

SHOW ME THE MONEY: HOW REGISTERED SEX OFFENDERS AFFECT PROPERTY TAX REVENUE AND WHAT GOVERNMENTS CAN DO TO RECOVER THE LOSSES

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I. INTRODUCTION

In his classic work *The Scarlet Letter*, Nathaniel Hawthorne walks through the trials and tribulations of Hester Prynne, a woman found guilty of committing adultery in colonial New England.¹ After her conviction, the townspeople parade Hester through the town with a scarlet “A” sewn to her chest, indicating to all who came into contact with her that she was an adulteress.² Eventually, Hester leaves the colony with her daughter in tow to make a life for the both of them in England.³ However, Hester later returns to New England so that she may be buried next to the man who was the object of her forbidden passion, beneath a tombstone marked with the letter “A.”⁴

The modern criminal justice system has come a long way since the days of Hester Prynne. While methods like those used in the Hawthorne classic are no longer explicitly used to discourage and punish activities society deems unacceptable, some argue there are certain elements of our modern penal system that too closely resemble the

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1. NATHANIEL HAWTHORNE, *THE SCARLET LETTER* 69–71 (Ticknor, Reed, & Fields) (1850).

2. *Id.* at 59, 61.

3. *Id.* at 303–04.

4. *Id.* at 305, 307.

shameful practices illustrated in Hawthorne's work. In particular, some claim that the sex offender registry ("SOR") is a modern-day scarlet letter, which carries with it certain negative collateral consequences that are far more detrimental to society than any positives the SORs provide.

Many people have written scholarly articles highlighting the pros and cons of SORs. Some have taken the analysis a step further by pointing out the impact SORs have on the values of homes in the vicinity of a registered sex offender ("RSO"). While these studies have pointed out the impact the presence of an RSO can have on the property value for an individual homeowner, research regarding the impact RSOs have on property tax revenue for taxing districts is non-existent. This Article highlights the correlation between the depressive effect the presence of RSOs has on property values, the impact this reduction in property value has on property tax revenue for taxing districts in Texas, and, as a corollary, the negative impact the decrease in revenue could have on the government's ability to provide vital public services.

The Article concludes by discussing different strategies states like Texas could use to allow taxing districts to recover some of this lost revenue. In particular, this Article suggests that states like Texas could (1) charge RSOs a premium on their property taxes to offset any losses their presence in the community causes; (2) pass laws that prevent RSOs from living in certain areas; (3) adjust the criteria used by taxing districts to appraise residential property; or (4) increase minimum sentences for sex offenders in an effort to reduce the number of registered sex offenders in the community.

A. *History of Sex Offender Registration*

In 1994 the state of New Jersey passed Megan's Law after seven-year-old Megan Kanka was raped and murdered by her neighbor, Jesse Timmendequas.⁵ Timmendequas, a convicted sex offender, lured Megan into the home he shared with two other convicted sex offenders by promising to give her a puppy.⁶ No one, including Megan's parents, knew three convicted sex offenders lived in the neighborhood.⁷ Acting under the belief that public knowledge of Timmendequas' criminal past could have prevented this tragedy, the State passed legislation requiring sex offenders to register with the State so that police

5. *20 Years Later, Megan Kanka's Legacy Lives On*, 6ABC ACTION NEWS (July 29, 2014), <http://6abc.com/news/20-years-later-megan-kankas-legacy-lives-on/226639/>.

6. *Id.*

7. *Id.*

and the citizenry could readily find out when a sex offender moves into their neighborhood.⁸

In the same year, the United States Congress passed the Jacob Wetterling Act, “mandating that each state keep a registry of violent sex offenders against children readily accessible by police.”⁹ Two years later Congress amended the Wetterling Act, making the registries public and requiring community notification when an offender moves into an area.¹⁰ In 2006, in an effort to “protect the public from sex offenders and offenders against children,” Congress passed the Adam Walsh Act, which established a “comprehensive national system for the registration” of sex offenders whose victims were under the age of fourteen.¹¹ Title I of the Walsh Act is the Sex Offender Registration and Notification Act (“SORNA”), which requires lifetime registration for those convicted of certain sexual crimes.¹² As a result of these laws, there are currently 843,260 RSOs in the United States.¹³

B. *Criticism of Registration Laws*

Critics of SORs claim that, while registration seems like a good idea on its face, registration requirements actually harm the communities they were intended to protect.¹⁴ In particular, critics claim the “scarlet letter” effect registries have on offenders make finding work and suitable housing incredibly difficult, if not impossible for many offenders, leaving them with no motivation to avoid reoffending.¹⁵ Furthermore, critics assert that most sexual offenses go unreported, and the registries, therefore, give communities a “false sense of security.”¹⁶ In this same vein, critics claim registration laws are far too broad because they do not “divulge the actual facts behind a sexual offense charge,” a fact which tends to give the public “a false impression that every sexual offender is a pedophile, rapist, or worse.”¹⁷ For example, critics claim that lumping an eighteen-year-old boy who is caught having sex with his sixteen-year-old girlfriend by his girlfriend’s angry parent into

8. Emily DePrang, *Life On the List*, TEX. OBSERVER (May 31, 2012, 2:52 PM), <https://www.texasobserver.org/life-on-the-list/>.

9. *Id.*

10. *Id.*

11. *Id.*; 42 U.S.C.A. § 16901 (West 2006).

12. 42 U.S.C.A. § 16915 (West 2006).

13. NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, MAP OF REGISTERED SEX OFFENDERS IN THE UNITED STATES (June 1, 2015), http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf#page=1.

