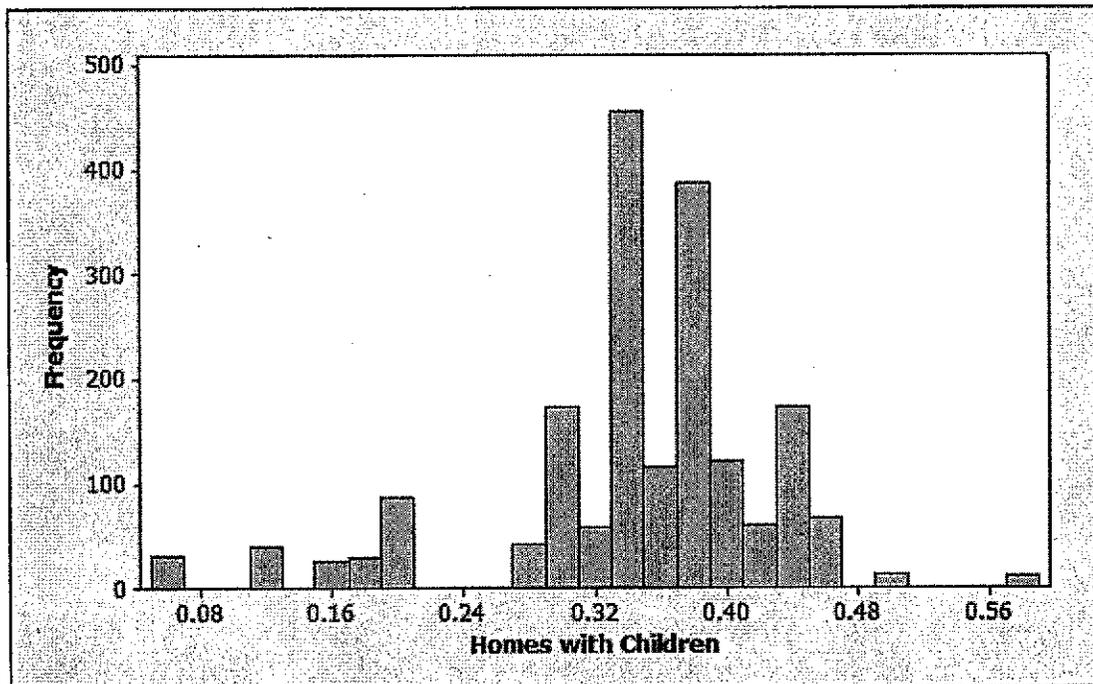
**Households with Children Under 18:** Information was also collected on the proportion of households with children under age eighteen in each census tract. Proportions ranged from

a low of 6.7 percent of households, to a high of 57.1 percent. Dividing tracts into quartiles resulted in 425 sampled parcels in the first quartile, 514 into the second quartile, 503 in the third quartile, and 441 in the fourth quartile (see Table 8). The distribution is surprisingly symmetrical, though slightly skewed to the left. Only slightly more one-half of county parcels ( $\hat{P}= 0.5385$ ,  $SE=0.0201$ ) are estimated to be in areas with a population density below the county median.

**Table 8: Estimated Parcels by Proportion of Children**

Quartile	Homes with Children	Parcels in Sample	Estimated County Proportion	Standard Error	Margin of Error*
First Quartile	6.7% - 31%	425	22.57%	0.704%	±1.81%
Second Quartile	32% - 35%	514	27.30%	0.946%	±2.44%
Third Quartile	35% - 40%	503	26.71%	1.006%	±2.59%
Fourth Quartile	40% - 57.1%	441	23.41%	0.908%	±2.34%
		<b>Total</b>	<b>1883</b>		<b>*<math>\alpha=.01</math></b>

**Figure 8: Distribution of Sampled Parcels by Homes with Children**



**Population Density:** Information on total tract population was combined with total land area to produce an estimate of population density per square mile. Population density ranges from 77.789 persons per square mile in near-rural areas to 10,577.645 persons on the campus of a major university (see Table 9). Slightly more one-half of county parcels ( $\hat{P}= 0.5385$ ,  $SE=0.0201$ ) are estimated to be in areas with a population density below the county median.

**Table 9: Estimated Parcels by Population Density**

Quartile	Population Density	Parcels in Sample	Estimated County Proportion	Standard Error	Margin of Error*
First Quartile	77.789 - 1,341.366	378	20.07%	0.921%	±2.37%
Second Quartile	1,341.366 - 2,790.306	636	33.78%	1.088%	±2.80%
Third Quartile	2,790.306 - 4,802.003	485	25.76%	1.006%	±2.59%
Fourth Quartile	4,802.003 - 10,577.645	364	19.33%	0.908%	±2.34%
		<b>Total</b>	<b>1873<sup>+</sup></b>		

\* $\alpha=01$

<sup>+</sup> One tract is excluded from analysis

### *Relationship among Economic and Geographic Factors*

Correlation analysis of economic and geographic factors (see Table 10) revealed a moderate negative relationship between median income and poverty rate, as well as strong positive relationships between median income and rent and home values. Thus, as median income increases, housing costs increase and poverty decreases. The relationship between poverty rate and both median area rent and home values was moderate and, unsurprisingly, negative.

The strong relationship indicates that analysis of both income and housing data may be redundant. The more moderate relationship among poverty rate and housing values indicates that each captures some variability in the data not explained by the other. Scatter plot analysis confirms that there is a strong non-linear relationship between poverty rate and the other three economic factors (Figure 9). However, log-linear, exponential and inverse-exponential transformation of poverty rate did not result in an improved linear relationship.

The relationship between population density and economic factors is less clear. Mild but significant negative relationships exist between population density and income, rent, and home value factors. There is a stronger, positive linear relationship between population density and poverty rate. Thus, as population density increases, so does poverty.

The proportion of homes with children is generally uncorrelated with median income and home value, but mildly negatively correlated with population density, indicating that the proportion of families with children tends to be smaller in areas with higher population density. A weighted scatterplot of these factors by each economic indicator is included in Figure 10 and Figure 11.

**Table 10: Correlation among Economic and Geographic Factors**

	Area Median Income	Poverty Rate	Median Area Rent	Median Home Value	Homes with Children
<b>Poverty Rate</b>	-0.678***				
<i>(p-value)</i>	<i>(0.000)</i>				
<b>Median Area Rent</b>	0.854***	-0.731***			
<i>(p-value)</i>	<i>(0.000)</i>	<i>(0.000)</i>			
<b>Median Home Value</b>	0.934***	-0.592***	0.809***		
<i>(p-value)</i>	<i>(0.000)</i>	<i>(0.000)</i>	<i>(0.000)</i>		
<b>Homes with Children</b>	0.011	-0.334**	0.304	0.147	
<i>(p-value)</i>	<i>(0.944)</i>	<i>(0.025)</i>	<i>(0.045)</i>	<i>(0.339)</i>	
<b>Population Density</b>	-0.399***	0.664***	-0.362**	-0.447***	-0.478***
<i>(p-value)</i>	<i>(0.007)</i>	<i>(0.000)</i>	<i>(0.017)</i>	<i>(0.003)</i>	<i>(0.001)</i>

*p* ≤ .10 \* *p* ≤ .05 \*\* *p* ≤ .01 \*\*\*

Population density is included in this analysis as a possible moderating variable that affects the relationship between economic factors and number of prohibited locations within one-thousand feet. For example, inner city areas may have fewer positive economic factors and more prohibitions, because of the close proximity residents have to each other. Interestingly, however, the correlation analysis indicates only mild relationship between population density and any of the four included economic factors.

Factors by area zip code are included in Table 11.

