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North Carolina v. Bryant: Paving the Way for a Comprehensive National Sex Offender Registry

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NORTH CAROLINA v. BRYANT: PAVING THE WAY FOR A COMPREHENSIVE NATIONAL SEX OFFENDER REGISTRY

KAREN S. SCHULLER*

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I. INTRODUCTION

The North Carolina Supreme Court upheld the constitutionality of the state's sex offender registration program in *State v. Bryant*.¹ The court found that the registration statute did not violate the notice requirements of the Due Process Clause, either facially or as applied to the defendant who had moved to North Carolina from another state.² By upholding the statute, the court made clear that North Carolina will not allow convicted sex offenders to escape the registration requirements for a supposed lack of knowledge, regardless of where they were convicted of such offenses.

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1. *State v. Bryant*, 359 N.C. 554, 555, 614 S.E.2d 479, 480 (2005).

2. *Id.*

At issue in *Bryant* is the convicted sex offender's procedural due process right to receive actual or constructive notice of the duty to register in a state sex offender registration program.³ With respect to an offender convicted in another state, the issue juxtaposes the state's duty to protect the welfare of its citizens with the sex offender's constitutional right to have notice of specific state requirements.

This article analyzes the issue of state sex offender registries in a national context, a situation rife with disparities and contradictions prior to the implementation of the Sex Offender Registration and Notification Act (SORNA) included in the Adam Walsh Child Protection and Safety Act of 2006.⁴ This article reviews the historical background of the federal legislation initiating and regulating sex offender registries, along with the specific state statutes at issue in *Bryant*. It also reviews the issue of notice required by the federal Due Process Clause by examining the U.S. Supreme Court's treatment of the required notice for a convicted felon's specific duty to register as a felon. Additionally, this article examines how other state courts have answered the same question presented in the *Bryant* case. The article then discusses: (1) the unique facts of the *Bryant* case, involving a convicted sex offender moving from one state to another, and the requirements of giving such an offender notice of the duty to register as a sex offender in the new state; (2) how the North Carolina Supreme Court reached its decision; and (3) how the decision may have been altered by varying circumstances. Finally, this article examines the newly enacted SORNA and the National Guidelines for Sex Offender Registration and Notification proposed by the U.S. Attorney General for implementation of the aforementioned Act.

This article was expanded from a prior draft examining the exceptional issues in the *Bryant* case and inconsistencies in statutes and decisions in state courts across the country. At the time of its drafting, in January 2006, many state courts found themselves unable to maintain an accurate sex offender registry, as they were at the mercy of either legislation or notification procedures in other states that did not require offenders to register in a new state of residence.⁵ The National Sex Offender Public Registry was a compilation of the individual states' registries, which were limited by the states' own abilities to sustain a complete registry, especially in light of the restrictions imposed when an offender moved from one state to another.⁶ The original draft advocated for a truly national and comprehensive registry, based

3. *Id.*

4. 42 U.S.C. §§ 16901-62 (West Supp. 2007).

5. See discussion in section II, *supra*.

6. *Id.*

on federal legislation, to close the gaps when offenders relocated to new states. The current national registry was created through the enactment of federal legislation.⁷ This legislation includes: (1) stringent guidelines, financial subsidies, and administrative assistance for state implementation; (2) comprehensive information required of registrants; and (3) harsher penalties for violation of the registration requirements.⁸ This legislation is still too recent to evaluate its effectiveness but is certainly a step toward consistency on this matter.

II. FEDERAL AND STATE LEGISLATION AT ISSUE IN *BRYANT*

In 1994, the United States Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("Jacob Wetterling Act"), which encouraged states to adopt sex offender registration laws and programs.⁹ The North Carolina General Assembly passed the Amy Jackson Law in compliance with the Jacob Wetterling Act in 1995.¹⁰ The South Carolina Legislature created a sex offender registry through legislation in 1994.¹¹

In 1996, the U.S. Congress passed Megan's Law, which amended the Jacob Wetterling Act to make the creation of sex offender registration programs a requirement for receiving federal funding of state law enforcement.¹² Within the year, "every State, the District of Columbia, and the Federal Government had enacted some variation of Megan's Law."¹³

North Carolina's Amy Jackson Law states its purpose:

[T]o assist law enforcement agencies' efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, and to authorize the access to necessary and relevant information about those offenders to others.¹⁴

7. 42 U.S.C. §§ 16901-29.

8. *Id.*

9. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, H.R. 3355, 103rd Cong. (1994) (codified as amended at 42 U.S.C. §§ 14071-72 (West 2005 & Supp. 2007)).

10. 1995 N.C. Sess. Laws 545 (codified at N.C. GEN. STAT. §§ 14-208.5-15 (2005 & Supp. 2006)).

11. Act of June, 29, 1994, 1994 S.C. Acts 497 (codified at S.C. CODE ANN. §§ 23-3-400-550 (2007)).

12. Megan's Law, H.R. 2137, 104th Cong. (1996) (codified at 42 U.S.C. §§ 14071-72 (West 2005 & Supp. 2007)).

13. *Smith v. Doe*, 538 U.S. 84, 90 (2003).