14. Deborah Jacobs, *Why Sex Offender Laws Do More Harm than Good*, ACLU N.J., <https://www.aclu-nj.org/theissues/criminaljustice/whysexoffenderlawsdomoreha/> (last visited June 16, 2015).

15. *See id.*

16. *Id.*

17. Teke Wiggin, *Sex Offender Data Threatening Home Values, Tarnishing Neighborhoods and Frustrating Real Estate Agents*, INMAN.COM (Apr. 25, 2014), <http://www.inman.com/2014/04/25/sex-offender-data-threatening-home-values-tarnishing-neighborhoods-and-frustrating-real-estate-agents/>.

a database that contains hardened sexual predators, makes it very “difficult for the public to differentiate and know who is truly dangerous.”¹⁸ In sum, critics hold fast to the claim that the registries simply do not accomplish their intended purpose of reducing the frequency of sexual crimes, and any good they do accomplish is far outweighed by the harm inflicted on offenders in particular and society in general.

Despite these criticisms, all fifty states and the District of Columbia currently maintain searchable databases, indicating that most believe, as does the Department of Justice, that the registries are “important for public safety purposes” and “[provide] important information about convicted sex offenders to local and federal authorities and the public.”¹⁹ Bolstering this mindset, a Department of Justice sponsored study of the South Carolina registry highlighted the “positive impact on general deterrence associated with averting” first-time sexual offenses at the rate of three per month, while at the same time conceding that the registry has had “no effect on deterring the risk of sexual recidivism.”²⁰ Seeing as the registries are a relatively new phenomenon, time will ultimately tell whether they truly accomplish their stated goal of “protect[ing] the public from sex offenders.”²¹

II. REGISTERED SEX OFFENDERS AND PROPERTY VALUES

While experts disagree on the efficacy of SORs, one aspect of the SORs on which experts do agree is the depressive impact SORs have on residential property values. A 2006 National Bureau of Economic Research paper by Leigh Linden and Jonah Rockoff, known in academic circles as the “Rockoff Report,” provides a detailed statistical analysis of the relationship between the proximity of a residential property to a property occupied by an RSO and the value of that property in Mecklenburg County, North Carolina.²² Using the widely accepted assumption that there is an “inverse relationship between

18. Dan Gunderson, *Sex Offender Laws Have Unintended Consequences*, MPRNEWS (June 18, 2007) (quoting Jill Levenson), <http://www.mprnews.org/story/2007/06/11/sexoffender1>; A twelve-year-old arrested for inappropriately touching his eight-year-old sister is required to register as a sex offender until the age of 31. See DePrang, *supra* note 8 (discussing other questionable qualifications for sex offenders).

19. *Sex Offender Registration and Notification Act (SORNA)*, U.S. DEP’T OF JUST., <http://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna> (last updated June 3, 2015).

20. ELIZABETH J. LETOURNEAU, ET AL., *EVALUATING THE EFFECTIVENESS OF SEX OFFENDER REGISTRATION AND NOTIFICATION POLICIES FOR REDUCING SEXUAL VIOLENCE AGAINST WOMEN 4* (2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf>.

21. See 42 U.S.C.A. § 16901 (West 2006).

22. See Leigh L. Linden & Jonah E. Rockoff, *There Goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values From Megan’s Laws*, (Nat’l Bureau of Econ. Research, Working Paper No. 12253, 2006), <http://www.nber.org/papers/w12253>.

property values and local crime rates,” the study endeavors to remove some of the variables inherent in previous studies by evaluating property value trends before and after an RSO moves into a neighborhood.²³ Using this framework, Rockoff and Linden found that the value of “homes sold closest to the [registered] offender declined by four percent” and “homes directly adjacent to an offender declined in value by twelve percent,” which is similar to the decline seen with homes located within a “cancer cluster.”²⁴

The report also found that property values recover once a property is .10 miles or more away from an offender.²⁵ Specifically, Linden and Rockoff found that homes located within .05 miles of an offender sold for \$145,000 prior to the offender moving into the area and sold for \$125,000 after the offender moved in.²⁶ Rockoff and Linden concluded “the arrival of a sex offender has a statistically and economically significant impact on the value of the homes in the immediate vicinity,” costing homeowners in Mecklenburg County around \$60 million in lost property value.²⁷ Based on these findings, it would be reasonable to surmise that residents would be “willing to pay a high cost,” up to \$60 million for the residents of Mecklenburg County, to keep sex offenders out of their neighborhoods and protect property values.²⁸

Another more recent study by Susan Yeh at George Mason University School of Law, found the presence of RSOs had a similar effect on residential property in Lancaster County, Nebraska.²⁹ Unlike Rockoff and Linden, however, Yeh highlighted the fact that properties located within .10 miles of an offender take longer to sell than those located in areas where offenders tend not to reside.³⁰ This finding is bolstered by a 2013 Longwood University report which posits the true source of decreased property values due to the presence of RSOs is the fact that houses located near RSOs tend to take longer to sell, decreasing the amount buyers are willing to pay for these homes.³¹ The reason a house usually sells for less the longer it sits on

23. *Id.* at 1–2.

24. *Id.* at 3–4, 22.

25. *Id.* at 22.

26. *Id.* at 15.

27. *Id.* at 23–24, 30.

28. *See id.* at 30.

29. *See* Susan Yeh, *Revealing the Rapist Next Door: Property Impacts of a Sex Offender Registry*, 44 INT’L REV. L. & ECON. 42, 43, 53 (2015). (Yeh found that “prices for houses whose offender had recently moved away” ended up being 4.96% higher than “houses that still [had] an offender nearby, but added that “house prices rebound after an offender moves away.”).