Figure 9: Scatterplot of Economic Factors

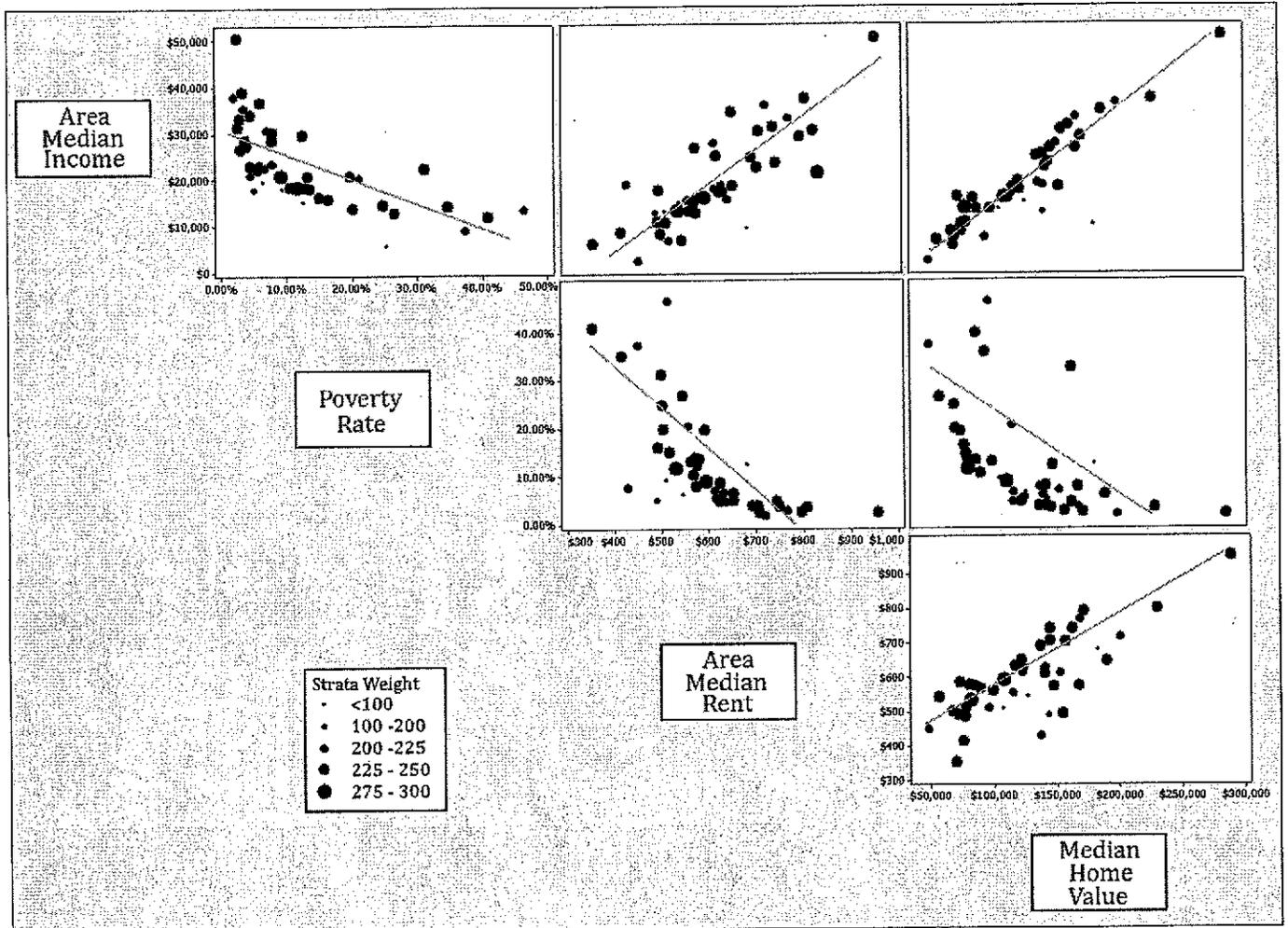


Figure 10: Scatterplot of Homes with Children and Economic Factors

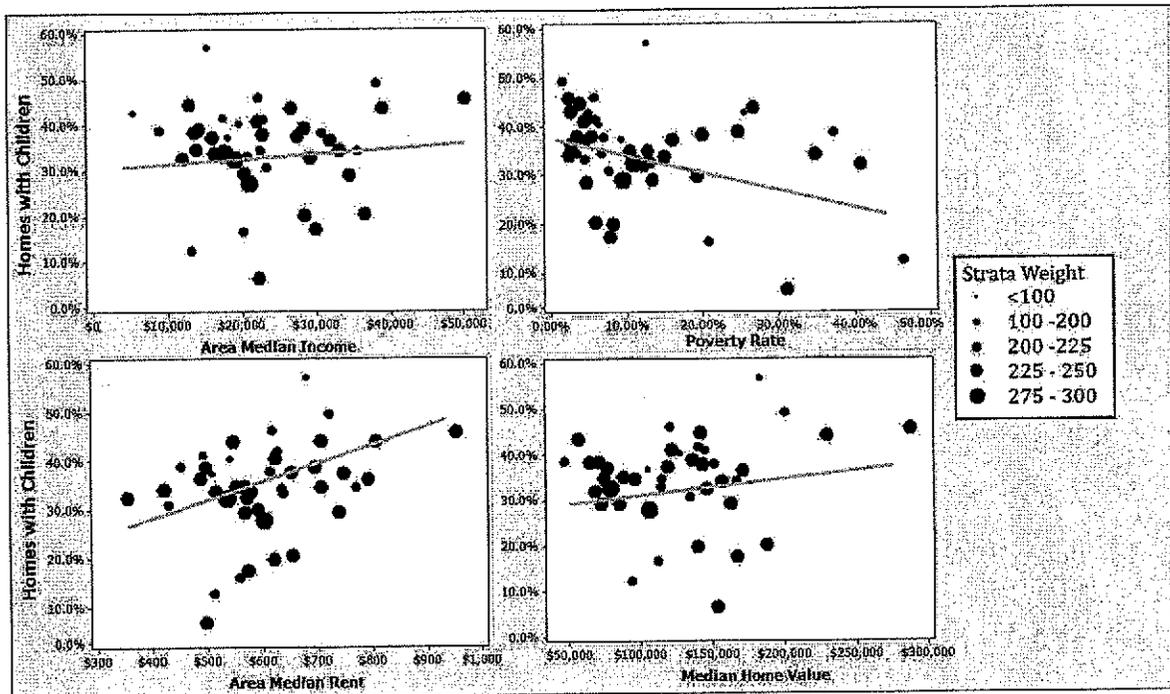
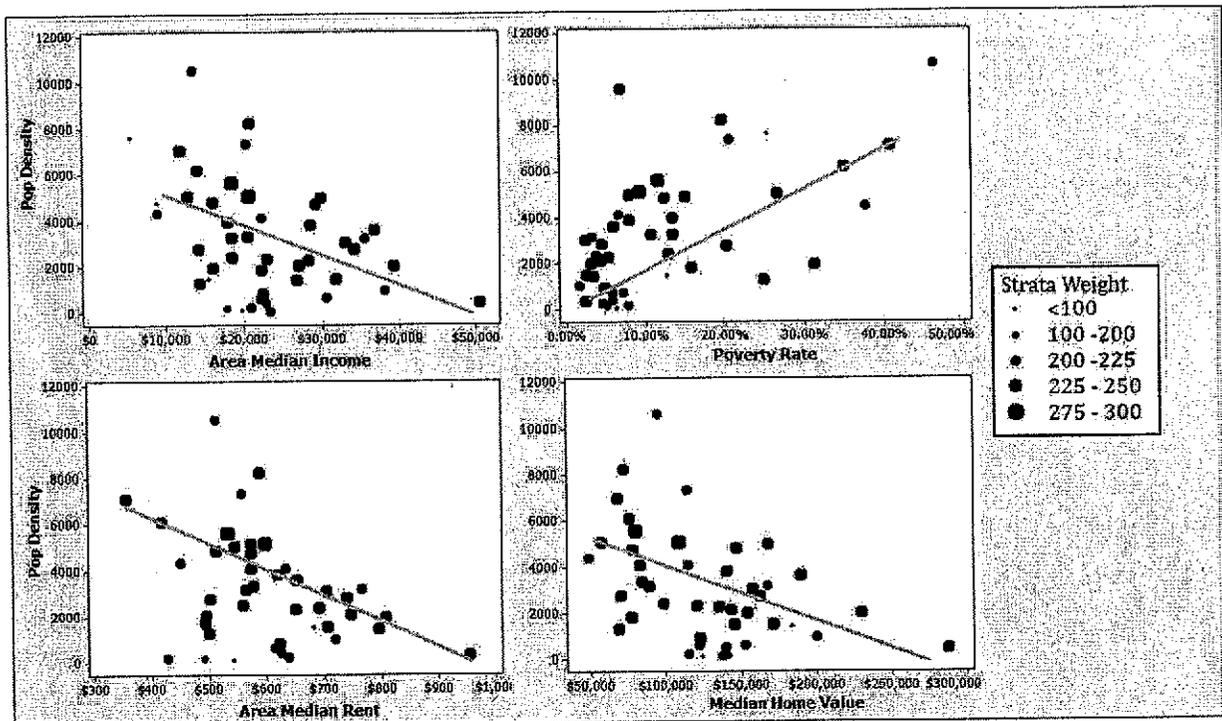


Figure 11: Scatterplot of Population Density and Economic Factors



**Table 11: Economic & Geographic Factors by Zip Code**

<b>Zip Code</b>	<b>Area Median Income</b>	<b>Poverty Rate</b>	<b>Area Median Rent</b>	<b>Median Home Value</b>	<b>Homes with Children</b>	<b>Pop Density</b>
43002	\$23,344	7.70%	\$428	\$136,700	30.90%	137.8233
43004	\$30,748	7%	\$613	\$152,500	37.90%	631.5857
43016	\$31,891	2.60%	\$792	\$171,200	36.40%	1463.944
43017	\$39,035	3.20%	\$804	\$229,900	43.70%	1963.541
43026	\$26,644	3.40%	\$704	\$143,700	44.40%	1489.978
43054	\$50,394	2.50%	\$955	\$287,300	45.60%	387.3034
43065	\$38,060	1.70%	\$720	\$200,500	49.30%	963.2137
43068	\$22,957	5.10%	\$651	\$120,800	37.50%	2289.639
43081	\$27,128	3.90%	\$745	\$143,600	37.40%	2130.551
43085	\$33,105	2.70%	\$706	\$156,400	34.10%	3058.55
43110	\$22,844	5.70%	\$626	\$140,300	41.50%	376.4508
43119	\$22,164	5.50%	\$615	\$122,200	46.30%	642.8523
43123	\$22,213	4.80%	\$624	\$122,000	40.80%	813.114
43125	\$20,953	4.50%	\$636	\$115,700	33.00%	270.241
43137	\$19,625	6.20%	\$542	\$125,300	40.40%	77.78915
43140	\$18,194	9.10%	\$508	\$105,500	37.30%	+
43146	\$17,666	5%	\$490	\$141,400	41.30%	173.2262
43201	\$13,237	46.30%	\$512	\$94,800	12.50%	10577.65
43202	\$20,195	20.70%	\$556	\$113,800	16.30%	7319.704
43203	\$11,853	40.70%	\$354	\$68,300	32.10%	7097.374
43204	\$18,035	13.20%	\$573	\$80,800	33.50%	4028.419
43205	\$14,069	34.70%	\$417	\$74,800	34.60%	6126.333
43206	\$20,675	19.60%	\$589	\$71,900	29.60%	8242.383
43207	\$15,893	16%	\$492	\$75,600	36.90%	1841.27
43209	\$29,430	12.30%	\$573	\$147,000	32.60%	4782.367
43210	\$5,369	25.40%	+	+	42.80%	7631.923
43211	\$12,801	26.50%	\$543	\$56,400	43.90%	5074.325
43212	\$29,738	7.80%	\$575	\$167,000	17.30%	4951.079
43213	\$20,301	13.20%	\$570	\$84,400	29.20%	3303.024
43214	\$28,486	7.80%	\$620	\$139,900	19.90%	3849.369
43215	\$22,265	31.10%	\$495	\$153,800	6.70%	1920.341
43217	\$15,343	12.60%	\$681	\$182,100	57.10%	1525.052
43219	\$14,377	24.70%	\$500	\$67,900	38.50%	1238.788
43220	\$36,560	5.90%	\$650	\$188,900	20.30%	3606.234
43221	\$35,475	3.20%	\$767	\$168,200	34.30%	3173.976
43222	\$8,943	37.30%	\$450	\$48,100	38.60%	4362.925
43223	\$13,923	20%	\$498	\$69,400	38.40%	2764.565
43224	\$15,916	15%	\$512	\$77,100	34.00%	4821.64
43227	\$18,509	11.50%	\$532	\$79,600	33.00%	5608.495
43228	\$18,347	12.80%	\$560	\$98,000	34.70%	2426.834
43229	\$20,684	9%	\$595	\$108,100	28.50%	5111.335
43230	\$28,102	3.70%	\$691	\$135,900	38.50%	2309.893
43231	\$22,480	6.50%	\$632	\$115,600	34.30%	4062.197
43232	\$18,486	10.60%	\$568	\$87,500	34.70%	3222.26
43235	\$34,050	4.50%	\$737	\$161,600	29.00%	2816.048
	<b>\$21,587</b>	<b>12.40%</b>	<b>\$602</b>	<b>\$119,600</b>	<b>33.10%</b>	<b>2,790.306</b>

\* No Census Data Available

### ***Sex Offender Residency under Current Restrictions***

Of the 1,561 offenders currently registered within the county, 133 (8.52%) were registered as living at unlocatable addresses (most likely the result of typographic errors). These addresses were excluded from analysis, leaving a total of 1428 offender addresses utilized in this analysis. This provides an interesting commentary on the Franklin County registration system, as the number of unlocatable offenders within the county actually exceeds the number of unlocatable offenders in the *entire* state of Nebraska, as measured by Hughes and Kadleck (2008).

A total of 593 of the total 1561 offenders are registered as working within the county, for an employment rate of 37.99 percent. Seventeen of the 1,561 offenders (1.1%) are currently in school. While ten (0.7%) offenders are officially registered as homeless, an additional 60 (4.2%) are registered as residing in a homeless shelter or program, bringing the total homelessness rate to 4.9 percent. An additional 122 (8.54%) reside in programs that help offenders transition from incarceration back into society. Fifteen offenders (1.1%) are currently living in a nursing home or health care facility, sixteen (1.1%) reside at motels, and nine (0.63%) live in trailers or modular homes. Because residence at transitional centers, homeless programs, hotels, motels, and nursing and care facilities most likely reflect processes other than those of interest to this study, these offenders were excluded from most analyses.

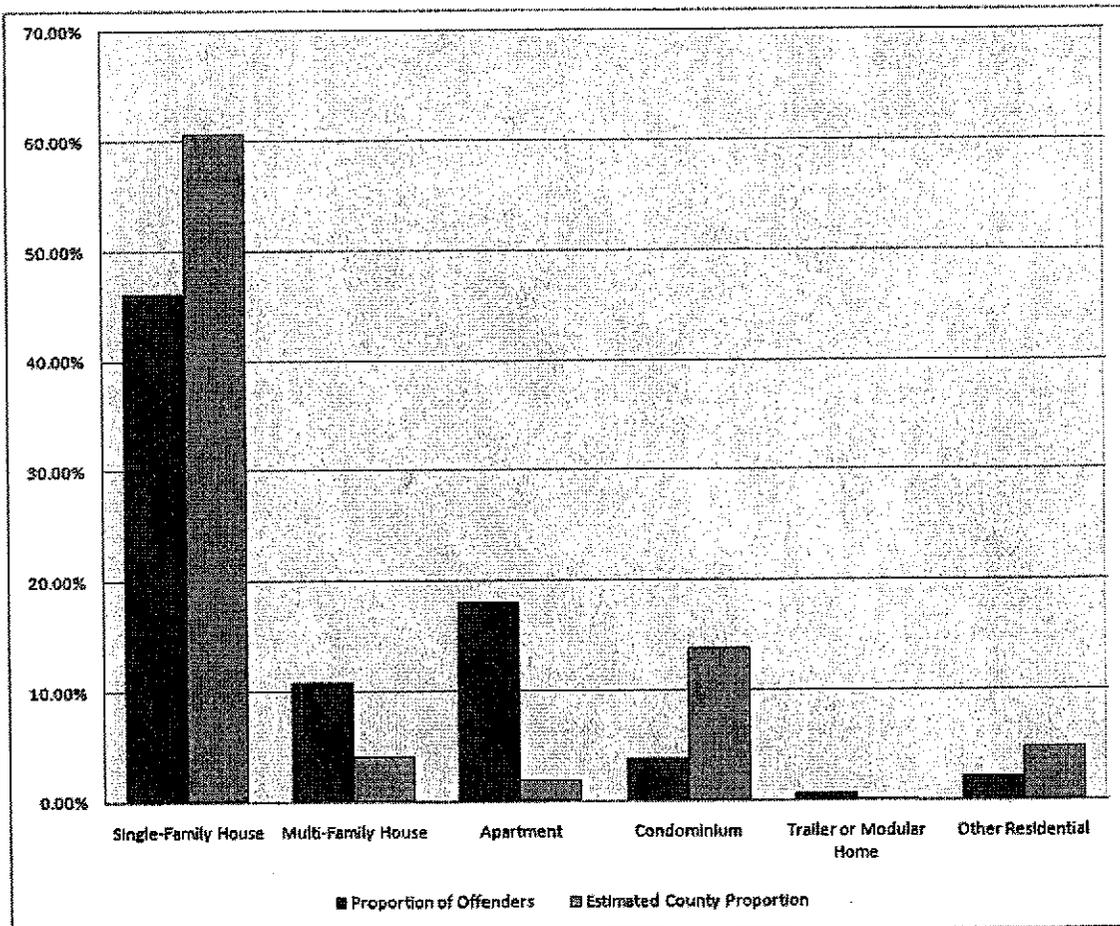
Of offenders residing in more traditional residences, 658 (46.08%) are residing in single-family homes, 154 (10.78%) reside in multi-family homes and 258 (18.07%) are living in apartments.

