

Residency Restrictions:

Sound public policy?

League of Minnesota Cities

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Minnesota Department of Corrections

Aug 21, 2017

Offenders Among Us

Predatory offenders have always lived in our communities

It's likely they live, work, and interact in every community in Minnesota



Registration

Established July 1, 1991

- Administered by the Bureau of Criminal Apprehension (BCA)

Contents of registration:

- Addresses (primary, secondary, seasonal)
- Employment/volunteer organizations
- School/training programs
- Vehicles (owned or operated)

Registration

Registration is required if an offender is convicted, charged, or adjudicated delinquent for certain offenses. Those offenses include:

- Criminal sexual conduct
- Sexual conduct involving a minor, including child pornography
- Kidnapping
- False imprisonment

Registration

As of January 1, 2017, there were approximately **17,800** people subject to predatory offender registration in Minnesota

Community Notification

Established January 1, 1997

Minn. Stat. § 244.052

Community Notification

Applies to:

- Predatory offenders released from prison
- Predatory offenders from other states or federal jurisdiction who were released from prison (including military)
- Civilly committed offenders

Does not apply to:

- Juvenile offenders (unless certified as an adult)
- Offenders sentenced to probation

Community Notification

Department of Corrections

- Responsible for assessing risk and assigning risk levels

Law Enforcement

- Responsible for community notification
- Scope of notification based on assigned risk level

Risk Factors

- Predatory offense sentences
- Felony sentences
- Harassment/stalking/violations of orders for protection
- Recent disorderly conduct
- Age at release
- Unsupervised release
- Completion of chemical dependency *and* sex offender treatment
- Sentences with male victims
- Offense committed in a public place

Risk Levels

Level 1—Lower Risk

- Law enforcement may notify other law enforcement agencies
- Law enforcement shall notify victims and witnesses of the offense
- Adult household members

Risk Levels

Level 2—Moderate Risk

- In addition to Level 1 notifications, law enforcement may notify individuals or organizations likely to be victimized based on the offender's particular offense pattern

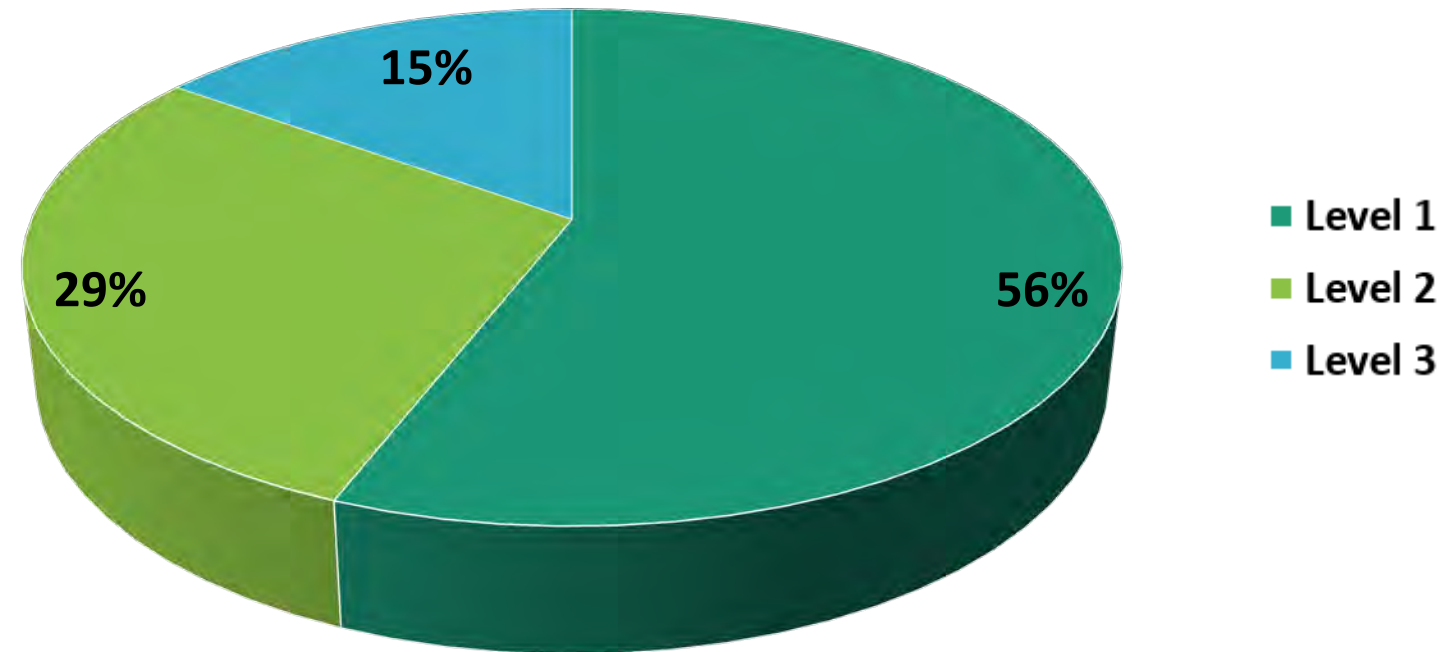
Risk Levels

Level 3—Higher Risk

- Broad public notification
- DOC public website
- Public community notification meeting
- Media (newspaper, radio, television, etc.)
- Agency website
- Social media
- Door-to-door flyers