30. *Id.* at 24.

31. XUN BIAN ET AL., NEIGHBORHOOD TIPPING AND SORTING DYNAMICS IN REAL ESTATE: EVIDENCE FROM THE VIRGINIA SEX OFFENDER REGISTRY, SSRN 3 (April 1, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2338223 (The presence of an RSO within 0.1 miles resulted in “an 80% increase in the time” it took for a property to sell); *see also* YEH, *supra* note 29.

the market is because when a savvy buyer sees a house that has been on the market for a long period of time they begin to ask questions and make negative assumptions about the property's or surrounding area's condition. This may lead the buyer to do more research into why the house has not sold, which could lead them to discover the presence of a sex offender nearby. The fact is that there are buyers willing to accept the risk of living near a sex offender, but, as with any buyer of a good, they expect a discounted price for taking on the risk associated with the purchase.

The Rockoff Report, the Yeh report, and the Longwood University report support the claim that the presence of RSOs adversely affects residential property values in the nearby area. No one, however, has addressed what to do about the depressive effect RSOs have on property values. In particular, this Article seeks to determine what states, and their taxing districts, can do to recover the lost property tax revenue resulting from the depressive effect RSOs have on property values.

A. *Basics of the Property Tax in Texas*

In 2015, Texans paid an average of \$3,327 in property taxes, which was the fifth highest average amount in the United States.³² In order to calculate the amount of the tax for each property, the Texas Constitution establishes that taxing districts shall tax non-exempt real property in proportion to the property's value.³³ Section 23.01 of the Texas Tax Code further provides that "all taxable property is appraised at its market value as of January 1."³⁴ Generally, market value is the price a willing buyer would pay and a willing seller would accept for a property, neither being under any compulsion to do so. The Code goes a little deeper than the general definition by ordering "each property shall be appraised based on the individual characteristics that affect the property's value and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value."³⁵ The Texas Comptroller's website provides that one of the methods taxing districts can use to determine market value is to compare the property to other properties sold in the area.³⁶

While there is nothing that indicates tax assessors include the presence or proximity of sex offenders as an "individual characteristic" of a property's market value, the accessibility of information on the loca-

32. Carol Christian, *Texas Property Taxes Among the Nation's Highest*, HOUS. CHRON., <http://www.chron.com/homes/article/Texas-property-taxes-among-the-nation-s-highest-6181429.php> (last updated Apr. 6, 2015).

33. TEX. CONST. art. 8, § 1(b) (West 2016).

34. TEX. TAX CODE ANN. § 23.01(a) (West 2016).

35. *Id.* at § 23.01(b).

36. GLENN HEGAR, TEX. COMPTROLLER PUB. ACCTS., PROPERTY TAX ADMINISTRATION IN TEXAS 1 (January 2016), <http://comptroller.texas.gov/taxinfo/proptax/pdf/96-1738.pdf>.

tion of sex offenders has increasingly caused such considerations to enter the calculus of many potential homebuyers. Since tax assessors in Texas use the market value of a property to determine its taxable value, any discount a buyer may require due to the fact that an RSO lives nearby conceivably decreases the taxable value of the property and other properties in the area, which decreases the amount of property tax paid on that property.

B. *Distribution of Revenue in Texas*

Having established that the presence of RSOs has a negative impact on property values and, as a result, property tax revenue, it is important to understand how a reduction in revenue affects taxing districts. In Texas, each of the following governmental entities can levy property taxes: cities, counties, school districts, and special purpose districts, e.g., municipal utility districts, emergency services districts, hospital districts, water control districts, and college districts.³⁷ In 2010, these entities collected a total of \$40.28 billion in property tax levies, with \$6.76 billion going to cities, \$6.57 billion going to counties, \$21.56 billion going to school districts, and \$5.39 billion going to special purpose districts.³⁸

Unlike states that depend on income tax as their main source of revenue, states like Texas, which do not have a state income tax and look to property taxes as a means to provide government services, are highly susceptible to market forces that decrease the value of residential property, and, as a result, property tax revenue. Because such negative market forces have a significant impact on the ability of states like Texas to provide basic services to its citizens, states like Texas, need to proactively seek out ways to either recover lost revenue due to the presence of RSOs or come up with a way to eliminate the impact RSOs have on property value.

III. SOLUTIONS TO THE REVENUE PROBLEM

In an article addressing the effect of government-imposed land use restrictions on property value and property tax revenue, Bethany Berger discusses the “fiscal illusion” that state governments should compensate property owners for government-imposed land use restrictions that negatively impact property values.³⁹ Berger suggests that governments “already feel the costs of actions that reduce the value or productivity of the property” in the form of lost tax revenue and requiring the government to compensate owners for lost property

37. SUSAN COMBS, TEX. COMPTROLLER PUB. ACCTS., *YOUR MONEY AND THE TAXING FACTS* 4 (Aug., 2012), http://www.texasransparency.org/Special_Features/Reports/pdf/TexasItsYourMoney-TaxingFacts.pdf.

38. *Id.* at 6.