Fisher's Exact Test was used to determine whether the proportion of offenders residing in certain housing types differs from the weighted estimates of housing availability of the county in general. The test was utilized because some land use types resulted in small cell sizes. Fisher's test utilizes a hypergeometric distribution and is thus more accurate for small sample sizes. The comparison revealed that, compared to county land use as a whole, offenders are much more likely to reside in multi-family homes, apartments, or "other" residential situations, and much less likely to reside in single-family homes or condominiums. Interestingly, 42 offenders are registered as residing in buildings not zoned as residential, though this proportion is, unsurprisingly, much less than in the county land use distribution as a whole (see Table 12). The general county sample did not contain any nursing or care facilities, so no test could be conducted. A comparison of the distribution of offender and weighted sampled parcels is presented in Figure 12.

**Table 12: Offender Residency by Land Use**

Land Use	Number of Offenders	Proportion of Offenders	Confidence Interval <sup>†</sup> for Proportion in County Sample	Estimate for Difference	Fisher's Exact Test P-Value
<b>Residential</b>	<b>1376</b>	<b>96.36%</b>	<b>(83.29% - 87.29%)</b>	11.07%	0.000***
Single-Family House	658	46.08%	(59.13% - 64.65%)	-14.57%	0.000***
Multi-Family House	154	10.78%	(2.96% - 5.24%)	6.75%	0.000***
Apartment	258	18.07%	(1.05% - 2.63%)	16.26%	0.000***
Condominium	54	3.78%	(11.71% - 15.69%)	-9.97%	0.000***
Trailer or Modular Home	9	0.63%	(-0.09% - 0.19%)	-0.52%	0.003***
Nursing/Care Facilities	15	1.05%	-	-	-
Motel or Hotel	16	1.12%	(-0.10% - 0.34%)	1.01%	0.000***
Offender/Housing Programs	182	12.75%	(-0.09% - 0.31%)	12.64%	0.000***
Other Residential	30	2.10%	(3.09% - 5.43%)	2.68	0.000***
<b>Homeless</b>	<b>10</b>	<b>0.70%</b>	-	-	-
<b>Not Residential</b>	<b>42</b>	<b>2.94%</b>	<b>(12.01% - 15.99%)</b>	<b>-11.77%</b>	<b>0.000***</b>
<b>Total</b>	<b>1428</b>			<sup>†</sup> $\alpha=0.1$	$p \leq .10$ * $p \leq .05$ ** $p \leq .01$ ***

**Figure 12: Distribution of Offenders and Parcels by Land Use**



Using Fisher's test, to compare the county as a whole to areas where offenders live, reveals a substantial difference among per-capita income categories (see Table 13). Slightly less than half of offenders (42.16%) live in areas in the lowest quartile of median per-capita income. Additionally, only 5.46 percent of offenders live in the highest quartile range, compared to an estimated 22.68 percent of the county as a whole. Overall, compared to the county as a whole, offenders are substantially more likely to live in lower-income areas.

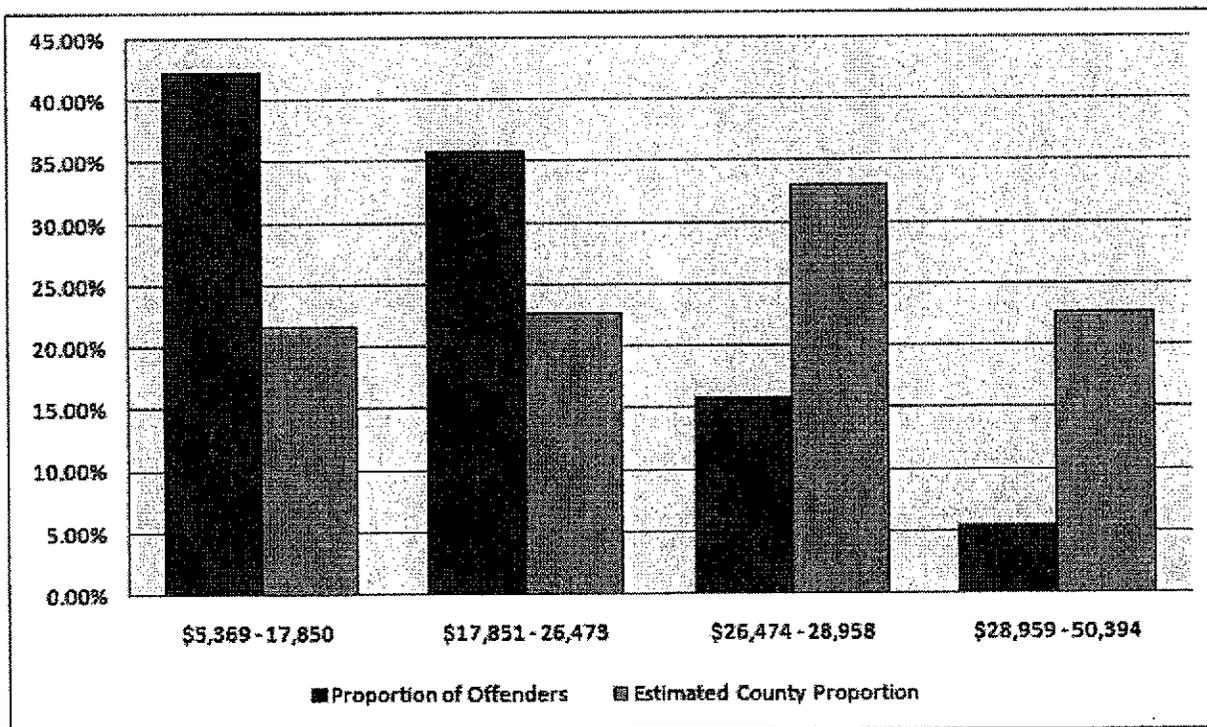
**Table 13: Offender Residency by Median Income**

Per-Capita Income	Number of Offenders	Proportion of Offenders	Confidence Interval <sup>†</sup> for Proportion in County Sample	Estimate for Difference	Fisher's Exact Test P-Value
Less than \$17,851	602	42.16%	(19.17%, 24.05%)	20.54%	0.000***
\$17,851 - 26,473	512	35.85%	(20.20%, 25.16%)	13.18%	0.000***
\$26,474 - 28,958	226	15.83%	(30.24%, 35.82%)	-17.21%	0.000***
Greater than \$28,959	78	5.46%	(20.20%, 25.16%)	-17.21%	0.000***
<b>Total</b>	<b>1418<sup>†</sup></b>				

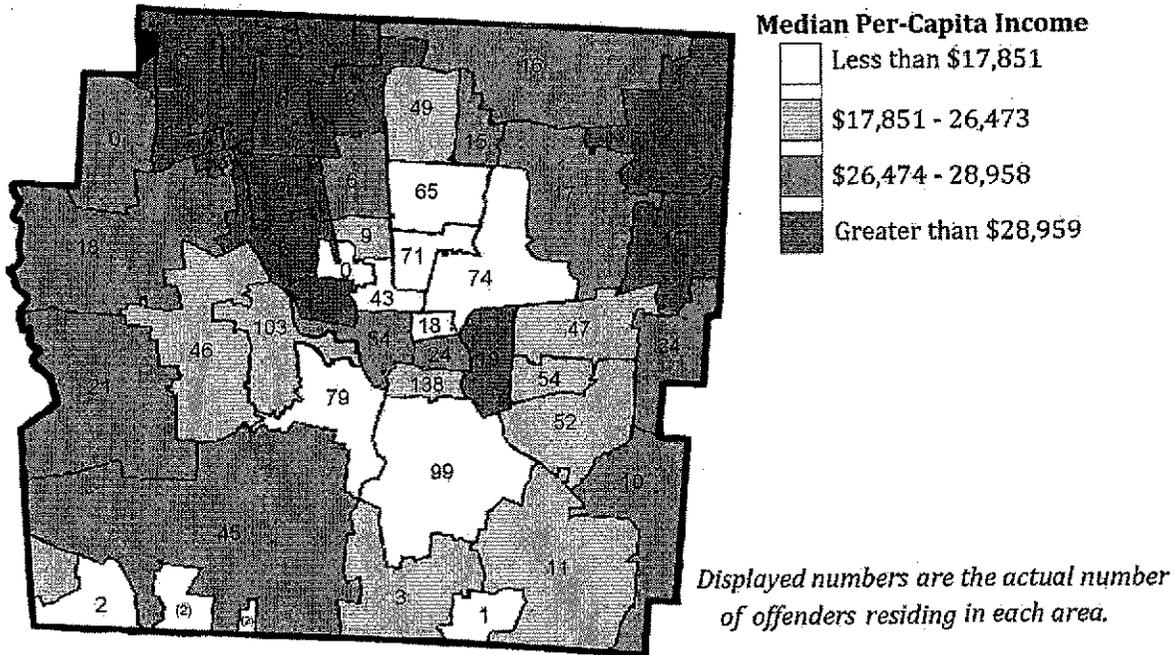
<sup>†</sup> $\alpha=0.01$      $p \leq .10$  \*     $p \leq .05$  \*\*     $p \leq .01$  \*\*\*  
+homeless excluded

A distribution of parcel and offender addresses shows that, while parcels are fairly evenly distributed, offenders are much more concentrated (see Figure 13). Figure 14 provides a map of offenders living in areas coded by median income quartiles.