Risk Levels

As of January 1, 2017



Level 1:
5,298

Level 2:
2,751

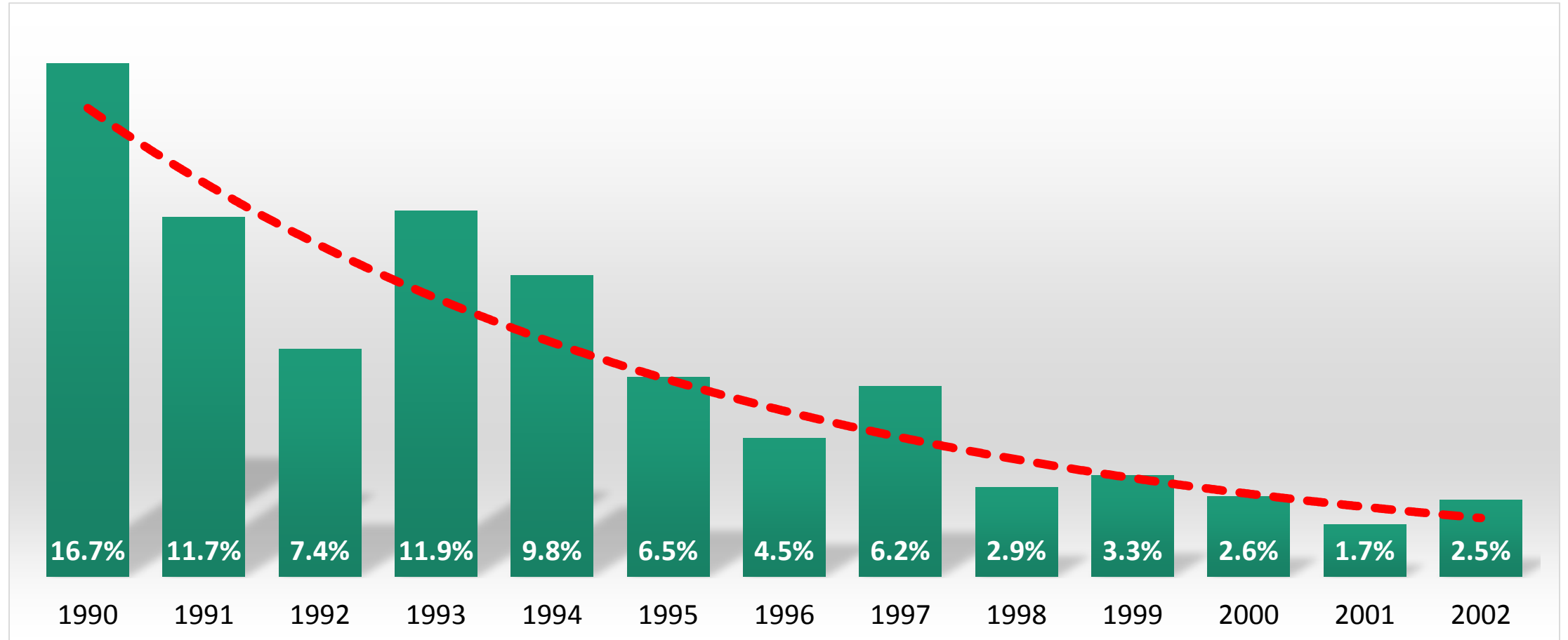
Level 3:
1,424

Total:
9,473

Those Subject to Broad Notification

As of August 10, 2017, there were **397** registrants subject to broad public notification living in Minnesota communities

Recidivism Study (2007)



(Minnesota Department of Corrections, 2007)

Recidivism Study (2012)

2,535 sex offenders released between 2003 and 2006

4-year look back

Sexual reconviction rate was **3.3%**

Residency Restriction Study (2007)

- 3,166 offenders released between 1990-2002
- 224 sexual reoffenses
- Residency restrictions would not have prevented any of these offenses

Not one of these offenses was related to the offender's residential proximity to a school, daycare, or park