14. N.C. GEN. STAT. § 14-208.5 (2005).

Persons convicted of “reportable conviction[s]” are “required to maintain registration with the sheriff of the county where the person resides.”¹⁵ A “reportable conviction” is defined as:

- a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses . . . [;]
- b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense . . . [;] [and]
- c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense¹⁶

For persons who are residents of the State of North Carolina at the time of such a reportable conviction, the offender must register “[w]ithin 10 days of release from a penal institution . . . ; or . . . [i]mmediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.”¹⁷ For offenders who move to North Carolina from another state, “the person shall register within [ten] days of establishing residence in this State, or whenever the person has been present in the State for [fifteen] days, whichever comes first.”¹⁸

The Jacob Wetterling Act provides that offenders must notify the state authorities upon any change of address, noting that, “[s]tate procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.”¹⁹ North Carolina complies with this provision by requiring “written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered.”²⁰ The sheriff then forwards the changed information to the Division of Criminal Statistics of the Department of Justice (Division), and, if the change involves a move to another county, the Division forwards the information to the sheriff of the new county.²¹

Similarly, South Carolina requires offenders who move within the same county to notify the sheriff of that county of their change of address within ten days and offenders who move to another county within the state to “register with the county sheriff in the new county within ten days of establishing the new residence. The person must also provide written notice within ten days of the change of address in

15. N.C. GEN. STAT. § 14-208.7(a).

16. N.C. GEN. STAT. § 14-208.6(4).

17. N.C. GEN. STAT. § 14-208.7(a)(1)-(2).

18. N.C. GEN. STAT. § 14-208.7(a).

19. 42 U.S.C. § 14071(b)(4) (West 2005).

20. N.C. GEN. STAT. § 14-208.9(a).

21. *Id.*

the previous county to the sheriff with whom the person last registered.”²² Further, all sheriffs are required to report changes to the State Law Enforcement Division.²³

The Jacob Wetterling Act also provides that an offender who moves to another state

shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State.²⁴

Likewise, North Carolina requires an offender who moves outside the state to “report in person to the sheriff of the county of current residence at least 10 days before the date the person intends to leave this State to establish residence in another state or jurisdiction.”²⁵ Then, “[t]he sheriff shall inform the person that the person must comply with the registration requirements in the new state of residence.”²⁶ The sheriff then forwards the new information to the Division of Criminal Statistics of the Department of Justice, and the Division notifies the appropriate state official in the new state.²⁷

South Carolina enacted similar provisions, requiring offenders who move out of the state to “provide written notice within ten days of the change of address to a new state to the county sheriff with whom the person last registered.”²⁸ This information is then sent by the sheriff to the State Law Enforcement Division.²⁹

Persons who fail to comply with the registration requirements of a state are subject to conviction for failing to properly register. In North Carolina, a person is guilty of a Class F felony if he or she:

- (1) Fails to register;
- (2) Fails to notify the last registering sheriff of a change of address;
- (3) Fails to return a verification notice as required under G.S. 14-208.9A [requiring annual registration for all sex offenders];
- (4) Forges or submits under false pretenses the information or verification notices required under this Article;
- (5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student;

22. S.C. CODE ANN. § 23-3-460 (2007).

23. *Id.*

24. 42 U.S.C. § 14071(b)(5).

25. N.C. GEN. STAT. § 14-208.9(b) (Supp. 2006).

26. N.C. GEN. STAT. § 14-208.9(b)(2).

27. N.C. GEN. STAT. § 14-208.9(b).

28. S.C. CODE ANN. § 23-3-460.

29. *Id.*

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education;³⁰

Failure to register in South Carolina imposes a mandatory ninety-day misdemeanor sentence for a first offense, a one-year misdemeanor sentence for a second offense, and a mandatory five-year felony sentence for a third or subsequent offense.³¹

III. DUE PROCESS: THE ISSUE OF NOTICE

The United States Constitution guarantees that no state will “deprive any person of life, liberty, or property, without due process of law.”³² Due process requires that citizens receive notice of a law before they can be expected to comply with it.³³ To this end, the Jacob Wetterling Act requires:

[i]f a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall –

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.³⁴

The U.S. Supreme Court first addressed the requirement of notice of a duty to register in its landmark 1957 case *Lambert v. California*,³⁵ which involved a municipal ordinance requiring registration of convicted felons.³⁶ The defendant was convicted of failing to register as a

30. N.C. GEN. STAT. § 14-208.11(a) (2006); see N.C. GEN. STAT. § 15A-1340.17 (2006) (According to North Carolina sentencing guidelines, Class F felonies carry ten to forty-nine months imprisonment.).

31. S.C. CODE ANN. § 23-3-470(B)(1)-(3) (2007).

32. U.S. CONST. amend. XIV, § 1.

33. See *United States v. Good Real Prop.*, 510 U.S. 43, 48 (1993).

34. 42 U.S.C. § 14071(b)(1)(A) (West 2007).

35. *Lambert v. California*, 355 U.S. 225 (1957).

36. *Id.* at 226.

convicted felon pursuant to Los Angeles Municipal Code §§ 52.39 and 52.43(b).³⁷ The *Lambert* Court held that “actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply are necessary before a conviction under the ordinance can stand.”³⁸ Since the State could not prove that the defendant had *actual knowledge* of this duty, the conviction for failure to register was overturned.³⁹

The convicted felon registration ordinance in *Lambert* has been distinguished from modern sex offender registration statutes on a number of grounds. First, the registration requirement in *Lambert* was based on a municipal ordinance applicable only to the city of Los Angeles, whereas today’s sex offender registration statutes are applicable statewide and exist in every state in the nation.⁴⁰ Second, the conduct in *Lambert* was considered passive in that “the situation addressed by the ordinance, conviction of a felony, would not move someone to inquire as to the applicable law.”⁴¹ On the other hand, the “pervasiveness” of modern sex offender registration statutes “would lead the reasonable individual to inquire of a duty to register in *any* state upon relocation.”⁴² Finally, the purpose behind the registration ordinance in *Lambert* is entirely different from the purpose of modern sex offender registration statutes. The *Lambert* ordinance was “a law enforcement technique designed for the convenience of law enforcement agencies,”⁴³ while sex offender registration statutes are designed to protect the public from sex offenders, who have a disproportionately high recidivism rate in comparison to other criminal offenders.⁴⁴

Prior to the North Carolina Supreme Court decision in *Bryant*, state courts addressed the issue of notice in sex offender registration statutes with widely-varied outcomes. While each case required the convicted sex offender to receive actual notice of a duty to register, at least in the state in which he or she was convicted of the sexual offense, the states differed dramatically on how such notice was applied with respect to the offenders’ subsequent convictions for failure to register as a sex offender upon moving, either within the state or out of state.