39. BETHANY R BERGER, *THE ILLUSION OF FISCAL ILLUSION IN REGULATORY TAKINGS*, SSRN 2 (Nov. 12, 2015), <http://ssrn.com/abstract=2689954>.

value is illusory because doing so will “add a new and much larger cost to the action.”⁴⁰ In discussing options other than directly compensating property owners for lost value due to land use restrictions, Berger goes on to say that “[l]ocal governments, which rely heavily on property taxes, will be most sensitive to land use restrictions that reduce the assessed value of property, state governments will be less so, and federal governments still less so,” leaving each entity with differing levels of motivation to address the negative impact their respective policies have on property value and the associated negative implications for property tax revenue.⁴¹

While SORs are not a land use restriction in the sense of those to which the Berger article refers, SORs are a form of government regulation that inadvertently affects the value of property and property tax revenue. Because SORs create RSOs and because RSOs have a documented depressive effect on property value, SORs have a very similar effect to the land use restrictions highlighted in the Berger article. The loss of property tax revenue due to the presence of RSOs could make it difficult for local governments to adequately provide the services their citizens expect, e.g., schools, hospitals, roadways, emergency services, etc.⁴² However, states and the federal government, that have multiple sources of revenue, e.g., sales tax, income tax, estate tax, etc., are less likely to feel the pain a loss in property tax revenue inflicts.

Furthermore, Berger points out that since “policy-setting, implementations, and budget management responsibilities are often divided among” different semi-autonomous government offices, the loss of revenue “may not be experienced by the same people that caused them, limiting their effect on political behavior.”⁴³ In the RSO context, sex-offender laws are enacted by state governments and the federal government, but since property taxes are collected and used mainly on the local level, state governments and the federal government rarely experience the negative fiscal consequences of their policies regarding RSOs.

Finally, Berger highlights the fact that politicians are not driven by “[r]evenue generation” but by votes, and, “while revenue losses . . . may affect political goals, they don’t necessarily.”⁴⁴ Berger claims this is true because “governmental actors are less interested in maximizing governmental budgets than in maximizing political power to secure reelection.”⁴⁵ Both the federal and state governments have established that the goal regarding sex offenders is to monitor them post incarceration in order keep the public safe from those offenders who

40. *Id.* at 3.

41. *Id.* at 4.

42. COMBS, *supra* note 37 at 4.

43. BERGER, *supra* note 39, at 24.

44. *Id.* at 4.

45. *Id.* at 23.

might recidivate.⁴⁶ This is a great campaign slogan because it is one that makes voters feel like the associated politician is looking out for their safety. However, the reality may be that a constituency feeling physically safe, i.e., by being informed about the presence of RSOs, can only be achieved at the expense of security on the fiscal front, in the form of lost property tax revenue. Because the revenue problem highlighted in this Article is a problem caused by actions both at the state and federal level, and the local government level, any solution will require the cooperation of all of the relevant government entities.⁴⁷ The remainder of this Article will discuss the potential solutions to the revenue problem, and conclude with a suggestion as to which option(s) the respective government entities should implement.

A. *The Offender's Premium*

One option to recover revenue may be for taxing districts to charge RSOs a premium on their property taxes to make up for any reduction in tax revenue their presence in a community causes. American jurisprudence is full of examples of civil penalties criminals continue to pay long after they have served time for their crimes, which are not considered criminal punishments, even though the civil penalty is incurred as a result of a criminal conviction.⁴⁸ For example, the Supreme Court has held that sex offender registration laws themselves do not impose criminal punishments. In *Smith v. Doe I, et al*, the Court, in deciding whether requiring offenders convicted prior to the passage of registration laws was an ex post facto criminal punishment, found that a law requiring sexual offenders to register on a public registry did not constitute a criminal punishment because it was “an incident of the state’s power to protect the health and safety of its citizens” and was not intended by the legislature to “add to the punishment.”⁴⁹ The Court also held that “even if the objective of the Act is consistent with the purposes of the Alaska criminal justice system, the State’s pursuit of it in a regulatory scheme does not make the objective punitive.”⁵⁰

Finally, in response to claims that the stigma the registry inflicts is evidence of its punitive quality, the Court held that any stigma that may result from a person being on the registry stems from the “dis-

46. See generally 42 U.S.C.A. § 16901 (West 2006).

47. See generally *id.*; BERGER, *supra* note 39, at 4 (“[G]overnments and their constituents need to feel both the costs and benefits of governmental action in order to make efficient decisions.”).

48. See *Administrative License Revocation (ALR) Program*, TEX. DEP’T PUB. SAFETY, <https://www.txdps.state.tx.us/DriverLicense/alr.htm> (last visited Feb. 24, 2016) (explaining persons suspected of driving while intoxicated in Texas “may have their driver license suspended from 90 days to 2 years,” regardless of any criminal penalties they may incur as a result of a subsequent conviction).

49. *Smith v. Doe I*, 538 U.S. 84, 93–94 (2003) (citing *Flemming v. Nestor*, 363 U.S. 603, 616 (1960)).

50. *Id.* at 94.

semination of accurate information about a criminal record” and that where “the state does not make the publicity and the resulting stigma an integral part of the regulatory scheme” no criminal punishment has occurred.⁵¹ While still deemed penalties, the Court held civil penalties, like sex offender registration, are not considered punitive because their primary purpose is to “protect the public,” and not to punish or deter crime.⁵²

Based on the precedent set by the Court in *Smith*, states could require RSOs to pay a premium on their property taxes. Courts would likely consider such a law to be a valid civil penalty because its primary purpose is to protect the public from the negative economic consequences of having RSOs in a taxing district and is not intended to add to the punishment of the RSO. However, practically speaking, this solution on its own would not likely solve the problem because many offenders have a very difficult time finding steady work after being released from confinement.⁵³ This makes it difficult for many offenders to maintain steady income, and, as such, the increased burden of a property tax premium may be more than many offenders can bear, giving them little motivation not to reoffend.⁵⁴

B. *Banishment Zones*

In an effort to reduce the presence of sex offenders in their communities, some cities and states have sought to pass laws making it extremely difficult, if not impossible, for RSOs to find adequate housing. A Georgia law, which sought to make it illegal for RSOs to live or work within 1,000 feet of “a place where children might assemble,” was deemed to violate the U.S. Constitution after the construction of a day care center within 1,000 feet of an RSO’s property line forced the RSO to move.⁵⁵ The author of the bill, State Representative Jerry Keen, unashamedly proclaimed that the underlying intent of his bill was to make the restriction so onerous that “offenders ‘will want to move to another state.’”⁵⁶ The RSO claimed this was an unlawful taking in violation of the Fifth Amendment of the United States Constitution, and the Supreme Court of Georgia agreed.⁵⁷ The court held

51. *Id.* at 98–99.