**Figure 13: Distribution of Offenders and Parcels by Income**



**Figure 14: Map of Offenders Residences by Income**



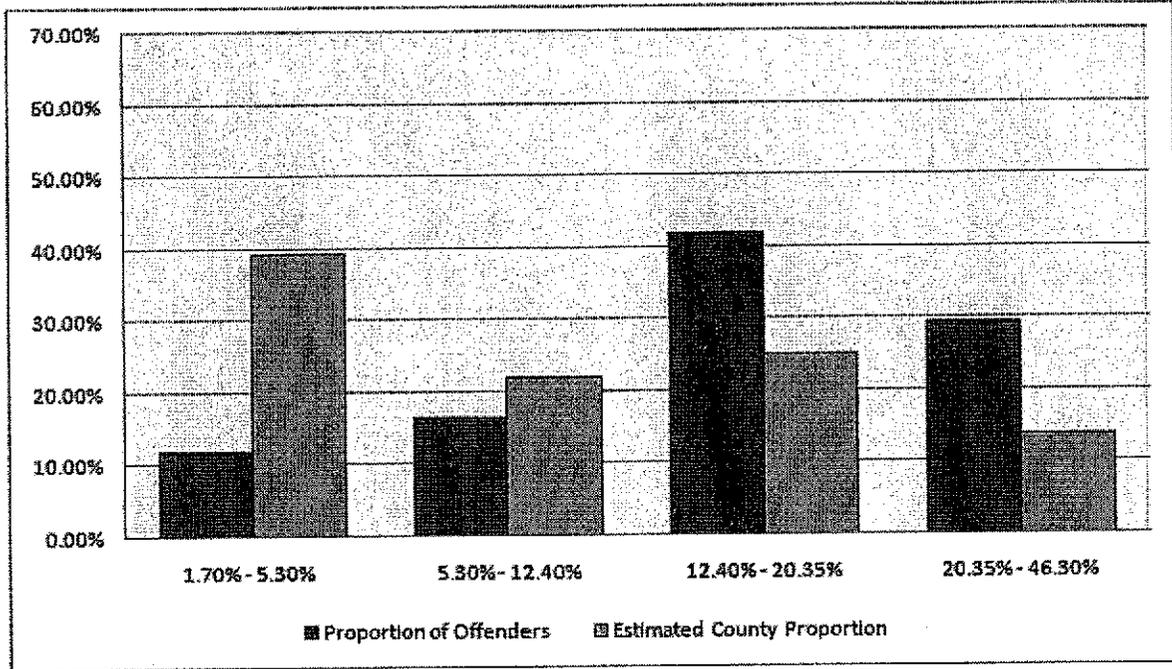
Fisher's Exact Test yielded similar results among poverty rate categories (see Table 14). Nearly three-quarters of offenders (71.15%) live in areas where the number of individuals in poverty is above the county median, compared with only 38.77 percent of the county land parcels as a whole, indicating that offenders are disproportionately distributed in higher poverty areas. A distribution is depicted in Figure 15 and a map illustrating offenders residences by poverty rate is provided in Figure 16.

**Table 14: Offender Residency by Poverty Rate**

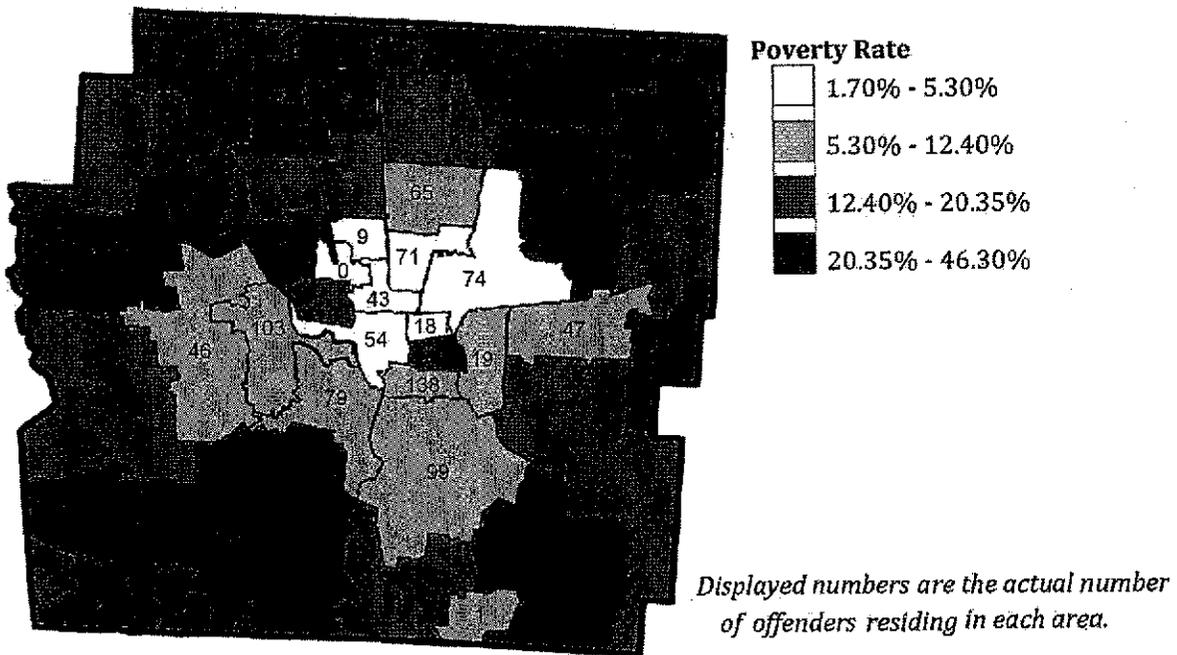
Poverty Rate	Number of Offenders	Proportion of Offenders	Confidence Interval <sup>†</sup> for Proportion in County Sample	Estimate for Difference	Fisher's Exact Test P-Value
1.70% - 5.30%	167	11.69%	(36.81%, 41.69%)	-27.55%	0.000***
5.30% - 12.40%	235	16.46%	(19.51%, 24.47%)	-5.53%	0.000***
12.40% - 20.35%	597	41.81%	(22.53%, 27.49%)	16.79%	0.000***
20.35% - 46.30%	419	29.34%	(11.27%, 16.23%)	15.59%	0.000***
<b>Total</b>	<b>1428<sup>‡</sup></b>				

<sup>†</sup>α=.01    p<.10 \*    p<.05 \*\*    p<.01 \*\*\*  
<sup>‡</sup>homeless excluded

**Figure 15: Distribution of Offenders and Parcels by Poverty Rate**



**Figure 16: Map of Offenders Residences by Poverty Rate**



Again the proportion of offenders residing in certain areas was compared to the weighted general county estimates (see Table 15). An overwhelming majority of offenders (83.14%) live in areas where median rent is below the county median, compared with approximately

half (48.64%) of county parcels, indicating that offenders are disproportionately distributed in areas with lower rent costs. Again, while parcels are evenly distributed, the offender address distribution is substantially skewed (Figure 17). A map of offender residency by median rent is included as Figure 18.

**Table 15: Offender Residency by Median Rent**

Median Area Rent	Number of Offenders	Proportion of Offenders	Confidence Interval <sup>†</sup> for Proportion in County Sample	Estimate for Difference	Fisher's Exact Test P-Value
Less than \$522	584	41.18%	(18.88%, 23.72%)	19.88%	0.000***
\$522 - \$602	595	41.96%	(24.70%, 29.98%)	14.62%	0.000***
\$602 - \$686	154	10.86%	(20.01%, 24.95%)	-11.62%	0.000***
Greater than \$686	85	5.99%	(26.20%, 31.56%)	-22.89%	0.000***
<b>Total</b>	<b>1418<sup>**</sup></b>				

<sup>†</sup> $\alpha=.01$      $p<.10$  \*     $p<.05$  \*\*     $p<.01$  \*\*\*  
 +homeless excluded  
 #One tract excluded

**Figure 17: Distribution of Offenders and Parcels by Median Rent**

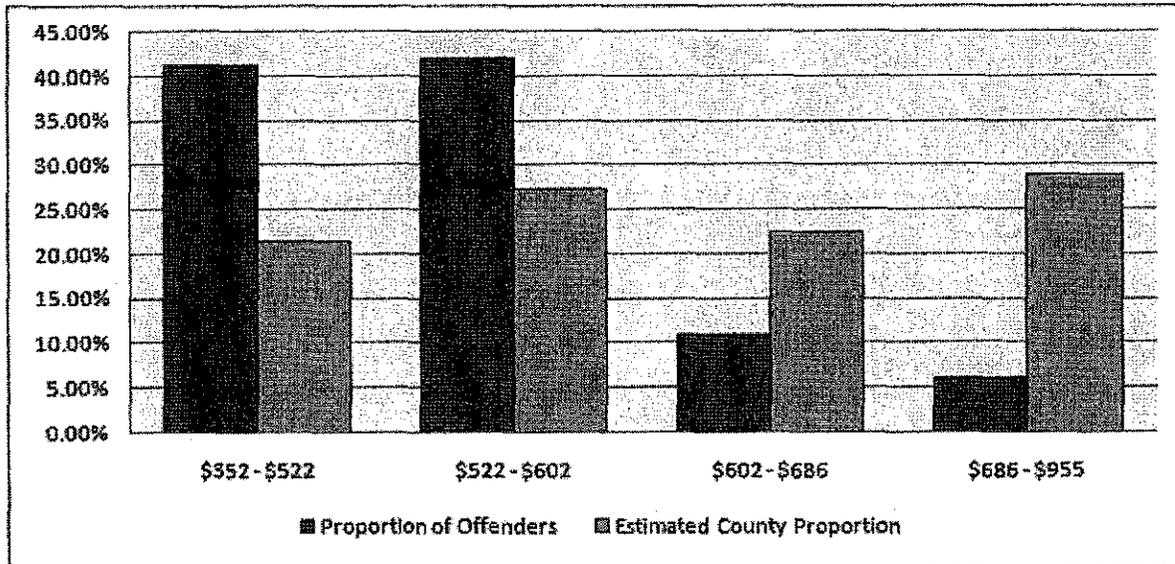
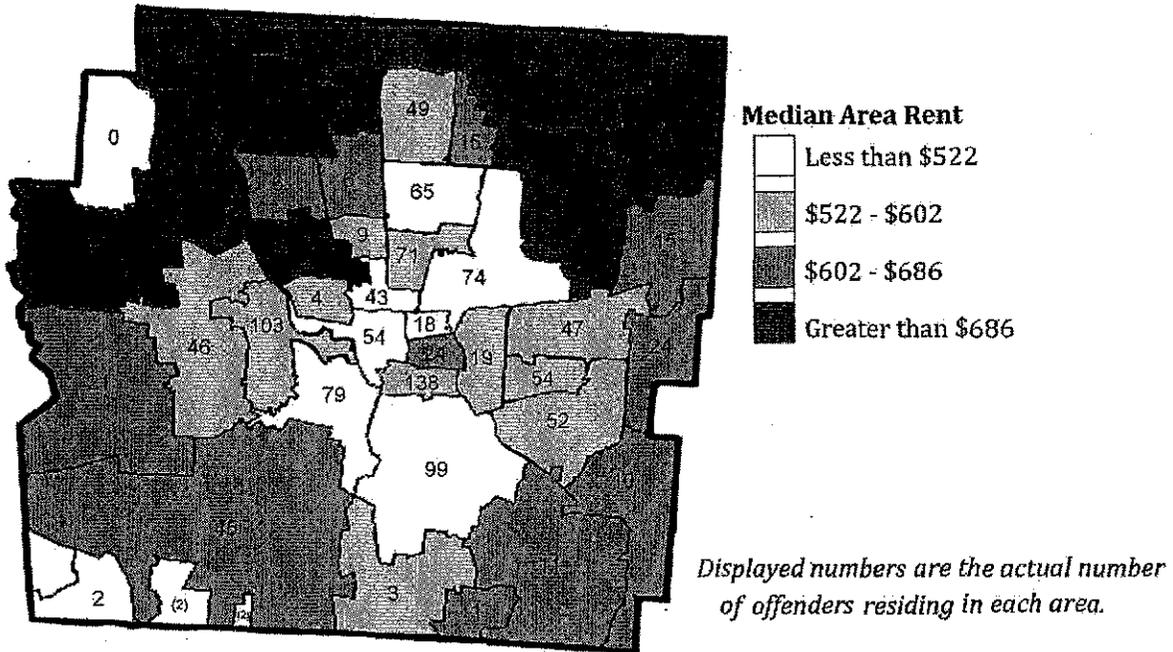


Figure 18: Map of Offenders Residences by Median Rent



When comparing the proportion of offenders to the weighted general county estimates, again offenders tend to be distributed in lower-cost areas (see Table 16). The majority of offenders (52.75%) live in the lowest home value quartile, compared with approximately one-third (30.81%) of the county. A distribution of both groups is presented in Figure 19 and a map of offender residences in Figure 20.