37. *Id.*

38. *Id.* at 229.

39. *Id.* at 229-30.

40. State v. Bryant, 359 N.C. 554, 567, 614 S.E.2d 479, 487 (2005).

41. State v. Beckley, No. 83254, 2004 WL 1277358, at *3 (Ohio Ct. App. June 10, 2004) (citing United States v. Weiler, 458 F.2d 474, 478 (3d Cir. 1972)).

42. *Bryant*, 359 N.C. at 568, 614 S.E.2d at 488.

43. *Lambert*, 355 U.S. at 229.

44. *Bryant*, 359 N.C. at 567, 614 S.E.2d at 487 (citing Conn. Dep’t of Pub. Safety v. Doe, 538 U.S. 1, 4 (2003) (quoting McKune v. Lile, 536 U.S. 24, 32 (2002))).

A. *State Cases Upholding a Conviction for Failure to Register Prior to Bryant*

In a decision regarding the notice given to a sex offender moving from one jurisdiction within the state to another, *People v. Patterson*⁴⁵ involved a man convicted of a sex crime in Bronx County, New York, and later charged with failure to register as a sex offender in New York County, New York. The New York Criminal Court first denied the defendant's motion to dismiss based on a lack of territorial jurisdiction, finding that the state's Sex Offender Registration Act (SORA) was applicable in each jurisdiction and further notice was not necessary for offenders who move within the state.⁴⁶ The court then found that the notice requirement of the SORA complied with the *Lambert* decision by providing actual notice to offenders upon release from incarceration.⁴⁷ To convict a sex offender of violating the registration statute while satisfying the requirements of due process, the State must prove that the defendant was properly given notice of his or her duty to register as a sex offender.⁴⁸ However, "once such notice is given[,] the burden of compliance rests squarely on the Offender."⁴⁹

The court also distinguished the state SORA from the registration ordinance in *Lambert*, noting that unlike the city ordinance in *Lambert*, the SORA

is a State-wide law. Moreover, all fifty States have now adopted somewhat similar sex offender registration laws in order to meet the requirements of 42 U.S.C. § 14071, the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. As time goes on and these State laws lose their novelty, it will be increasingly difficult to say that sex offenders do not have fair warning that sex offender registration laws exist, even in the absence of mandatory individual notice requirements like those set out in SORA.⁵⁰

Several other state courts have addressed the issue of notice given to a sex offender who moves from one state to another. In *People v. Richards*, the appellate court confirmed the State's duty to prove that actual notice was given to a convicted sex offender of his or her duty to register and to update his or her address with the proper authorities upon any move within the state or out of state.⁵¹ The appellant, a sex

45. *People v. Patterson*, 708 N.Y.S.2d 815 (N.Y. Crim. Ct. 2000).

46. *Id.* at 818-19.

47. *Id.* at 826.

48. *Id.* at 827.

49. *Id.*

50. *Id.* at 826.

51. *People v. Richards*, No. B166154, 2004 WL 789667, at *11 (Cal. Ct. App. Apr. 14, 2004).

offender convicted in California, moved from California to New Mexico, did not inform authorities in either state of his new address in New Mexico, and was subsequently convicted in California for failure to notify the California authorities of his move out of the state.⁵² The court noted that:

[A] proper instruction on the element of willfulness ‘should . . . require[] proof that, in addition to being formally notified by the appropriate officers as required by [the sex offender registration statute], in order to willfully violate [the statute,] the defendant must *actually* know of his duty to register.’ Besides being potentially misled concerning the element of knowledge, the jurors in the present case were told nothing of the necessity of finding willfulness or notification.⁵³

Ultimately, the court determined that such error in jury instructions was harmless, since the evidence indicated the appellant had actual knowledge of the registration requirements.⁵⁴ Upon his release from incarceration, the appellant acknowledged his duty to register by executing documents, which stated,

‘[w]hen changing my residence address, either within California or out of state, I must inform the registering agency with which I last registered of the new address . . . as a sex offender within [five] working days’; ‘If I move out of California, I’m required to register in any state in which I’m located or reside within [ten] days with the law enforcement agency having jurisdiction over my residence or location.’⁵⁵

In 2004, the Ohio Supreme Court addressed the issue of notice of the duty to register for out-of-state sex offenders in *State v. Beckley*.⁵⁶ The appellant was convicted of child molestation in Vancouver, Washington, in 1992, and adjudicated as a juvenile delinquent.⁵⁷ He later signed a form acknowledging his duty to register as a sex offender for the next fifteen years, which included a duty to inform the authorities if he changed his address during those fifteen years.⁵⁸ He demonstrated his knowledge of this duty when he registered a new address within Washington in 1998.⁵⁹ However, like the appellant in *Richards*, after moving from Washington to Ohio in 1999, the appellant did not inform the authorities in either state.⁶⁰ He appealed his conviction for

52. *Id.* at *2.

53. *Id.* at *11 (citing *People v. Garcia*, 23 P.3d 590, 596 (Cal. 2001)) (emphasis added) (alteration in original) (citation omitted).

54. *See id.*

55. *Id.* at *1.

56. *State v. Beckley*, No. 83254, 2004 WL 1277358 (Ohio Ct. App. June 10, 2004).

57. *Id.* at *1.