52. Emily DePrang, *Criminal Court Punts on ‘Retroactive Punishment’ Question*, TEX. OBSERVER (Mar. 31, 2014, 12:59 PM), <https://www.texasobserver.org/texas-court-criminal-appeals-retroactive-civil-penalties/>.

53. Richard Tewksbury, *Exile at Home: The Unintended Consequences of Sex Offender Residency Restrictions*, 42 Harv. C.R.-C.L. L. Rev. 531, 532–33 (2007) (explaining that “42% [of offenders] lost a job as a result of registration”).

54. See Jacobs, *supra* note 14 (explaining that “when nothing works out - job, home, family-individuals are more likely to give up and reoffend”).

55. Peter Whoriskey, *Georgia Court Rejects Law on Sex Offenders*, WASH. POST (Nov. 22, 2007) <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/21/AR2007112102091.html>.

56. *Id.*

57. See *id.*

that the law made it so that “there is no place in Georgia where a registered sex offender can live without continually being at risk of being ejected,” turning the entire state of Georgia into a so-called “banishment zone.”⁵⁸

Some claim that these types of banishment-zone laws make it increasingly difficult for RSOs to re-acclimate to life outside of prison. Richard Tewksbury, a professor of Justice Administration at the University of Louisville, claims that “the difficulty RSOs experience in locating and maintaining safe, affordable, and legal housing” makes it extremely difficult for them “to reintegrate into communities as law-abiding residents.”⁵⁹ Tewksbury and other critics claim banishment-zone laws, rather than accomplishing their stated purpose of “maximizing public safety and deterring sexual offenses,” may actually make life so difficult for RSOs that the stress the laws cause may drive RSOs to seek ways to relieve their stress, including committing new sexual offenses.⁶⁰

Deborah Jacobs of the ACLU of New Jersey echoes these sentiments by claiming “[b]anishment zone laws may likely force sexual offenders to move from environments in which they have support networks into other communities in which they have no support.”⁶¹ Jacobs goes on to say that this state of affairs puts residents in the “new communities at risk” because offenders without adequate support networks are more likely to reoffend.⁶² Residency restrictions also push RSOs “to the fringes of society, forcing them to live in motels, out of cars or under bridges,” making it very difficult for law enforcement to keep track of where they are located, effectively defeating one of the original purposes behind the SORNA law.⁶³

Some state courts, following the lead of states like Georgia and responding to the criticisms voiced by those that agree with Tewksbury and Jacobs, have begun to push back against banishment-zone laws that bar RSOs from living in certain areas.⁶⁴ In Massachusetts, the Supreme Judicial Court upheld a lower court ruling that a city ordinance preventing level two and three RSOs from living “within 1,000 feet of a school or park” violated the Massachusetts state constitution.⁶⁵ The ordinance effectively prohibited certain RSOs from “establishing residence, or even spending the night in a shelter, in ninety-

58. *Id.*

59. Tewksbury, *supra* note 53 at 534, 537.

60. *Id.* at 538, 540.

61. Jacobs, *supra* note 14.

62. *Id.*

63. See Editorial Board, *The Pointless Banishment of Sex Offenders*, N.Y. TIMES (Sept. 8, 2015), <http://www.nytimes.com/2015/09/08/opinion/the-pointless-banishment-of-sex-offenders.html>.

64. See *id.*

65. *Doe v. City of Lynn*, 36 N.E.3d 18, 20 (Mass. 2015).

five percent of the residential properties” in the city of Lynn.⁶⁶ The court compared laws that created large banishment zones for sex offenders to laws that allowed “whole communities of persons, such as Native Americans or Japanese-Americans [to] be lawfully banished from our midst” in the past.⁶⁷

Ultimately, the court held that under the Home Rule amendment to the Massachusetts state constitution, which prevents cities from implementing laws that conflict with the stated policy position of the state legislature, the city lacked the authority to establish such an ordinance because the state legislature never intended to give cities in the state authority to establish laws regarding “sex offender residency options.”⁶⁸ While Massachusetts did have some laws regarding residency restrictions for RSOs at the state level, the court highlighted the fact that the state legislature had “limited its restriction to those offenders seeking to reside in an integrated setting with a vulnerable population,” like a long-term care facility.⁶⁹ The court went on to note that the legislature did not intend to restrict the residency of “those seeking to reside geographically close to a vulnerable population,” and, as such, the city of Lynn could not implement a law with broader residency restrictions.⁷⁰

California courts have also held that a blanket residency restriction that prevented sex offenders from living “within 2000 feet of any public or private school, or park where children regularly gather” was unconstitutional.⁷¹ In *in re Taylor*, the plaintiffs, all sex offenders on parole, claimed this law unconstitutionally restricted their “privacy rights, property rights, right to intrastate travel and substantive due process” making it virtually impossible for them to find affordable compliant housing in San Diego County.⁷² The court acknowledged that while a parolee’s rights are limited, parole conditions must not impede “those basic, albeit limited, constitutional rights.”⁷³ The court found that the blanket residency restriction “imposed harsh and severe restrictions and disabilities on the affected parolees’ liberty and privacy rights” by making 97% of the rental property in San Diego County unavailable to them.⁷⁴

Additionally, the court held the law produced “conditions that hamper, rather than foster efforts to monitor, supervise, and rehabilitate”

66. *Id.*

67. *Id.* at 25.