Table 16: Offender Residency by Median Home Value

Median Home Value	Number of Offenders	Proportion of Offenders	Confidence Interval <sup>†</sup> for Proportion in County Sample	Estimate for Difference	Fisher's Exact Test P-Value
Less than \$80,200	748	52.75%	(19.49%, 24.39%)	30.81%	0.000***
\$80,200 - \$119,600	375	26.45%	(19.44%, 24.34%)	4.56%	0.000***
\$119,600 - \$149,750	181	12.76%	(30.69%, 36.27%)	-20.71%	0.000***
Greater than \$149,750	114	8.04%	(20.21%, 25.17%)	-14.65%	0.000***

Total 1418<sup>#</sup>

<sup>†</sup>α=.01

p≤.10 \*

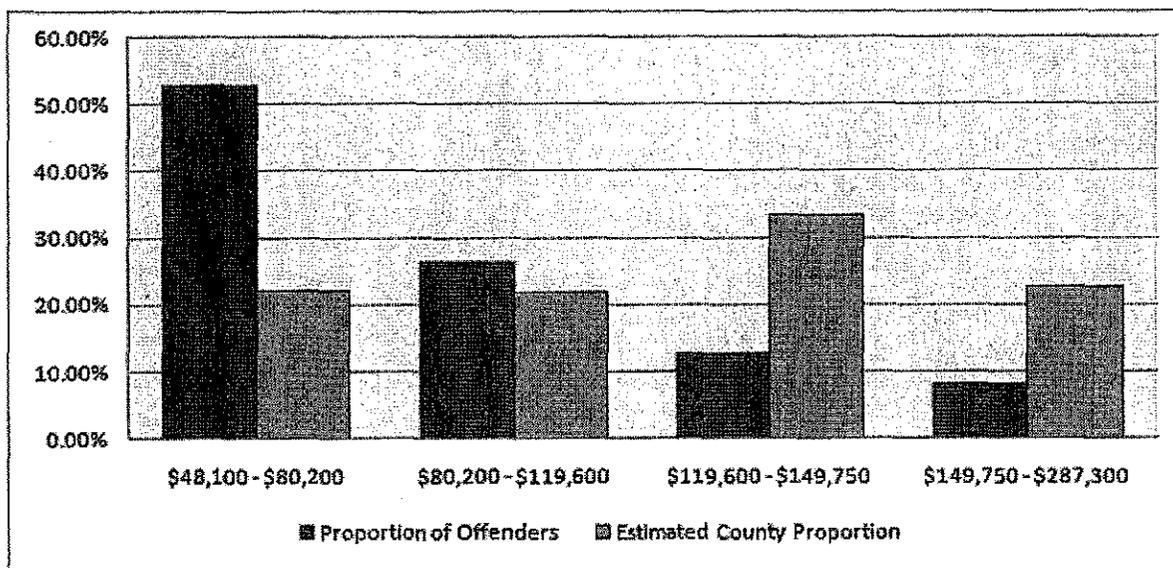
p≤.05 \*\*

p≤.01 \*\*\*

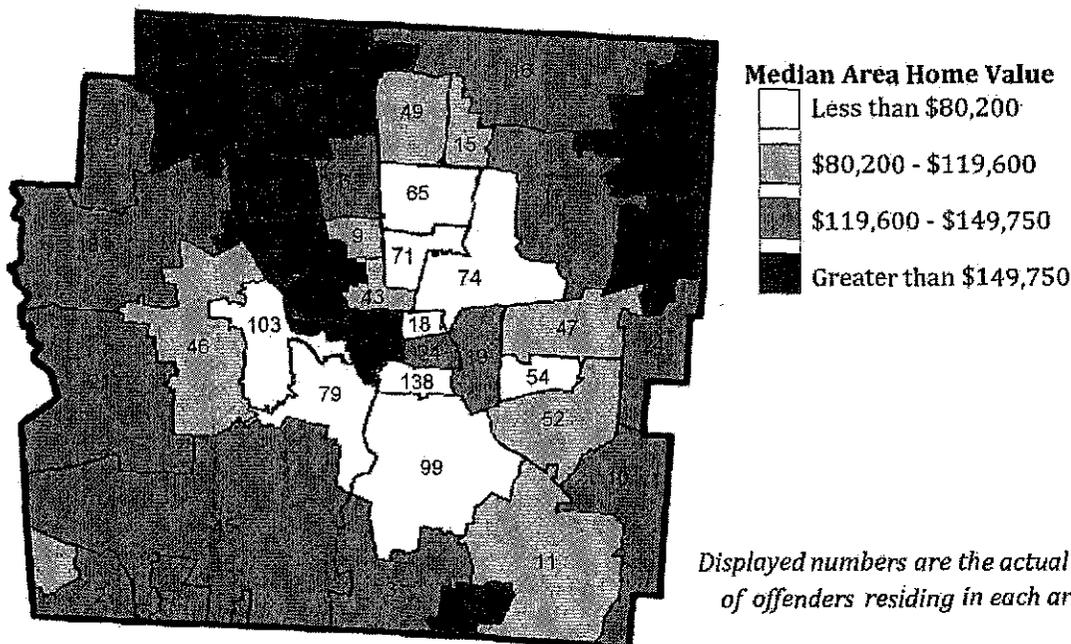
+homeless excluded

#One tract excluded

**Figure 19: Distribution of Offenders and Parcels by Home Value**



**Figure 20: Map of Offenders Residences by Median Home Value**



When comparing the proportion of offenders to the weighted general county estimates, offenders tend to be slightly, but significantly, more concentrated in areas where fewer homes have children (see Table 17). Only 12.76 percent of offenders live in areas included in the top quartile of tracts compared to 23.41 percent of general county parcels, a significant difference of more than ten percent. This indicates that offenders do *not* tend to gravitate their

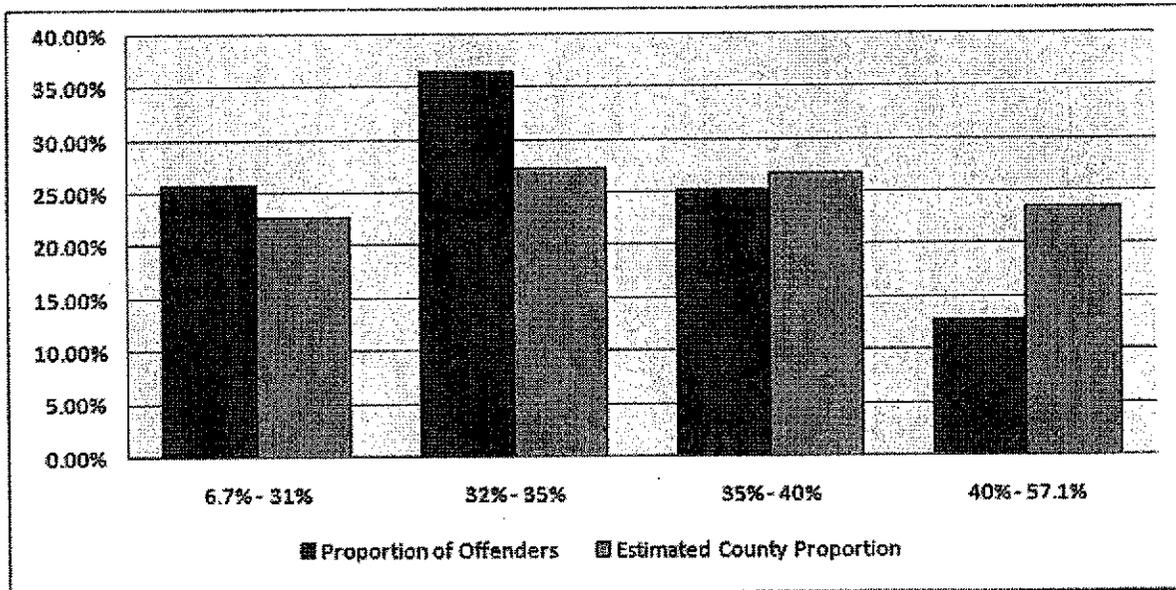
residences around areas where children tend to live. A distribution of both groups is presented in Figure 21.

**Table 17: Offender Residency by Homes with Children**

Homes with Children	Number of Offenders	Proportion of Offenders	Confidence Interval <sup>†</sup> for Proportion in County Sample	Estimate for Difference	Fisher's Exact Test P-Value
6.7% - 31%	364	25.67%	(20.76%, 24.38%)	3.10%	0.039**
32% - 35%	517	36.46%	(24.86%, 29.74%)	9.16%	0.000***
35% - 40%	356	25.11%	(24.12%, 29.30%)	-1.60%	0.316
40% - 57.1%	181	12.76%	(21.07%, 25.75%)	-10.66%	0.000***
<b>Total</b>	<b>1418<sup>†</sup></b>				

<sup>†</sup>α=.01    p≤.10 \*    p≤.05 \*\*    p≤.01 \*\*\*  
 +homeless excluded

**Figure 21: Distribution of Offenders and Parcels by Homes with Children**



Binomial logistic regression models were fit to each of the economic variables, to predict the probability of an offender residing in certain economic areas ( $\text{logit}(p[\text{offender}]) = \beta_0 + \beta_1 \text{FACTOR}$ ). Pearson's chi-square test for goodness of fit and review of residuals indicate that each model fits the data well (see Table 18). Economically, logistic regression analysis determined:

- (1) For every dollar increase in yearly median income, an offender is 0.999 times as likely to live in the area. Conversely, for every dollar decrease in yearly median income, a sex offender is 1.01 times as likely to live in the area. Or, scaled in more everyday terms, for every \$10,000 decrease in median income, an offender is 3.22 (CI<sub>Z $\alpha$ =0.01</sub>= 2.75, 3.78) times more likely to live in the area.
- (2) For every percent increase in area poverty rate, an offender is 1.07 times as likely to live in the area. Additionally, for every five percent increase in poverty, an offender is 64.31 times more likely to live in the area, though the curvilinear nature of county poverty rates makes the confidence interval very wide (CI<sub>Z $\alpha$ =0.01</sub>= 36.40, 113.62).
- (3) For every dollar decrease in median monthly rent, a sex offender is 1.01 times as likely to live in the area. Alternately, for every \$100 decrease in median rent, an offender is 1.25 (CI<sub>Z $\alpha$ =0.01</sub>= 1.22, 1.29) times more likely to live in the area.
- (4) For every dollar increase in median home value, an offender is 0.99 times as likely to live in the area. For every \$10,000 increase in median home value, an offender is more, than half as likely (0.799, CI<sub>Z $\alpha$ =0.01</sub>= 0.77, 0.822) to live in the area. Conversely, for every \$10,000 decrease in median home value, an offender is 1.25 (CI<sub>Z $\alpha$ =0.01</sub>= 1.22, 1.29) times more likely to live in the area.

**Table 18: Regression Analysis of Offender Residency across Economic Measures**

	Pearson's $\chi^2$	P-Value	Coefficient ( $\hat{b}_1$ )	SE(Coefficient)	P-Value	$e^{\hat{b}_1}$
Area Mean Income	306.104	0.000***	-0.0001170	0.0000062	0.000***	0.99988
Poverty Rate	361.127	0.000***	0.0657577	0.003726-	0.000***	1.06797
Median Rent Amount	291.669	0.000***	-0.0083274	0.0004419	0.000***	0.99171
Median House Value	241.134	0.000***	-0.0000224	0.0000011	0.000***	0.99998
Homes with Children	620.272	0.000***	-.0189920	0.00419174	0.000***	0.981187

*p*≤.10 \* *p*≤.05 \*\* *p*≤.01 \*\*\*

Examining the relationship between offender residence and homes with children revealed that, as the proportion of homes with children increases by one percent, an offender is 1.019 times less likely to live in the area.

While there is a relationship between economic factors and the probability that an offender lives in the area, it is not clear that this is not influenced by a relationship between economic factors and population density. However, after controlling for population density, the coefficients for economic variables remain significant, indicating that economic variables still play a substantial role. Coefficients change little and remain significant. For example, after controlling for population density, for every dollar increase in yearly median income, an

offender is 0.9999 times as likely to live in the area, compared to 0.9998 when density is not controlled (Table 19). Scaled more appropriately, for every \$10,000 decrease in median income an offender is 2.84 times as likely to live in the area, compared to 3.22 times when population is not controlled. Thus, while population density can help predict sex offender residence, economic factors remain vital.