58. *Id.*

59. *See id.*

60. *Id.*

failure to register on the ground that he lacked actual notice of his duty to register in Ohio, in violation of his due process rights.⁶¹

The *Beckley* court distinguished the defendant's case from *Lambert* based on the constructive knowledge provided by the registration requirements in the defendant's prior home state.⁶² While Ohio's sex offender registration statute does not specify a requirement to give notice to out-of-state offenders who become Ohio residents, "[i]t would be nonsensical to find that a sex offender could escape his reporting requirements by moving to Ohio, a state that does not have notice requirements for out-of-state sex offenders, and then claim ignorance or no notice."⁶³ Furthermore, the court found that the defendant did have actual notice of his duty to register, holding that, "having been notified to register as a sex offender in one state puts the offender on notice to inquire into the applicable law of the state in which he moves."⁶⁴

B. *State Cases Overturning a Conviction for Failure to Register Prior to Bryant*

Lack of notice upon prison release turned the case in *State v. Tippet*,⁶⁵ in which a sex offender's conviction for failure to register after moving from Illinois to Iowa was overturned because Illinois officials did not provide notice of his continuing duty to register when moving out of state.⁶⁶ Despite a subsequent statutory amendment to the contrary, "at the time [the] defendant was released from prison in 1993, Illinois correctional officials were not expressly tasked to advise him concerning the duty to register in another state to which he might move."⁶⁷ Illinois' present sex offender registration statute remedies this lapse by explicitly providing the duty for correctional officers to make offenders aware of their continuing duty to register:

The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within [five] days after establishing the residence, beginning employment, or beginning school.⁶⁸

61. See *id.*

62. See *id.* at *4.

63. *Id.* at *3.

64. *Id.* at *4.

65. *State v. Tippet*, 624 N.W.2d 176 (Iowa 2001).

66. *Id.* at 177.

67. *Id.* at 179.

68. 730 ILL. COMP. STAT. ANN. 150/4 (Supp. 2007).

Similarly, the Kentucky Court of Appeals overturned a conviction for failure to register following a sex offender's move from another state in *McBride v. Commonwealth*.⁶⁹ Following his conviction and incarceration for a sex offense in Tennessee, the appellant moved to Kentucky and did not register as a sex offender in Kentucky.⁷⁰ The court reversed the conviction based on the appellant's lack of actual notice of his duty to register in Kentucky upon moving there.⁷¹ Relying on the *Bryant* decision by the Court of Appeals of North Carolina, the court found that the appellant's due process rights were violated when he was convicted of an offense for which he did not have actual notice.⁷²

The *McBride* court was concerned about the dilemma caused by the apparent gap created for sex offenders who move from one state to another. The court noted that the appellant was in violation of Tennessee law for failing to notify the authorities in Tennessee of his move; however, the court could not address possible violations of Tennessee laws since the appellant was before the Kentucky court "for committing the Kentucky offense of failing to register as a sex offender *here*, and the fact remains that he was not given notice of the duty to so register in Kentucky as required by the statute."⁷³ Furthermore, the form signed by the appellant in Tennessee, acknowledging his continued duty to register and update his address with the authorities there, "only required McBride to give notice to *Tennessee* if he moved to another state. The form did not inform McBride that he had a duty to register in any other state to which he might relocate or require him to inform his new state of residence that he has moved there."⁷⁴ Had the appellant informed the Tennessee authorities of his move out of state, "the sex offender registry unit from the original state [would have notified] the state where the offender [was] moving," to allow the authorities in the new state of residence to inform the offender of the registration requirements in that state.⁷⁵

In his dissenting opinion in *McBride*, Judge Johnson criticized the majority's overturning of the appellant's conviction for failure to register as an "absurd result."⁷⁶ The majority noted, "How can Kentucky give notice to an out-of-state offender who relocates to Kentucky that

69. *McBride v. Commonwealth*, No. 2003-CA-001843-MR, 2005 WL 1367463 (Ky. Ct. App. June 10, 2005).

70. *Id.* at *1.

71. *Id.*

72. *Id.* at *4-5.

73. *Id.* at *6 (emphasis added).

74. *Id.* at *5.

75. *Id.* at *3.

76. *Id.* at *8 (Johnson, J., dissenting) (citing *Cosby v. Commonwealth*, 147 S.W.3d 56, 59 (Ky. 2004) (quoting *Commonwealth v. Gray*, 880 S.W.2d 557, 559 (Ky. 1994))).

he must register as a sex offender in Kentucky when the state does not know that the offender has moved here?"⁷⁷ The dissent observed the flaws in this reasoning, noting that the State of Kentucky was unable to give the appellant notice of his duty to register because of the appellant's own failure to notify Tennessee of his out-of-state move.⁷⁸ By overturning the conviction for failure to register, the majority allowed the appellant to be "rewarded in Kentucky for his failure to register as a sex offender because he failed to comply with the sex offender laws of Tennessee."⁷⁹

IV. THE *BRYANT* CASE

A. *Facts and Procedural History*

The defendant, Roy Eugene Bryant, was convicted in South Carolina for criminal sexual conduct and assault with intent to commit criminal sexual conduct on March 20, 1996, for which he served just over four years in prison.⁸⁰ Shortly before his release from incarceration, Bryant signed a form acknowledging his lifelong duty to register annually with the South Carolina Sex Offender Registry.⁸¹ The form addressed out-of-state moves: "If an inmate who is required to register moves out of the State of South Carolina, s/he is required to provide written notice to the county sheriff where s/he was last registered in South Carolina within [ten] days of the change of address to a new state."⁸² Bryant additionally acknowledged that he must update his registration upon moving to a different county and, in fact, demonstrated knowledge of this requirement by updating his registration when he moved to another South Carolina county in August 2000, several months after his release from prison.⁸³

In October of 2000, Bryant visited North Carolina while working with a traveling fair.⁸⁴ While in Winston-Salem, he met Crystal Sunshine Miller.⁸⁵ After suffering an injury on the last night of the fair, Bryant decided to stay in North Carolina to be with Miller.⁸⁶ He spent some time living at a soup kitchen, before moving in with Miller, her two daughters, and other members of Miller's family at 4373

77. *Id.* at *6.

78. *Id.* at *8 (Johnson, J., dissenting).

79. *Id.* (Johnson, J., dissenting).