68. *Id.* at 23.

69. *Id.* at 25.

70. *Id.*

71. CAL. PENAL CODE § 3003.5 (West 2006), *invalidated by In re Taylor*, 343 P.3d 867 (Cal. 2015).

72. *In re Taylor*, 343 P.3d at 870–71.

73. *Id.* at 882.

74. *Id.* at 876, 879.

RSOs because homeless RSOs are harder to surveil and supervise.⁷⁵ However, the court did not abolish residency restrictions altogether. The court provided that residency restrictions can be imposed on parolees that are “more or less restrictive” than the restriction in the California law as long as the restriction imposed is “based on, and supported by, the particularized circumstances of each individual parolee.”⁷⁶

It makes sense on its face to keep RSOs away from areas where they might be tempted to reoffend (one would not suggest, after all, to an alcoholic that they live right next door to a bar), but the legal trend seems to be moving away from broad residency restriction laws, while still leaving room for corrections officials to restrict residency as necessary for individual RSOs. Because RSOs tend to reside in areas that “are more socio-economically disadvantaged, with higher poverty and unemployment rates and a lower percentage of college graduates,” forcing these already struggling areas to shoulder alone the negative affects RSOs can have on tax revenue by banishing RSOs from more desirable areas could work to hasten the decline of an already declining community.⁷⁷ As such, states and taxing districts should not look to residency restrictions alone to solve the property tax revenue problem.

C. *Adjust Appraisal Criteria*

Currently, there is no literature or research indicating Texas tax assessors include the presence of RSOs, or lack thereof, in their assessed value calculation for a residential property. However, there is some precedent from other states for assessors including the presence of RSOs in their appraisal criteria.⁷⁸ In an article entitled *When Sex Doesn't Sell: Mitigating the Damaging Effect of Megan's Law on Property Values*, Suzann Hartzell-Baird discusses the fact that some property tax assessors have been willing to reduce the assessed value of a property based on the presence of nearby RSOs.⁷⁹ She points out that while “[n]o *per se* rule exists for determining how much” the presence of an RSO affects property value, the increasing amount of research on the subject gives homeowners “better empirical data to demonstrate the potential financial impact” RSOs living nearby have on a property.⁸⁰ While Hartzell-Baird looks at the property value issue

75. *Id.* at 879, 882.

76. *Id.* at 869.

77. Yeh, *supra* note 29 at 16; *See also*, Tewksbury, *supra* note 53 at 535 (explaining that while RSOs are found in all kinds of neighborhoods, “they are particularly likely to reside in areas characterized by economic disadvantage, lack of physical resources, relatively little social capital, and high levels of social disorganization”).

78. *See* Suzanna Hartzell-Baird, *When Sex Doesn't Sell: Mitigating the Damaging Effect of Megan's Law on Property Values*, 35 REAL EST. L. J. 353, 370 (2006).

79. *Id.*

80. *Id.* at 371.

from the taxpayer perspective, taxing entities could use the same data to properly value the homes in their districts.

As noted above, the Texas Tax Code does leave some discretion in the hands of taxing districts as to how the taxable value of a property is determined.⁸¹ Taxing districts in Texas could use the discretion given to them within the statutory scheme to properly decrease or increase the value of a property based on the presence of RSOs nearby, or lack thereof. At first glance, one might think that this would only exacerbate the problem by reducing the value of a property at the outset because an RSO resides nearby instead of allowing market forces to determine the appropriate reduction in value. However, as with any change to a taxing system, there would be a corresponding increase in revenue to make up for this reduction.

According to Yeh, since RSOs tend to reside in areas that have higher unemployment and poverty rates, adjusting the appraisal criteria to account for the presence or absence of RSOs in an area would effectively provide a tax cut for those economically disadvantaged areas that tend to attract RSOs and levy a tax increase on those more affluent areas that tend not to house RSOs.⁸² For a home in an affluent area worth \$500,000, a 4% increase in assessed value will raise the property's value by \$20,000. Conversely, a 4% decrease in the value of a home in an economically disadvantaged area worth \$100,000 will decrease that property's value by \$4,000. This scenario results in a \$16,000 net increase in property value for the taxing district. If this \$16,000 net increase in property value were multiplied by the average property tax rate for Texans of 2.18%, the taxing district would see a net increase in property tax revenue of \$348.80.⁸³ While this does not seem like much, this increase in revenue adds up as it is applied across the board to all the homes in the district. Such an approach would mean an increase in the overall revenue for that district, while at the same time making homes in the poorer area slightly more affordable by lowering the property tax burden.

Taxing districts should not rely on this strategy too heavily, however, because the use of data can cut both ways. Hartzell-Baird concedes that the proliferation of data regarding the location of sex offenders has made it difficult to find a property that does not have RSOs "living or working nearby."⁸⁴ While many see the availability of

81. See TEX. TAX CODE ANN. § 23.0(a)–(b) (West 2016).

82. Yeh, *supra* note 29 at 16.

83. Jennifer Von Pohlmann, *Property Tax Rates Highest for Homeowners Who Have Owned Between Five and 15 Years, Own High-End or Low-End Homes*, REALTYTRAC (Mar. 2, 2015), <http://www.realtytrac.com/news/home-prices-and-sales/property-tax-rates-highest-for-homeowners-who-have-owned-between-five-and-15-years-own-high-end-or-low-end-homes/>.