**Table 19: Regression Analysis of Offender Residency Controlling for Population Density**

	Pearson's $\chi^2$	P-Value	Population Density Coefficient	Economic Coefficient ( $\hat{b}_2$ )	SE(Economic Coefficient)	P-Value	$e^{\hat{b}_2}$
Area Mean Income	267.501	0.000***	0.0001157 <sup>n.s.</sup>	-0.0001043	0.0000064	0.000***	0.9999
Poverty Rate	391.979	0.000***	0.0000640 <sup>n.s.</sup>	0.0057957	0.0004352	0.000***	1.00581
Median Rent Amount	234.443	0.000***	0.0001228 <sup>n.s.</sup>	-0.0075093	0.0004615	0.000***	0.99252
Median House Value	209.064	0.000***	0.0000843 <sup>n.s.</sup>	-0.0000202	0.0000012	0.000***	0.99998

*p* ≤ .10 \* *p* ≤ .05 \*\* *p* ≤ .01 \*\*\*

Overall, the data indicates that economic factors are strongly predictive of the areas where sex offenders tend to live. Offenders are disproportionally clustered in areas with low income, high poverty, and lower housing costs. These relationships remain significant even after accounting for population density. These findings are consistent with previous studies (Mustaine, Tewksbury et al. 2006; Hughes and Kadleck 2008).

### **Parcels Restricted by Residency Requirements**

To determine the availability of housing for sex offenders, it is necessary to determine how many parcels violate current residency restrictions. Each sampled parcel was analyzed to determine whether it fell within the statutory one-thousand foot buffer zone of a prohibited location (school, pre-school, or child care facility). If the parcel violated the proximity restriction, the total number of violations (how many prohibited locations fell within one-thousand feet) was noted. Data was not collected on non-residential parcels as, while it is possible to reside in a non-residential building, such residency would not be considered legitimate and the offender would (theoretically) be subject to the same action as one living in a restricted residential unit.

Overall, 955 of the 1,606 residential parcels (59.53%) sampled were restricted. Of parcels that are restricted, the average number of prohibitions within one-thousand feet is 1.68 ( $CI_{\alpha=.01} = 1.56, 1.79$ ). Sampled single family homes had the least proportion of units prohibited under residency requirements (58.23%) while multifamily homes had the most (66.23%), however Fisher's Exact Test revealed no significant difference between the two proportions ( $p=0.149$ ) (see Table 20).

Adjusting for the effect of survey design, an estimated 60.03 percent of the county's residential parcels violate the residency restriction ( $\hat{P}$ = 0.60026, SE=0.000311), with a margin of error of  $\pm 0.802$  percent. Thus, including non-residential parcels, an estimated 65.32 percent ( $\hat{P}$ = 0.65322, SE=0.00324) of the county is *unlivable* under current residency restrictions. This represents a substantial proportion of the county that offenders are barred from occupying. Results are similar to the findings of a previous study, which found that approximately 50 percent of county parcels were restricted, though that work did not distinguish land use differences (Grubestic, Mack et al. 2007). These results can be directly compared, as both studies were conducted within the same state, under the same legal framework (though enforcement factors may vary).

**Table 20: Restricted Parcels by Land Use**

Land Use	Parcels in Sample	Parcels Violating Restrictions	Proportion of Parcels that are Restricted	Estimated County Proportion Restricted	Standard Error	Margin of Error*
<b>Residential</b>	<b>1606</b>	<b>956</b>	<b>59.53%</b>	<b>60.026%</b>	<b>0.311%</b>	<b><math>\pm 0.802\%</math></b>
Single-Family House	1142	665	58.23%	58.838%	0.314%	$\pm 0.810\%$
Multi-Family House	77	51	66.23%	70.842%	0.502%	$\pm 1.293\%$
Apartment	34	22	64.71%	55.386%	0.271%	$\pm 0.698\%$
Condominium	259	156	60.23%	60.581%	0.331%	$\pm 0.852\%$
Trailer or Modular Home	1	0	0.00%	N/A	N/A	N/A
Nursing/Care Facilities	0	0	N/A	N/A	N/A	N/A
Motel or Hotel	2	2	100.00%	N/A	N/A	N/A
Offender/Housing Programs	2	1	50.00%	N/A	N/A	N/A
Other Residential	90	58	64.44%	63.828%	0.382%	$\pm 0.984\%$
<b>Not Residential</b>	<b>277</b>	<b>277</b>	<b>100.00%</b>	<b>100.00%</b>	<b>N/A</b>	<b>N/A</b>
<b>Total</b>	<b>1883</b>	<b>1232</b>	<b>65.43%</b>	<b>65.322%</b>	<b>0.324%</b>	<b><math>\pm 0.835\%</math></b>

\*\* $\alpha=0.01$

Of parcels sampled in areas where median area per-capita income is in the lowest quartile, 68.30 percent of parcels were restricted. This compares to 62.76 percent in the second bracket, 66.88 percent in the third, and 63.23 percent in the fourth. No immediate trend is evident. Adjusted for sampling design, weighted estimates of the proportion of county housing restricted remain largely unchanged (see Table 21).

**Table 21: Restricted Parcels by Median Income**

Per-Capita Income	Parcels in Sample	Parcels Violating Restrictions	Proportion of Parcels that are Restricted	Estimated County Proportion Restricted	Standard Error	Margin of Error*
Less than \$17,851	407	278	68.30%	68.028%	1.454%	±3.746%
\$17,851 - 26,473	427	268	62.76%	62.773%	1.306%	±3.363%
\$26,474 - 28,958	622	416	66.88%	66.870%	1.062%	±2.736%
Greater than \$28,959	427	270	63.23%	63.203%	1.182%	±3.046%

\*\*α=.01

Sampled parcels examined by poverty rate revealed no immediate trend. However, among high-poverty areas sampled, an astounding 80.69 percent of sampled parcels (weighted  $\hat{P} = 0.80008$ ,  $SE = 0.00246$ ) were within one-thousand feet of a prohibited location (see Table 22).

**Table 22: Restricted Parcels by Poverty Rate**

Poverty Rate	Parcels in Sample	Parcels Violating Restrictions	Proportion of Parcels that are Restricted	Estimated County Proportion Restricted	Standard Error	Margin of Error*
1.70% - 5.30%	739	472	63.87%	63.738%	0.884%	±2.277%
5.30% - 12.40%	414	274	66.18%	66.129%	1.239%	±3.190%
12.40% - 20.35%	471	277	58.81%	59.204%	1.247%	±3.211%
20.35% - 46.30%	259	209	80.69%	80.008%	2.046%	±5.271%

\*\*α=.01

Examination of restricted parcels by median area rent (Table 23) and median area home value (Table 24) again revealed no immediate trend. However, in all four economic characteristics the proportion of parcels violating a residential buffer is highest in the areas with the worst economic conditions.

**Table 23: Restricted Parcels by Median Rent**

Median Area Rent	Parcels in Sample	Parcels Violating Restrictions	Proportion of Parcels that are Restricted	Estimated County Proportion Restricted	Standard Error	Margin of Error*
Less than \$522	399	280	70.18%	69.285%	1.417%	±3.651%
\$522 - \$602	512	336	65.63%	66.235%	1.085%	±2.796%
\$602 - \$686	421	265	62.95%	63.435%	1.413%	±3.639%
Greater than \$686	541	341	63.03%	63.017%	1.143%	±2.946%

\*\*α=.01

**Table 24: Restricted Parcels by Median Home Value**

Median Home Value	Parcels in Sample	Parcels Violating Restrictions	Proportion of Parcels that are Restricted	Estimated County Proportion Restricted	Standard Error	Margin of Error*
Less than \$80,200	411	278	67.64%	67.906%	1.352%	±3.482%
\$80,200 - \$119,600	410	254	61.95%	61.245%	1.335%	±3.438%
\$119,600 - \$149,750	627	417	66.51%	66.614%	1.080%	±2.781%
Greater than \$149,750	425	273	64.24%	64.765%	1.209%	±3.113%

\*\*α=.01

Surprisingly, there does not appear to be any pattern in the number of restricted parcels when examined by the proportion of homes with children (Table 25). While it is expected that the number of prohibited locations would be higher in areas where more children tend to live, no such pattern is evident in this data.

**Table 25: Restricted Parcels by Homes with Children**

Homes with Children	Parcels in Sample	Parcels Violating Restrictions	Proportion of Parcels that are Restricted	Estimated County Proportion Restricted	Standard Error	Margin of Error*
6.7% - 31%	425	296	15.72%	69.619%	1.234%	±3.179%
32% - 35%	514	304	16.14%	59.525%	1.018%	±2.623%
35% - 40%	503	315	16.73%	61.891%	1.254%	±3.230%
40% - 57.1%	441	317	16.83%	72.266%	1.547%	±3.986%

\*\*α=.01

Fitting logistic regression models to each of the economic variables, to predict the probability that a parcel would violate a restricted buffer zone, yielded interesting results (see Table 26):

- (1) For every dollar increase in yearly median income, a parcel is 0.999 times as likely to be restricted, or for every dollar *decrease* in yearly median income a parcel is 1.01 times as likely to be restricted. Phrased more practically, for every \$10,000 decrease in median income, a parcel is 1.133 (CI<sub>Zα=.01</sub>= 0.968, 1.325) times more likely to be restricted. While this result is statistically significant (at α=.05), the confidence interval is quite wide, and because it crosses one, indicates the error may be too large to support conclusions about the effect median income has on restrictiveness.
- (2) For every percent increase in area poverty rate, a parcel is 1.024 times as likely to be restricted. Additionally, for every five percent increase in poverty rate, a parcel is 1.125 times more likely to be restricted (CI<sub>Zα=.01</sub>= 1.207, 1.049).

- (3) For every dollar decrease in median monthly rent, a parcel is 1.01 time as likely to be restricted. Further, for every \$100 decrease in median rent a parcel is 1.143 times more likely to be restricted ( $CI_{Z\alpha=0.1} = 1.014, 1.289$ ).
- (4) For every dollar increase in median home value, a parcel is 0.99 times as likely to be restricted and 1.008 times for every \$10,000 increase in median home value ( $CI_{Z\alpha=0.1} = 0.980, 1.036$ ). However, this effect was not significant.

**Table 26: Regression Analysis of Restriction across Economic Measures**

	Pearson's $\chi^2$	P-Value	Coefficient ( $\hat{b}_1$ )	SE(Coefficient)	P-Value	$e^{\hat{b}_1}$
Area Mean Income	145.961	0.000***	-0.0000125	0.0000061	0.041**	0.9999875
Poverty Rate	108.501	0.000***	0.0235579	0.545301	0.000***	1.023558
Median Rent Amount	122.865	0.000***	-0.0013403	0.0004652	0.004***	0.9986606
Median Home Value	142.503	0.000***	-0.0000008	0.0000011	0.479 <sup>n.s.</sup>	0.9999992
Homes with Children	141.294	0.000***	-0.0050182	0.0059000	0.395 <sup>n.s.</sup>	0.994994

*p*≤.10 \* *p*≤.05 \*\* *p*≤.01 \*\*\*

Pearson's chi-square test for goodness of fit and review of residuals indicate that the median income, poverty rate, and median rent amount models fit the data well, indicating that there is a relationship between these variables and the probability that a parcel is restricted. The proportion of homes with children is *not* a significant predictor of restricted parcels.

After controlling for population density, the coefficients for poverty rate and median rent remain significant predictors. However, the effect from area median home value largely disappears (Table 27). Overall, the data indicates that parcels are more likely to be restricted in areas of higher poverty rate and median rent value. These findings are consistent with earlier research (Hughes and Burchfield 2008), though proportions of land restricted cannot be directly compared, due to differences in residency restriction laws.