80. *State v. Bryant*, 359 N.C. 554, 566, 614 S.E.2d 479, 480 (2005).

81. *Id.* at 556, 614 S.E.2d at 480-81.

82. *Id.* at 556, 614 S.E.2d at 481 (quoting form entitled "South Carolina Department of Corrections Notice of Sex Offender Registry").

83. *Id.* at 556-57, 614 S.E.2d at 481.

84. *Id.* at 557, 614 S.E.2d at 481.

85. *Id.*

86. *Id.*

Grove Avenue in Winston-Salem, North Carolina in early November of 2000.⁸⁷ Bryant received mail, including bills, letters, and gifts at this address and performed household duties while living there.⁸⁸ Bryant lived there until about March 30, 2001, when his relationship with Miller ended, and he moved to a new residence.⁸⁹

At that time, Detective Kelly Wilkinson of the Winston-Salem Police Department had reason to run a criminal background check on Bryant, which revealed his prior sexual convictions.⁹⁰ Bryant admitted that he had lived in North Carolina since October of 2000.⁹¹ He also admitted that he had been convicted of sexual offenses in both South Carolina and Florida.⁹² He further acknowledged his duty to register as a sex offender in South Carolina.⁹³ Bryant did not answer when asked about his reason for not registering; he did not say that he was unaware of his duty to register.⁹⁴ He was subsequently arrested by the Forsyth County Sheriff's Department for failing to register as a convicted sex offender in North Carolina.⁹⁵

On February 21, 2002, Bryant was convicted in Forsyth County Superior Court of failing to register as a sex offender and having attained the status of habitual felon.⁹⁶ He was sentenced to a total minimum term of 133 months and a total maximum term of 169 months imprisonment.⁹⁷ Bryant timely filed an appeal, which was heard on December 3, 2003.⁹⁸ On April 6, 2004, the North Carolina Court of Appeals overturned his conviction, holding that "North Carolina's sex offender registration statute is unconstitutional as applied to an out-of-state offender who lacked notice of his duty to register upon moving to North Carolina."⁹⁹

B. *Decision of the North Carolina Supreme Court*

On July 1, 2005, on a petition for discretionary review from the State,¹⁰⁰ the North Carolina Supreme Court reversed the Court of Appeals' decision and held that the sex offender registration statute

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 557-58, 614 S.E.2d at 481.

91. *Id.* at 558, 614 S.E.2d at 481.

92. *Id.* at 558, 614 S.E.2d at 482.

93. Brief for Appellant at 5, *State v. Bryant*, 359 N.C. 554, 614 S.E.2d 479 (2005) (No. 173PA04).

94. *Id.*

95. *Bryant*, 359 N.C. at 555-56, 614 S.E.2d at 480.

96. *Id.* at 558, 614 S.E.2d at 482.

97. *Id.*

98. *Id.*

99. *Id.* (quoting *State v. Bryant*, 163 N.C.App. 478, 478, 594 S.E.2d 202, 203 (2004)).

100. *Id.* at 558-59, 614 S.E.2d at 482.

did not violate the notice requirements of the due process clause on its face, or as applied to the defendant, who had been convicted in another state and moved to North Carolina.¹⁰¹

The court first discussed the history of the sex offender statutes and their proliferation throughout the country and noted that, “convicted sex offenders had been subject to registration throughout the fifty states for approximately six years when, in 2001, [the] defendant was arrested for failing to register as a convicted sex offender in North Carolina.”¹⁰²

Turning to the legislative history of the North Carolina statute, specifically the history of the provisions criminalizing the failure to register, the court addressed a prior amendment which removed the mens rea requirement for failing to register, characterizing the amendment as the General Assembly’s “intent to make failure to register as a sex offender a strict liability offense under North Carolina law.”¹⁰³

The court then addressed the constitutionality of North Carolina General Statute § 14-208.11.¹⁰⁴ The defendant argued that this section violated his right to procedural due process, which requires that “‘when government action deprive[s] a person of life, liberty, or property . . . that action is implemented in a fair manner.’”¹⁰⁵ The defendant utilized the reasoning of *Lambert* to affirm that the State must give a sex offender “actual or probable notice of the duty to register” to comply with procedural due process.¹⁰⁶

The court found the statute to be facially constitutional, based on the pre-release notification requirements.¹⁰⁷ Section 14-208.8(a)(1) requires that “an official of the penal institution must inform the individual of his duty to register under the Sex Offender and Public Protection Registration Program” and that such notification must take place between ten and thirty days prior to the offender’s release.¹⁰⁸ Since offenders in North Carolina’s penal system are “required to have actual notice of their duty to register,” such offenders cannot later claim that they did not have notice.¹⁰⁹

Finding the statute facially constitutional, the court turned to the statute’s application to this defendant, a sex offender who moved to

101. *Id.* at 569, 614 S.E.2d at 489.

102. *Id.* at 560, 614 S.E.2d at 483.

103. *Id.* at 562, 614 S.E.2d at 484 (citing Act of Sept. 17, 1997, 1997 N.C. Sess. Laws 516 (codified as amended at N.C. GEN. STAT. § 14-208.11 (2005))).

104. *Id.* at 563, 614 S.E.2d at 485.

105. *Id.* (quoting *State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 282 (1998)).

106. *Id.* at 564, 614 S.E.2d at 485 (quoting *Lambert v. California*, 355 U.S. 225, 229 (1957)).

107. *Id.* at 565, 614 S.E.2d at 486.

108. *Id.* (citing N.C. GEN. STAT. § 14-208.8(a)(1) (2007)).