84. Hartzell-Baird, *supra* note 78 at 371; In a 2015 interview, Rockoff noted that the proliferation of data and new technology and increasingly user-friendly registries could "presume[ably] magnify discounts" beyond the four percent reduction in value

information on the location of RSOs as a positive, Hartzell-Baird points out that the ease with which this information can be accessed may make it “difficult for homeowners to demonstrate diminished property value” due to the presence of an RSO.⁸⁵ By way of illustration, if a home is located in a town known to have toxic contamination, it is going to be very difficult for anyone to establish that the presence of toxic contamination makes that home worth less than the surrounding homes because all are equally exposed to the contamination. Similarly, taxing districts will have a difficult time justifying an increase or decrease in the value of the properties in their district if the presence of RSOs is so great that setting a standard for what home is and is not in the vicinity of an RSO is practically impossible.⁸⁶ In short, if all the homes are discounted due to the presence of an RSO, none of the homes are discounted.

D. *Increase Minimum Sentences*

While the strategies cited above all deal with the effects the presence of RSOs have on tax revenue, none of those solutions address the fact that the surest way of reducing the effect RSOs have on the public is to reduce the number of RSOs. Simple logic demands one to concede the surest way to reduce crime in society is to reduce the number of criminals in society, and the best way to reduce the number of criminals available to commit crimes against the public is to put them in prison where it is much more difficult for them to victimize society.⁸⁷ Many states and the federal government, in keeping with this philosophy, have chosen to implement minimum sentence requirements for certain sex crimes, with the federal government requiring mandatory minimum sentences for the following sex-based offenses:

- Section 1591(b)(1) and (2) require a minimum ten- or fifteen-year term for sex trafficking of a minor depending on the age of the victim;⁸⁸

found in both the Rockoff and Yeh studies mentioned above. In the minds of many real estate professionals, this prediction by Rockoff is quickly coming to fruition. Real estate professionals are beginning to recognize that the proliferation of information on the location of sex offenders on real estate websites and smartphone apps “could literally bring down property values all over the United States.” Wiggin, *supra* note 17.

85. Hartzell-Baird, *supra* note 78 at 371.

86. *Id.* at 371–72.

87. See William Otis, *Like Less Crime? Thank Mandatory Minimums*, U.S. NEWS (Sep. 2, 2013, 8:00 AM), <http://www.usnews.com/opinion/articles/2013/09/02/tell-eric-holder-that-mandatory-minimums-worked-to-reduce-crime> (explaining that since mandatory minimum sentencing was adopted in the 1980s, there has been “a 50% reduction in crime,” leading to the economic boom enjoyed by the United States over the past three decades).

88. 18 U.S.C. § 1591(b)(1)–(2) (2015).

- Section 2241(c) requires a minimum thirty-year term for traveling across state lines with the intent to have sex with a child under twelve years of age or for crossing state lines and having sex with a child between the ages of twelve and sixteen under certain aggravating circumstances;⁸⁹
- Sections 2251(e) and 2260(c)(1) require a minimum term of fifteen years for production of child pornography and enhanced minimum terms if such a defendant has a prior felony conviction for an enumerated sex offense;⁹⁰
- Section 2251A(a) and (b) require a minimum term of thirty years for buying or selling, or otherwise transferring, children for the purpose of participating in the production of child pornography;⁹¹
- Section 2422(b) requires a minimum term of ten years for using mail or facilities or means of commerce to cause a minor to engage in prostitution or other criminal sexual activity;⁹²
- Section 2423(a) requires a minimum term of ten years for transporting a minor in commerce for the purpose of engaging in prostitution or other criminal sexual activity;⁹³ and
- Section 3559(e) requires a mandatory life imprisonment for second conviction for certain sex offenses against minors.⁹⁴

Section 3553(b)(2)(A) of Title 18 U.S.C. gives courts the discretion for sex crimes and crimes against children to either increase or decrease the sentence from the mandatory minimum based on the presence of either aggravating or mitigating circumstances.⁹⁵ This “safety valve” can work to reduce the impact of mandatory minimum sentences by putting the discretion in regards to sentencing back in the hands of the judge.

Texas also has mandatory minimums for certain sexual crimes. For example, a mandatory minimum sentence of twenty-five years is required for anyone convicted of aggravated sexual assault where the victim is under the age of six or where the victim is under the age of fourteen and “the offense contained threats of serious bodily injury or use of a deadly weapon.”⁹⁶ Additionally, if a person over the age of eighteen is convicted of aggravated sexual assault and has “previously

89. 18 U.S.C. § 2241(c) (2007).

90. 18 U.S.C. §§ 2251(e), 2260(c)(1) (2008).

91. 18 U.S.C. § 2251A(a)–(b) (2008).

92. 18 U.S.C. § 2422(b) (2006).

93. 18 U.S.C. § 2423(a) (2015).

94. 18 U.S.C. § 3559(e) (2015).

95. 18 U.S.C. § 3553(b)(2)(A) (2015).