**Table 27: Regression Analysis of Restriction Controlling for Population Density**

	Pearson's $\chi^2$	P-Value	Population Density Coefficient	Economic Coefficient ( $\hat{b}_2$ )	SE(Economic Coefficient)	P-Value	$e^{\hat{b}_2}$
Area Mean Income	138.132	0.000***	0.0395288*	-0.0000093	0.0000062	0.132 <sup>n.s.</sup>	0.999991
Poverty Rate	124.529	0.000***	0.0399185*	0.0227181	0.0054539	0.000***	1.022978
Median Rent Amount	132.896	0.000***	0.0238959 <sup>n.s.</sup>	-0.0012573	0.0004659	0.007***	0.998743
Median House Value	137.539	0.000***	0.0252916 <sup>n.s.</sup>	-0.0000007	0.0000011	0.501 <sup>n.s.</sup>	0.999999

*p*≤.10 \* *p*≤.05 \*\* *p*≤.01 \*\*\*

This analysis indicates the availability of unrestricted housing for the county in general, but fails to consider the clustering of offenders within economic groups. For example, an estimated 39.419 percent of county condominium parcels, adjusted for survey design

considerations, are unrestricted, but only 5.22 percent of the 1418 registered offenders live in condominiums. If only the 1237 offenders from tracts where the offender per-capita rate is above county median are considered (82.14% of offenders are concentrated in these areas), the proportion living in condominiums is reduced further to 3.56 percent (see Table 28).

Because offenders tend to be clustered in economically poor areas, and parcels in these areas also tend to be more restrictive, the net effect is more substantially limited as to housing options than the overall 34.678 percent of unrestricted parcels would suggest. While housing in the county is available, albeit only moderately, the availability of *affordable* housing is much more significantly constrained. Examined by income, while less than 32 percent of parcels are estimated to be available in areas with the lowest median per-capita area income, more than 42 percent of offenders live in these areas. This pattern is evident across all economic indicators (Table 29), emphasizing the need to consider sex offender housing availability within the larger community context in which it is relevant.

**Table 28: Unrestricted Parcels Compared to Offender Residency by Land Use**

Land Use	Unrestricted Residential Parcels	Estimated Proportion of County Parcels	Proportion of Offenders		Proportion of Offenders (Concentrated)	
<b>Residential</b>	<b>650</b>	<b>34.678%</b>	<b>97.04%</b>	<b>1376</b>	<b>96.93%</b>	<b>1199</b>
Single-Family House	477	41.162%	47.04%	667	45.51%	563
Multi-Family House	26	29.158%	10.86%	154	11.08%	137
Apartment	12	44.614%	18.19%	258	19.56%	242
Condominium	103	39.419%	5.22%	74	3.56%	44
Other Residential	32	36.172%	2.12%	30	1.86%	23
<b>Not Residential</b>	<b>0</b>	<b>0.00%</b>	<b>2.96%</b>	<b>42</b>	<b>3.07%</b>	<b>38</b>
<b>Total</b>	<b>650</b>	<b>34.678%</b>	<b>100.0%</b>	<b>1418</b>	<b>100.0%</b>	<b>1237</b>

**Table 29: Unrestricted Parcels Compared to Offender Residency by Income**

Per-Capita Income	Unrestricted Residential Parcels	Estimated Proportion of County Parcels	Proportion of Offenders		Proportion of Offenders (Concentrated)	
Less than \$17,851	129	31.972%	42.52%	603	48.50%	600
\$17,851 - 26,473	159	37.227%	36.18%	513	40.74%	504
\$26,474 - 28,958	206	33.130%	15.80%	224	9.54%	118
Greater than \$28,959	157	36.797%	5.50%	78	1.21%	15
<b>Poverty Rate</b>						
1.70% - 5.30%	267	36.262%	11.78%	167	4.53%	56
5.30% - 12.40%	140	33.871%	16.57%	235	15.68%	194
12.40% - 20.35%	194	40.796%	42.17%	598	46.73%	578
20.35% - 46.30%	50	19.992%	29.48%	418	33.06%	409
<b>Median Area Rent</b>						
Less than \$522	119	30.715%	41.04%	582	46.89%	580
\$522 - \$602	176	33.765%	42.10%	597	45.68%	565
\$602 - \$686	156	36.565%	10.86%	154	7.44%	92
Greater than \$686	200	36.983%	5.99%	85	0.00%	0
<b>Median Home Value</b>						
Less than \$80,200	133	32.094%	52.82%	749	60.55%	749
\$80,200 - \$119,600	156	38.755%	26.52%	376	28.46%	352
\$119,600 - \$149,750	210	33.386%	12.76%	181	5.58%	69
Greater than \$149,750	152	35.235%	7.90%	112	5.42%	67

**Violations of Residency Restriction Law**

Of the valid 1,428 offender addresses, more than one-third (515, 36.22%) currently identify residences that are within one thousand feet of a prohibited location. On average, violating offenders reside within one thousand feet of 1.47 prohibited properties, significantly less than the 1.86 average violations for restricted parcels (t=7.82, p=0.000), indicating that residency restrictions may have *some* effect on residency choices, discouraging offenders from residing near prohibited locations. This proportion is consistent with findings from Hughes and Burchfield (2008), though the legal schemes differ substantially, so such comparability may be coincidental.

Nearly half (47.18%) of all offenders living in areas with the lowest median income are in violation of current residency restrictions. This group makes up more than half (55.15%) of all violations occurring within the county (Table 30). A similar trend can be seen within the other economic indicators: offenders living in poorer areas are disproportionately more likely to violate.

**Table 30: Offender Violations by Economic Factors**

Per-Capita Income	Number of Offenders	Number of Violations	Cumulative	Proportion Violating	Proportion of Violators	Cumulative
Less than \$17,851	602	284	284	47.18%	55.15%	55.15%
\$17,851 - 26,473	512	131	415	25.59%	25.44%	80.58%
\$26,474 - 28,958	226	80	495	35.40%	15.53%	96.12%
Greater than \$28,959	78	20	515	25.64%	3.88%	100.0%
<b>Poverty Rate</b>						
1.70% - 5.30%	167	34	34	20.36%	6.60%	6.60%
5.30% - 12.40%	235	69	103	29.36%	13.40%	20.00%
12.40% - 20.35%	597	151	254	25.29%	29.32%	49.32%
20.35% - 46.30%	419	261	515	62.29%	50.68%	100.0%
<b>Median Rent</b>						
Less than \$522	584	293	293	50.17%	56.89%	56.89%
\$522 - \$602	595	14	467	29.24%	33.79%	90.68%
\$602 - \$686	154	25	492	16.23%	4.85%	95.53%
Greater than \$686	85	23	515	27.06%	4.47%	100.0%
<b>Median Home Value</b>						
Less than \$80,200	748	312	312	41.71%	60.58%	60.58%
\$80,200 - \$119,600	375	107	419	28.53%	20.78%	81.36%
\$119,600 - \$149,750	181	34	453	18.78%	6.60%	87.96%
Greater than \$149,750	114	62	515	54.39%	12.04%	100.0%
<b>Homes with Children</b>						
6.7% - 31%	364	126	126	34.62%	24.47%	24.47%
32% - 35%	517	216	342	41.78%	41.94%	66.41%
35% - 40%	356	116	458	32.58%	22.52%	88.93%
40% - 57.1%	181	57	515	31.49%	11.07%	100.00%
<b>Total</b>	<b>1418</b>	<b>515</b>		<b>36.32%</b>		

Interestingly, the number of offenders in violation does not seem to be readily related to the number of homes with children in the area.

Logistic regression was used to model the proportion of offenders in violation of current restrictions. Coefficients for each economic variable, excepting home value, were significant, indicating a relationship between community economic condition and the likelihood of offender violation. Whether these results are due to the increased concentration of offenders in poor areas, or the increased likelihood of violation in general for these areas, is not clear. In reality, the effect is probably the result of both causes. For example, median home value was a significant predictor of sex offender location, but was not a predictor of probability of

restriction. In this analysis, home value does not predict likelihood of offender violation. Proportion of homes with children was not a significant predictor of offender violations.

**Table 31: Regression Analysis of Violation across Economic Measures**

	Pearson's $\chi^2$	P-Value	Coefficient ( $\hat{b}_1$ )	SE(Coefficient)	P-Value	$e^{\hat{b}_1}$
Area Mean Income	259.472	0.000***	-0.0000635	0.0000117	0.000***	0.999937
Poverty Rate	159.365	0.000***	0.0588564	0.0054996	0.000***	1.060623
Median Rent Amount	194.884	0.000***	-0.0087235	0.0008563	0.000***	0.991314
Median Home Value	283.152	0.000***	-0.0000025	0.0000018	0.161 <sup>n.s.</sup>	0.999998
Homes with Children	141.294	0.000***	-0.501819	0.589998	0.395 <sup>n.s.</sup>	0.605428

*p*≤.10 \* *p*≤.05 \*\* *p*≤.01 \*\*\*

After controlling for population density, the significance of coefficients remains unchanged (Table 32), confirming that economic factors impact the likelihood of offender violation. These findings are consistent with earlier research (Hughes and Burchfield 2008).

**Table 32: Regression Analysis of Violation Controlling for Population Density**

	Pearson's $\chi^2$	P-Value	Population Density Coefficient	Economic Coefficient ( $\hat{b}_2$ )	SE(Economic Coefficient)	P-Value	$e^{\hat{b}_2}$
Area Mean Income	258.697	0.000***	-0.321477***	-0.0000668	0.0000118	0.000***	0.999933
Poverty Rate	170.497	0.000***	-0.219780**	0.0576924	0.0054500	0.000***	1.059389
Median Rent Amount	185.815	0.000***	-0.216697**	-0.0085760	0.0008545	0.000***	0.991461
Median House Value	280.530	0.000***	-0.275909***	-0.0000026	0.0000018	0.139 <sup>n.s.</sup>	0.999997

*p*≤.10 \* *p*≤.05 \*\* *p*≤.01 \*\*\*

## CONCLUSION AND DISCUSSION

Offender advocates, legal scholars and social researchers level a variety of claims against laws restricting the areas in which sex offenders may live. Much of the criticism has focused on 'collateral consequences' of such restrictions, arguing that such laws so restrict offender housing that they may even amount to serious constitutional violations. This study assesses some of the fundamental assumptions underlying residency restrictions and questions whether these laws have the desired effect. Previous research is tested and results are placed in a community context, in order to shed light on the true impact of residency restrictions on housing availability, given the economic realities faced by both offenders and general county residents. The study specifically assesses whether such restrictions place a more substantial burden on the economically most vulnerable.

Results indicate little relationship between the proportion of area homes with children under the age of eighteen and the likelihood that a parcel was restricted. This suggests that the creation of buffer zones around schools may not relate to the insulation of children from offenders. Logically, the rationale behind restrictions designed to protect children while they are in school, arguably one of the most supervised and structured environments, fails to address the true habits and vulnerabilities of children. This point is poignantly demonstrated by the stories of child violence that inspired much of this legislation, none of which took place on school grounds. This study concludes that such buffer zones, while unrelated to child residence, render a substantial portion of county housing unavailable to registered offenders. Expanding these zones to incorporate areas that more appropriately capture child living arrangements and whereabouts, might ultimately make the county generally uninhabitable.

Consistent with previous work, this study finds that offenders are disproportionately clustered in economically disadvantaged areas. Compared to the county as a whole, offenders are substantially more likely to live in lower-income neighborhoods. Nearly three-quarters live in areas where the number of individuals in poverty is above the county median, compared with only 38.77 percent of the county as a whole. An overwhelming majority (83%) live in areas where median rent is below the county median, compared with half of all county land as a whole. For every \$10,000 decrease in median income, an offender is 3.22 times more likely to live in that area. Additionally, for every \$10,000 increase in median home value, an offender is half as likely to live in the area. Overall, data indicates that economic factors are strongly predictive of areas where offenders tend to live, with offenders disproportionately concentrated in areas with low income, high poverty, and low housing value.

This analysis takes a step beyond previous comparisons, in that it uses county characteristics, based on sampled housing parcels and adjusted to mirror county living conditions in general, instead of broad county or national averages. This direct, local comparison improves the robustness of findings and the reliability of indications that offenders are distributed in ways that distinguish them from residents in general.

The study also finds that residency restrictions render substantial portions of the county 'off limits'. Overall, 59.53% of all residential parcels samples were restricted. When adjusted to include non-residential parcels, an estimated 65.32 percent of the county is unlivable under current restrictions. This 'off limits' proportion represents an effective minimum on the limitation of housing. Previous studies have documented other difficulties faced by offenders seeking housing (Levenson and Cotter 2005; Tewksbury 2005; Mercado, Alvarez et al. 2008; Levenson and Tewksbury 2009), indicating that further housing restrictions may apply to registered offenders, imposed by landlords and other private interveners.