109. *Id.*

North Carolina from another state.¹¹⁰ The defendant alleged that when he received notice in South Carolina of his lifelong duty to register, he did not receive notice of a duty to register outside of South Carolina.¹¹¹ The court defeated the defendant's argument by distinguishing his case from *Lambert*, in which actual notice of a duty to register was upheld by the U.S. Supreme Court.¹¹² The court noted that the registration requirement in *Lambert* "was a general municipal ordinance, whereas the sex offender registration statutes enacted in North Carolina and all other states are statewide registration programs."¹¹³ Further, the sex offender registration programs are narrowly focused on sex offenders, apart from all felony offenders as in *Lambert*, and the sex offender registration programs are utilized as public safety programs, as opposed to mere assistance for law enforcement officials as in *Lambert*.¹¹⁴

Finally, in order to claim relief under the *Lambert* exception, a defendant must prove the absence of circumstances which would prompt someone to inquire into a duty to register.¹¹⁵ In its appellate brief, the State, citing *Beckley*, likened this situation to that of obtaining a new driver's license when one moves to another state: "Just as drivers nationwide may be presumed to know of their duty to acquire a new driver's license upon moving to a new state, sex offenders may be presumed to know of their duty to inquire into a new state's registration process."¹¹⁶ The court found the defendant's "case rich with circumstances that would move the reasonable individual to inquire of his duty to register in North Carolina," making *Lambert* inapplicable to this defendant.¹¹⁷ Bryant had actual notice of his duty to register annually in South Carolina for the remainder of his life and of his duty to notify officials in South Carolina of any change of address, including moving to a new state.¹¹⁸ The court found the defendant had actual notice in South Carolina. Furthermore, the court found that the "pervasiveness of sex offender registration programs certainly constitute circumstances which would lead the reasonable individual to inquire of a duty to register in *any* state upon relocation."¹¹⁹ The

110. *Id.*

111. *Id.*

112. *Id.* at 566-69, 614 S.E.2d at 487-89 (distinguishing *Lambert v. California*, 355 U.S. 225, 226, 228-29, 232 (1957)).

113. *Id.* at 567, 614 S.E.2d at 487.

114. *Id.*

115. *Id.* at 568, 614 S.E.2d at 488 (citing *Lambert* at 228-29).

116. Brief for Appellant at 23, *State v. Bryant*, 359 N.C. 554, 614 S.E.2d 479 (2005) (No. 173PA04).

117. *Bryant*, 359 N.C. at 568, 614 S.E.2d at 488.

118. *Id.*

119. *Id.*

Bryant court, like the Ohio court in *Beckley*, concluded that having received actual notice in one state, ignorance of a comparable law in another state is not a reasonable excuse for failing to follow the law.¹²⁰

V. THE NEED FOR UNIFORMITY

North Carolina remained true to the letter and spirit of the federal Jacob Wetterling Act and the state's own Amy Jackson Law, making clear that sex offenders have an absolute duty to register in North Carolina, regardless of where his or her conviction took place. Unfortunately, other states have drawn different conclusions, as noted in detail above with regard to *Patterson*, *Richards*, *Beckley*, *Tippett*, and *McBride*. Various factors may influence a state to determine that a sex offender did not have proper notice of the duty to register, such as variations in statutory language and irregularities in the notice provided at the time of the offender's release from incarceration. In *Richards*, *Beckley*, and *Bryant*, each out-of-state offender was subject to similar registration provisions in both the state in which he had been convicted and the state in which he failed to register.¹²¹

However, in *Tippett*, the Iowa court was forced to overturn a conviction for failure to register based on the Illinois law in place at the time the offender was released, which did not provide actual notice of a duty to register in other states.¹²² Regardless of where the defendant had moved outside of the State of Illinois, the new state could not impose a duty to register because Illinois had not provided proper prerelease notice. Similarly, in *McBride*, the Kentucky court could not uphold a conviction for failure to register in Kentucky because the form signed by the appellant in Tennessee - the state in which he was convicted - "only required McBride to give notice to *Tennessee* if he moved to another state. The form did not inform McBride that he had a duty to register in any other state to which he might relocate or require him to inform his new state of residence that he has moved there."¹²³ This is extremely problematic in a mobile society. States cannot protect their citizens with an ineffective and incomplete sex offender registry, made even more frustrating if one state is effectively subject to the laws of another state which did not provide proper notice to its own sex offenders.

120. *Id.* at 569, 614 S.E.2d at 488-89; *State v. Beckley*, No. 83254, 2004 WL 1277358, at *4 (Ohio Ct. App. June 10, 2004).

121. *People v. Richards*, No. B166154, 2004 WL 789667, note 4, at *4 (Cal. Ct. App. Apr. 14, 2004); *Beckley*, 2004 WL 1277358, at *1; *Bryant*, 359 N.C. at 555-557, 614 S.E.2d at 480-81.

122. *State v. Tippett*, 624 N.W.2d 176, 179 (Iowa 2001).

123. *McBride v. Commonwealth*, No. 2003-CA-001843-MR, 2005 WL 1367463, at *5 (Ky. Ct. App. June 10, 2005).

Without uniform state laws and procedures for notice of the duty to register, or, in the alternative, the implementation of a federal law and procedure for notice of the duty to register, these inconsistencies would remain an issue in this mobile society. States may find themselves unable to prosecute sex offenders for failure to register based on the laws and inactions of another state.