96. OFF. ATT’Y GEN. TEX., PENAL CODE OFFENSES BY PUNISHMENT RANGE 2 (Nov. 2015), <https://www.texasattorneygeneral.gov/files/cj/penalcode.pdf>.

been convicted of certain violent sexual offenses” that person shall receive a sentence of life in prison without parole.⁹⁷

As with any issue of this magnitude, there are those in favor of and those opposed to mandatory minimum sentencing. A 2014 Heritage.com article discusses the differences between the two sides of the mandatory minimum debate.⁹⁸ The article points out that those who are against mandatory minimums argue that mandatory minimums put too much power in the hands of prosecutors because the length of the sentence and the mandatory minimum is based on the crime with which the prosecutor chooses to charge the offender.⁹⁹ They further argue that a one-year sentence has the same deterrent effect as a five-year sentence, and that the real deterrent effect comes from a desire not to be arrested.¹⁰⁰ According to those who are against mandatory minimums, the related sentence does not really enter into the calculus of a person considering whether to commit a crime, and, as such, long minimum sentences do little to deter crime.¹⁰¹

Those in favor of mandatory minimums argue that legislatures are generally in a much better position to determine the appropriate punishment for a crime than is a judge.¹⁰² Proponents of mandatory minimums claim that leaving too much power in the hands of a judge when it comes to sentencing leads to disparity in ranges of punishment for the same or similar crimes and sentences that are too lenient.¹⁰³ They also argue that mandatory minimums give prosecutors leverage in negotiating with offenders for information that could lead to the apprehension of more dangerous criminals. If a prosecutor has the power to change a charge from one with a twenty-five year mandatory minimum to one with a ten year mandatory minimum or no mandatory minimum, that offender may be willing to offer the state information that could lead to the apprehension of a more dangerous person.¹⁰⁴ Finally, supporters remind detractors that, while the cost of housing criminals may increase with mandatory minimums, the decreased cost to victims, as a result of fewer offenders being on the streets, must also be taken into consideration.¹⁰⁵

If society is truly concerned about the impact RSOs have on a community, from both a public safety and fiscal perspective, the primary

97. *Id.* at 5.

98. Evan Bernick & Paul J. Larkin, Jr., *Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms*, Legal Memorandum No. 114, HERITAGE FOUND. (Feb. 10, 2014), http://thf_media.s3.amazonaws.com/2014/pdf/LM114.pdf.

99. *Id.* at 3.

100. *Id.* at 4.

101. *Id.* at 3.

102. *Id.* at 4.

103. *Id.*

104. *Id.* at 5.

105. *Id.*

defense should not be severe post-incarceration restrictions, like banishment zones, but instead should be to pass laws that keep sex offenders off the streets for longer periods of time. This reduces the amount of RSOs available to negatively impact property value and property tax revenue, while at the same time giving the offenders the time and treatment they need to have the best shot at rehabilitation. While this solution may seem harsh to some, the far reaching social and economic effects of sexual crime, not to mention the impact sexual crime has on the individual victims, warrant the harshest treatment available.

IV. CONCLUSION

As the Berger article suggests, the real problem with implementing any of these strategies to regain revenue for taxing districts is the fact that the taxing districts themselves lack the authority to implement or repeal the registration laws that are costing them millions of dollars in property value each year.¹⁰⁶ Additionally, laws like the Home Rule Amendment make it difficult for local entities to pass laws aimed at protecting property values, like banishment-zone laws, if those laws do not mesh with the policy position that the state's legislature has taken regarding RSOs.¹⁰⁷ Accordingly, the local, state, and federal governments will have to work together to reach a solution that satisfies their respective interests regarding the monitoring of RSOs and the generation of revenue through property taxes.

To that end, on the local level, taxing districts could adjust their appraisal criteria to account for the presence of RSOs, or lack thereof, in a particular area. In Texas, this change is directly within the purview of the taxing districts.¹⁰⁸ As noted above, this solution will both accurately reflect the value of homes in the more economically disadvantaged areas and increase taxes on the more affluent areas where RSOs tend not to reside. The net increase in revenue would allow taxing districts to reinvest in those economically disadvantaged areas and potentially allow the property values in those areas to recover over time.

At the same time, states and the federal government could decrease the number of RSOs available to negatively impact property values by increasing the minimum sentences for sex offenders. This solution will

106. BERGER, *supra* note 39, at 24.

107. *See Doe v. City of Lynn*, 36 N.E.3d 18, 23 (Mass. 2015) (holding the city's regulation of sex offenders violated the "Home Rule Amendment" to the Massachusetts state constitution which prevented a municipality from passing a law that contradicted the policy goals of the state legislature); *see also* David Warren, *More Than 20 Texas Towns Repeal Sex Offender Residency Law*, ASSOCIATED PRESS (Feb. 8, 2016), <http://www.edgemedianetwork.com/index.php?ch=news&sc=crime&sc3=news&id=193134&pf=1> (explaining that some Texas cities are having to repeal municipal sex offender ordinances due to the fact that implementing such ordinances violates the "Home Rule Amendment" in the Texas state constitution).

108. TEX. TAX CODE ANN. § 23.01(a)–(b) (West 2016).

likely increase the cost of incarceration since sex offenders will be in prison longer. However, voters are more likely to be willing to pay increased incarceration costs, a cost felt by all taxpayers, rather than personally take the hit on the value of their residence and potentially become a victim of a sex crime because of an RSO in the area.

Until the local, state, and federal governments are willing to make some changes regarding the RSO issue, citizens will increasingly feel the effects of the presence of RSOs in their neighborhoods through decreased property value, and, potentially, through a reduction in the government services property tax revenue is intended to cover. As of now, the cost has not been great enough to cause the citizenry to call for the necessary changes, but given the current statutory scheme regarding RSOs; the availability of information regarding the location of RSOs and the fact that there seems to be a proliferation of sex related crimes in our society, the presence of RSOs and their effect on property values and property tax revenue is only likely to increase over time. As such, governments need to act now to mitigate some of the effects RSOs produce in order to protect the future social and economic wellbeing of the communities that they govern.