The proportion of parcels restricted is directly related to economic factors of the area. Among high poverty areas, an astounding 80 percent of sampled parcels are within a prohibited buffer zone. Within all four economic variables, based on regression analysis and modeling, the proportion of parcels violating a residential buffer is highest in areas with worst economic conditions. For example, for every 5% increase in poverty rate, a parcel is 1.125 times more likely to be restricted and for every \$100 decrease in median rent a parcel is 1.143 times more likely to be restricted, indicating that economics also play a role in predicting parcel restriction.

However, this conclusion, while similar to other studies, tells only half the tale, and must be placed within the relevant community context in order to be fully understood. Because offenders tend to be clustered in economically poor areas, and parcels in these areas tend to be more restrictive, the net effect is more substantially limited as to housing options than the overall 34.679% rate of unrestricted parcels would suggest. While housing in the county is available, albeit only moderately, the availability of affordable housing, given the economic conditions where offenders tend to reside, is much more significantly constrained. For example, when examined by income, less than 32% of parcels are estimated to be available in areas with the lowest median per-capita income, but more than 42 percent of all offenders live in these areas. This pattern is evident across all economic indicators. Although no cause-effect relationship can be established, it is evident that economic factors play a substantial part in

predicting where offenders are able to live, both in terms of residency restrictions and affordability.

Hughes and Kadleck (2008) argue that concentration of offenders in low-income areas may be the result of collective action on the part of residents in more affluent areas, using their resources to force offenders out of their neighborhoods. However, Zevitz (2003) found that, while the presence of a sex offender tended to create resident anxiety and anger, no collective reactions were evident. This supports a more simple explanation, that offenders live in poor areas because they cannot afford to live elsewhere. Surveys by Levenson and colleagues (Levenson and D'Amora 2007; Levenson and Tewksbury 2009) find that offenders report difficulty with jobs and financial stability, and this study's employment rate of 37.99 percent is also supportive of such a conclusion.

Mustaine and Tewksbury et al. (2006) appropriately point out that the cause of offender concentration in poor areas cannot be definitively assessed with studies such as this. It is possible, given the increased probability that parcels within poor areas are within buffer zones, that offenders locate themselves in poor areas to be closer to potential victims. However, this study rejects that possibility as specious, for two reasons. First, economic factors play a substantial role in predicting where sex offenders live, but have a reduced (though still substantial) role in determining parcel restriction. Thus, offenders would still have access to restricted locations, and by extension possible victims, in more affluent areas. Second, in Ohio, where the minority of offenders are child-victim offenders (Office of Criminal Justice Services 2006), the majority of offenders would have no reason to position themselves within a buffer zone, even if they had the intention to re-offend. A more rational explanation for the clustering of offenders in economically disadvantaged areas is that offenders are themselves economically disadvantaged.

Moreover, this study was able to empirically demonstrate that there is no such relationship between offender location and proportion of area homes with children. In fact, as the proportion of area homes with children increases, the likelihood of an offender residing in the area decreases. Also, there was no relationship between homes with children and likelihood of offenders violating residency restrictions.

Nevertheless, this limitation raises interesting questions for further research. Temporal comparisons across offenders and jurisdictions would allow a further assessment of the causes and consequences of offender clustering. To date, no research has found negative effects of

offenders living in close proximity to one another (Minnesota Department of Corrections 2003), but additional research could reveal the extent of the stigma attached to sex offenders, compared to other types of offenders, and the economic cost of such stigma.

Lastly, this study finds that more than a third of offenders are currently violating county residency restrictions, and that economic factors play a substantial role in predicting such violations. In areas with the lowest median income, nearly half (47.18%) of all offenders are living in prohibited areas. In other words, offenders living in poor areas are more likely to be in violation. This relationship is most likely the cumulative result of offender concentration and increased restrictiveness in such areas. To put it simply, offenders in such areas are in violation of residency restrictions because they cannot find housing (either because of economic restraints or due to other factors) that does not violate their restrictions.

Additionally, there are practical implications to the high proportion of offenders who are violating current residency restrictions. Should county officials suddenly seek full enforcement of these restrictions tomorrow, this would immediately displace 515 offenders, placing them at increased risk for homelessness or transience, given the limitations on affordable, available housing.

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The Sex Offender Registration and Notification Act (SORNA)<sup>1</sup>, which mandates a national registry of people convicted of sex offenses and expands the type of offenses for which a person must register, applies to both adults and children. By July 2009, all states must comply with SORNA or risk losing 10 percent of the state's allocated Byrne Grant money, which states generally use to enforce drug laws and support law enforcement.

In the last two years, some states have extensively analyzed the financial costs of complying with SORNA. These states have found that implementing SORNA in their state is far more costly than the penalties for not being in compliance. JPI's analysis finds that in all 50 states, the first-year costs of implementing SORNA outweigh the cost of losing 10 percent of the state's Byrne Grant. Most of the resources available to states would be devoted to the administrative maintenance of the registry and notification, rather than targeting known serious offenders. Registries and notification have not been proven to protect communities from sexual offenses, and may even distract from more effective approaches.

Given the enormous fiscal costs of implementing SORNA, coupled with the lack of evidence that registries and notification make communities safer, states should think carefully before committing to comply with SORNA.

**Ohio determined that the cost of implementing new software to create a registry would approach a half million dollars in the first year.<sup>2</sup> The total estimated cost for complying with SORNA exceeds the Byrne funds Ohio would lose if it did not comply.**

- Installing and implementing software alone would cost \$475,000 in the first year. The software would then cost \$85,000 annually thereafter for maintenance.
- Certification of treatment programs based on new standards and providing a description of a person on the registry to the state's Bureau of Criminal Identification and Investigation would cost another \$100,000 annually.
- Ohio also lists other factors that would increase the cost of implementing SORNA, including salaries and benefits for new personnel, new court and administration costs, and costs to counties and municipalities. These costs are in addition to the \$475,000 needed for software, but have not yet been quantified by the state.
- If Ohio chose not to implement SORNA, the state would lose approximately \$622,000 annually from its Byrne funds. However, the total estimated cost of software, certification of treatment programs, salaries, and benefits for new personnel would exceed the lost Byrne funds.

**Virginia determined that the first year of compliance with the registry aspect of SORNA would cost more than \$12 million.<sup>3</sup>**

- The first year of implementing SORNA would cost the Commonwealth of Virginia \$12,497,000.
- The yearly annual cost of SORNA would be \$8,887,000. Adjusted with a 3.5 percent yearly inflation rate,<sup>4</sup> Virginia would be paying more than \$10 million by 2014.
- If Virginia chose to comply with SORNA, the state would spend \$12,097,000 more than it would if it chose not to implement SORNA and forfeit 10 percent of its yearly Byrne grant, a loss totaling approximately \$400,000.<sup>5</sup>

**As evidenced by these summaries, states can expect to incur significant costs as they attempt to comply with SORNA. States should consider all possible areas in which increased expenditures will occur.**

- New personnel
- Software, including installation and maintenance
- Additional jail and prison space
- Court and administrative costs
- Law enforcement costs
- Legislative costs related to adopting, and crafting state law

<sup>1</sup> SORNA is Title 1 of the Adam Walsh Act.

<sup>2</sup> Ohio Legislative Service Commission Fiscal Note & Local Impact Statement (Columbus, OH: Ohio Legislative Service Commission, 2007) <http://www.lsc.state.oh.us>

<sup>3</sup> Virginia Department of Planning and Budget 2008 Fiscal Impact Statement (Richmond, VA: Department of Planning and Budget, 2008).

<sup>4</sup> Oregon State University, "Yearly Inflation or Deflation Rate (CPI-U) 1915 -2005, in Percent." April 24, 2008.

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**In every state, the first-year cost of implementing the Sex Offender Registration and Notification Act outweighs the cost of losing 10 percent of the state's Byrne money.<sup>6</sup>**

	SORNA Implementation Estimate for 2009	Byrne Money Received in 2006 <sup>7</sup>	10 Percent of Byrne Money
ALABAMA	\$7,506,185	\$3,178,628	\$317,863
ALASKA	\$1,108,573	\$565,971	\$56,597
ARIZONA	\$10,281,201	\$3,653,881	\$365,388
ARKANSAS	\$4,597,925	\$2,180,442	\$218,044
CALIFORNIA	\$59,287,816	\$21,876,819	\$2,187,682
COLORADO	\$7,885,178	\$2,725,489	\$272,549
CONNECTICUT	\$5,680,602	\$2,189,001	\$218,900
DELAWARE	\$1,402,612	\$1,248,534	\$124,853
DISTRICT OF COLUMBIA	\$954,186	\$1,804,991	\$180,499
FLORIDA	\$29,602,768	\$12,402,693	\$1,240,269
GEORGIA	\$15,481,193	\$5,594,288	\$559,429
HAWAII	\$2,081,603	\$933,732	\$93,373
IDAHO	\$2,431,969	\$1,170,003	\$117,000
ILLINOIS	\$20,846,306	\$8,501,000	\$850,100
INDIANA	\$10,291,799	\$3,696,033	\$369,603
IOWA	\$4,846,488	\$1,881,623	\$188,162
KANSAS	\$4,502,553	\$2,035,999	\$203,600
KENTUCKY	\$6,879,497	\$2,702,451	\$270,245
LOUISIANA	\$6,963,401	\$3,514,704	\$351,470
MAINE	\$2,136,456	\$1,172,583	\$117,258
MARYLAND	\$9,112,724	\$4,320,568	\$432,057
MASSACHUSETTS	\$10,461,238	\$4,353,201	\$435,320
MICHIGAN	\$16,336,082	\$6,793,169	\$679,317
MINNESOTA	\$8,430,328	\$3,061,831	\$306,183
MISSISSIPPI	\$4,734,150	\$2,065,269	\$206,527
MISSOURI	\$9,534,548	\$4,182,382	\$418,238
MONTANA	\$1,553,611	\$1,076,424	\$107,642
NEBRASKA	\$2,878,281	\$1,288,957	\$128,896
NEVADA	\$4,160,944	\$1,808,095	\$180,810
NEW HAMPSHIRE	\$2,134,219	\$1,192,435	\$119,244
NEW JERSEY	\$14,088,206	\$5,160,709	\$516,071
NEW MEXICO	\$3,195,121	\$1,879,901	\$187,990
NEW YORK	\$31,300,125	\$11,279,841	\$1,127,984
NORTH	\$14,696,622	\$5,460,983	\$546,098
NORTH DAKOTA	\$1,037,592	\$554,556	\$55,456
OHIO	\$18,598,869	\$6,223,825	\$622,383
OKLAHOMA	\$5,867,138	\$2,790,472	\$279,047
OREGON	\$6,078,218	\$2,251,312	\$225,131
PENNSYLVANIA	\$20,165,479	\$7,640,322	\$764,032
RHODE ISLAND	\$1,715,760	\$967,292	\$96,729
SOUTH CAROLINA	\$7,149,123	\$3,610,292	\$361,029
SOUTH DAKOTA	\$1,291,426	\$513,858	\$51,386
TENNESSEE	\$9,985,946	\$4,817,782	\$481,778
TEXAS	\$38,771,924	\$14,045,713	\$1,404,571
UTAH	\$4,290,617	\$1,557,034	\$155,703
VERMONT	\$1,007,649	\$630,419	\$63,042
VIRGINIA	\$12,508,695	\$3,943,036	\$394,304
WASHINGTON	\$10,491,519	\$3,538,816	\$353,882
WEST VIRGINIA	\$2,939,046	\$1,679,108	\$167,911
WISCONSIN	\$9,085,630	\$2,982,833	\$298,283
WYOMING	\$848,009	\$584,036	\$58,404

<sup>6</sup> These numbers are calculated by using the Virginia Department of Planning and Budget total (\$12,508,694) divided by the predicted number of people in Virginia in 2009 (U.S. Census 2007 multiplied by predicted 1 percent yearly growth). The cost per person (\$1.59) was then multiplied by the predicted number of people in all states in 2009. Virginia conducted the most comprehensive analysis of the potential cost of implementing SORNA that was also available to the public.

<sup>7</sup> The U.S. House of Representatives estimates that 2009 federal allocations for Byrne grants will return to 2006 levels, which total