The federal government initially attempted to correct these problems by creating the National Sex Offender Registry in 2005, renamed the Dru Sjodin National Sex Offender Public Website in 2006, which comprised a compilation of individual states' registries.¹²⁴ Even though participation was entirely voluntary, all fifty states and the District of Columbia elected to participate in the national registry compilation as prescribed.¹²⁵ However, the national registry was only as good as the individual state registries that comprised it, and the state registries were still limited by offenders who failed to register, including offenders who failed to register based on a lack of notice and offenders who relocated from one state to another and avoided registration requirements. The U.S. Attorney General noted:

While sex offender registration and notification in the United States are generally carried out through programs operated by the individual States and other non-federal jurisdictions, their effectiveness depends on also having effective arrangements for tracking of registrants as they move among jurisdictions and some national baseline of registration and notification standards. In a federal union like the United States with a mobile population, sex offender registration could not be effective if registered sex offenders could simply disappear from the purview of the registration authorities by moving from one jurisdiction to another, or if registration and notification requirements could be evaded by moving from a jurisdiction with an effective program to a nearby jurisdiction that required little or nothing in terms of registration and notification.¹²⁶

VI. A TRULY NATIONAL SEX OFFENDER REGISTRY

On July 27, 2006, Congress enacted landmark legislation, the Adam Walsh Child Protection and Safety Act of 2006, which included the Sex Offender Registration and Notification Act (SORNA).¹²⁷ Pursu-

124. 42 U.S.C. §§ 14071(b)(2)(B), 14072(b), 16920 (West 2005); U.S. Dep't of Justice, Dru Sjodin National Sex Offender Public Website, <http://www.nsopr.gov> (last visited September 20, 2007).

125. U.S. DEP'T OF JUSTICE, Dru Sjodin National Sex Offender Public Website; 42 U.S.C. §§ 14071(b)(2)(B), 14072(b) (West 2005).

126. National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. 30,210, 30,211 (proposed May 30, 2007).

127. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006) (to be codified as amended in scattered sections of 42 U.S.C. and 18 U.S.C.).

ant to 42 U.S.C. § 16912(b), the U.S. Attorney General introduced proposed guidelines to implement SORNA on May 30, 2007, with the final deadline for comments on the proposed guidelines of August 1, 2007.¹²⁸

More comprehensive than the previous piecemeal legislation,¹²⁹ SORNA creates uniformity among the state statutes, reduces the inconsistencies in the sex offender registries as a whole, and “eliminate[s] potential gaps and loopholes under the pre-existing standards by means of which sex offenders could attempt to evade registration requirements or the consequences of registration violations.”¹³⁰ In passing this legislation, the U.S. Congress provided bipartisan support:

[A] National registry . . . will provide enhanced information on a uniform basis thereby replacing a patchwork of individual systems administered and maintained by each State. Through this bill, sex offenders will have the same requirements to register throughout the country While we can never do enough to protect our children, this bill does tighten the weave of the safety net through which many predators have slipped.¹³¹

SORNA is applicable to each state, the District of Columbia, Native American tribal territory, and other United States territories, including Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands.¹³² Each jurisdiction must substantially implement the requirements under SORNA by July 27, 2009, or risk a ten percent reduction in its Byrne Justice Assistance Grant.¹³³

128. National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. 30,210.

129. The prior sex offender program was repealed:

(a) REPEAL.—Sections 170101 (42 U.S.C. 14071) and 170102 (42 U.S.C. 14072) of the Violent Crime Control and Law Enforcement Act of 1994, and section 8 of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (42 U.S.C. 14073), are repealed. (b) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, this section shall take effect on the date of the deadline determined in accordance with section 124(a).

Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 129, 120 Stat. 587, 600.

130. National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,210.

131. REP. CHRIS VAN HOLLEN, JR., 152 CONG. REC. H5705, H5730 (2006).

132. 42 U.S.C. § 16911(10) (West Supp. 2007).

133. 42 U.S.C. §§ 16924(a)(1), 16925(a) (West Supp. 2007). “The Edward Byrne Memorial Justice Assistance Grant Program allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system.” U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Assistance, Justice Assistance Grant (JAG) Program, <http://www.ojp.usdoj.gov/BJA/grant/jag.html> (last visited July 31, 2007). The federal Congress may place conditions upon grants to state and local governments, so long as the conditions are related to the purpose of the spending program. *South Dakota v. Dole*, 483 U.S. 203 (1987).

To comply with SORNA, each jurisdiction must implement legislation which meets the minimum SORNA requirements, although a jurisdiction may choose to have more stringent requirements in its legislation. Among other requirements, SORNA addresses the issues plaguing the current sex offender registries, including discrepancies among the states that have allowed sex offenders to avoid registration after moving to another state.

Each jurisdiction must maintain a sex offender registry for the entire jurisdiction in accordance with the requirements of SORNA.¹³⁴ Each jurisdiction must inform every offender of his or her registration obligations, either before release from imprisonment or within three business days of sentencing if no incarceration is imposed.¹³⁵ Each offender must initially register in the jurisdiction in which he or she was convicted.¹³⁶ Thereafter, each offender must register in the jurisdiction of residence, the jurisdiction of employment, and the jurisdiction of education, if these jurisdictions differ, either from each other or from the jurisdiction of conviction.¹³⁷

Each offender must provide his or her name and/or alias; his or her Social Security number; his or her address of residence; the name and address of his or her place of employment and/or place of education; and the license plate number and description of any motor vehicle owned or operated by the offender.¹³⁸ Additionally, pursuant to the guidelines issued by the U.S. Attorney General, each offender must also provide his or her Internet identifiers, including email addresses and instant messaging handles; telephone numbers, including both landlines and cellular phones; residential information for transient offenders, including places where an offender habitually sleeps (such as a city park or homeless shelter) and temporary lodging information; travel and immigration documents; other employment information for offenders without fixed employment locations, including normal work travel routes and the general area or areas in which the offender works; professional licenses; and information about all motor vehicles, including land vehicles, watercraft, and aircraft, and the place or places where the motor vehicles are usually parked, docked, or stored.¹³⁹

134. 42 U.S.C. § 16912(a) (West Supp. 2007).

135. 42 U.S.C. § 16913(b) (West Supp. 2007).

136. U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART) OFFICE, FACT SHEET: THE PROPOSED GUIDELINES FOR THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA), http://www.ojp.gov/smart/pdfs/sorna_factsheet.pdf (last visited July 31, 2007).

137. 42 U.S.C. § 16913(a) (West Supp. 2007).

138. 42 U.S.C. § 16914(a) (West Supp. 2007).

139. 42 U.S.C. § 16914(a)(7) (West Supp. 2007); National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. 30,210, 30,223-30,224 (proposed May 30, 2007).

The jurisdiction or jurisdictions in which the offender registers must include on its jurisdictional registry and must provide to the federal registry the following information:

- (1) A physical description of the sex offender.
- (2) The text of the provision of law defining the criminal offense for which the sex offender is registered.
- (3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.
- (4) A current photograph of the sex offender.
- (5) A set of fingerprints and palm prints of the sex offender.
- (6) A DNA sample of the sex offender.
- (7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.¹⁴⁰

By requiring this varied and detailed information for each jurisdictional registry, SORNA ensures the creation of a comprehensive and truly national sex offender registry. More importantly, the inclusion of fingerprints, palm prints, and DNA samples provides strong evidence to make certain that convicted sex offenders will not be able to alter their appearance to avoid registration.

The sex offender registration information will be made available to the public and to other jurisdictions through the Internet, as each jurisdiction is required to "maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user."¹⁴¹ Each jurisdiction's registry will be included in the searchable Dru Sjodin National Sex Offender Public Website.¹⁴² Several pieces of information provided by the sex offenders must remain exempt from public disclosure: the identity of the victim or victims; the offender's Social Security number; the offender's arrests that did not result in conviction; and the offender's passport or immigration document numbers.¹⁴³

An offender must appear in person to effect any change to his or her registration information within three business days of the change.¹⁴⁴ Additionally, offenders must appear in person on a regular basis to verify his or her registration information – at least every year for tier I offenders, every six months for tier II offenders, and every

140. 42 U.S.C. § 16914(b) (West Supp. 2007).

141. 42 U.S.C. § 16918(a) (West Supp. 2007).

142. 42 U.S.C. §§ 16918(a), 16920 (West Supp. 2007).

143. 42 U.S.C. § 16918(b) (West Supp. 2007); National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,220-30,222.

144. 42 U.S.C. § 16913(c) (West Supp. 2007).

three months for tier III offenders.¹⁴⁵ Finally, sex offenders must verify and update his or her registration information for a period of at least fifteen years for tier I offenders, twenty-five years for tier II offenders, and the lifetime of tier III offenders.¹⁴⁶

If an offender fails to register, fails to register changes in residence, employment, or student status, or fails to verify his or her registration, the jurisdiction must provide a criminal penalty that includes a maximum term of imprisonment of at least one year.¹⁴⁷ In addition, an offender convicted under a state statute that fails to register or fails to verify his or her registration and also engages in interstate or international travel can be prosecuted under the newly-enacted federal sex offender registration statute, which includes a maximum sentence of ten years imprisonment.¹⁴⁸

To implement the SORNA requirements in each jurisdiction, the U.S. Attorney General must create and execute a Sex Offender Management Assistance program (SOMA) to provide financial subsidies to assist the jurisdictions in their implementation of the SORNA requirements.¹⁴⁹ Additionally, SORNA established the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (nicknamed the "SMART Office") within the Department of Justice, which is empowered to:

- (1) administer the standards for the sex offender registration and notification program . . . ;
- (2) administer grant programs relating to sex offender registration and notification . . . ; [and]
- (3) cooperate with and provide technical assistance to [jurisdictions] and other public and private entities involved in activities related to sex offender registration or notification or to other measures for the protection of children or other members of the public from sexual abuse or exploitation.¹⁵⁰

Each jurisdiction must substantially implement the requirements under SORNA by July 27, 2009, or risk a ten percent reduction in its Byrne Justice Assistance Grant.¹⁵¹ At the time of this writing, the

145. 42 U.S.C. § 16916. For definitions of the tiers of sex offenders, see 42 U.S.C. § 16911(2)-(4).

146. 42 U.S.C. § 16915(a).

147. 42 U.S.C. § 16913(e).

148. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 141(a)(1), 120 Stat. 587, 602 (codified at 18 U.S.C. § 2250).

149. 42 U.S.C. § 16926(a).

150. 42 U.S.C. § 16945(a), (c).

151. 42 U.S.C. §§ 16924(a)(1), 16925(a). "The Edward Byrne Memorial Justice Assistance Grant Program allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system." U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, Justice Assistance Grant (JAG) Program, <http://www.ojp.usdoj.gov/BJA/grant/jag.html> (last visited July 31, 2007). The

guidelines proposed by the U.S. Attorney General have not been finally approved and the jurisdictions still have nearly two years before the SORNA requirements must be implemented. As such, it remains to be seen how these changes will affect the landscape of the sex offender registries of the states and, by extension, of the nation.

VII. CONCLUSION

North Carolina maintained its stance that it would protect its citizens by requiring sex offenders to register in North Carolina, regardless of where they were convicted. Just as drivers have constructive notice of the requirement to obtain a driver's license upon moving to a new state, the North Carolina Supreme Court found that convicted sex offenders have the same constructive notice of their duty to register as sex offenders upon moving to North Carolina from another state. According to the *Bryant* court, so universal are the sex offender registration statutes that actual notice of the specific requirements of a particular state are not required to put the offenders on notice of the duty to register.

Courts in other states did not reach the same conclusion as the *Bryant* court, finding that absent actual notice of the duty to register, convicted sex offenders could not be held liable for failure to register. North Carolina's legal precedent paved the way for consistency in enforcement to protect public safety. Such consistency came in the form of the Sex Offender Registration and Notification Act in the Adam Walsh Child Protection and Safety Act of 2006, providing uniform notification and registration procedures.¹⁵² With the implementation of this legislation in each jurisdiction, sex offenders will receive actual notice of the duty to register in every state in the country, making it more difficult for offenders to escape the registration process in our increasingly mobile society.

federal Congress may place conditions upon grants to state and local governments, so long as the conditions are related to the purpose of the spending program. *South Dakota v. Dole*, 483 U.S. 203 (1987).

152. 42 U.S.C. § 16901-62.