Reality

**Prison for Minn. man who made
porn using kids in his home for
day care**

Star Tribune
April 26, 2015

**Therapist pleads guilty to criminal
sexual conduct with teen client at
Totem Town**

Pioneer Press
July 19, 2016

**St. Paul teacher charged with
criminal sexual conduct after
allegedly groping student**

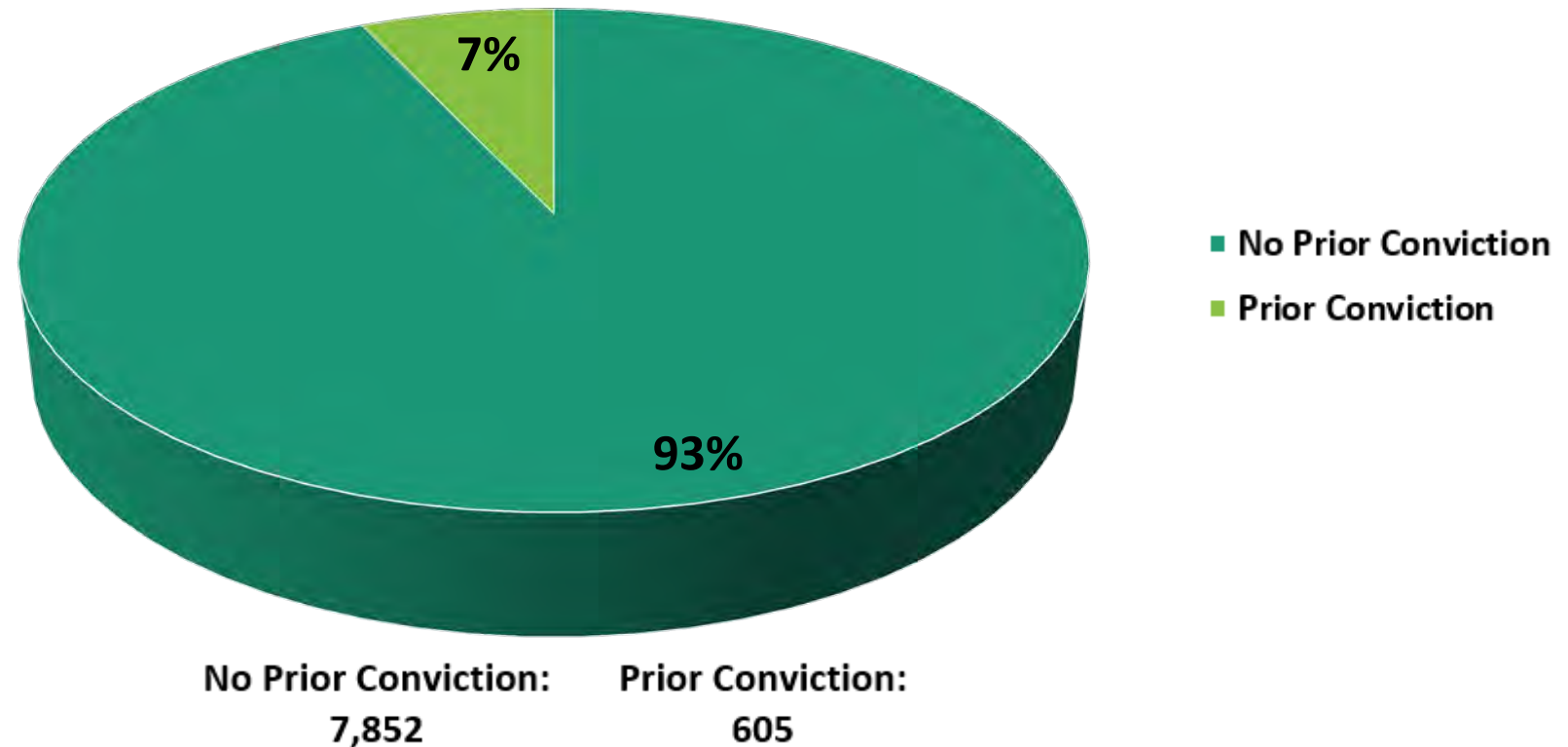
Star Tribune
June 1, 2015

**Charge: Bemidji assistant principal
posed online as 13-year-old to
lure kids for sex**

Star Tribune
March 25, 2017

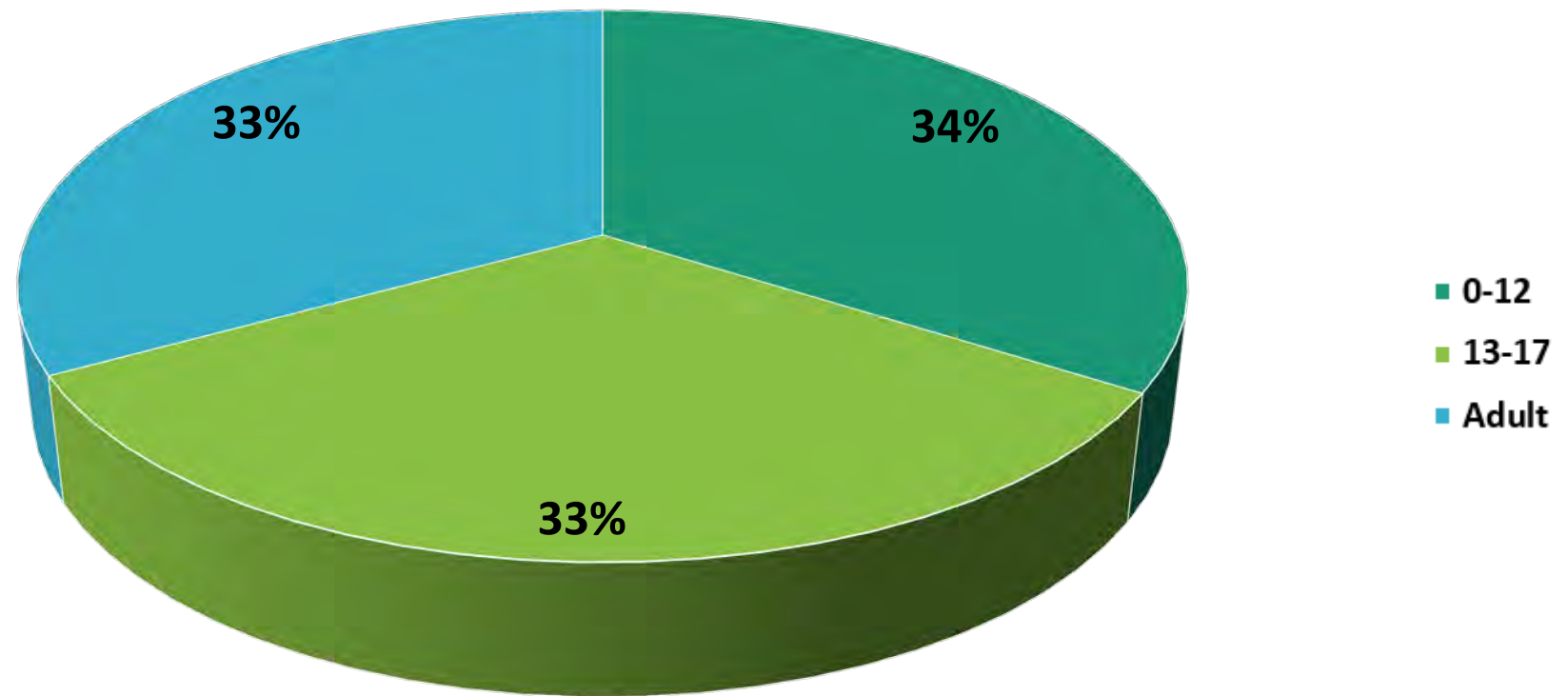
Who's Most Likely to Offend Next?

Criminal Sexual Conduct Convictions in Minnesota 2000-2014



(Minnesota Sentencing Guidelines Commission, 2015)

Victim/Offender Relationship



(Minnesota Department of Corrections, 2012)

Sexual Violence Prevention

The Three 90's

- 90% do not reoffend
- 90% known to victim
- 90% not previously convicted

The Two R's

- It's about ***relationship*** not ***residence***
- Social proximity is more important than geographic proximity

Evidence from Duluth, MN

In June 2010, Duluth enacted residency restrictions for Level 3's

At the time of enactment, there were **9** Level 3's living in Duluth

- *None of them were homeless*

In October 2016, there were **12** Level 3's living in Duluth

- *2 homeless*
- 3 in transitional housing
- 3 in private flop houses
- 4 in private residences/apartments

Evidence from Duluth, MN

51 total felony-level convictions for criminal sexual conduct during the three years before and after enactment

- **22** before
- **26** after
- **3** overlapped

18.2% increase in convictions after ordinance

10.4% increase throughout the state

Evidence from Duluth, MN

Committed by:

- Level 1, 2, or 3.....**0 (0%)**
- Registered offender.....**1 (2%)**
- Not previously registered.....**50 (98%)**
- Family member or acquaintance.....**44 (86%)**
- Someone who traveled 2,500 feet or less to establish contact with victim near school, park, or daycare.....**1 (2%)**

(Collins, 2016)

Smith v. Doe, 538 U.S. 84 (2002)

At issue: Is the Alaska sex offender registration and notification statute *ex post facto*?

Justice Anthony Kennedy in the opinion upholding registration and notification noted that, “*offenders subject to the Alaska statute are free to move where they wish and to live and work as other citizens.*”

Justice Clarence Thomas in his concurrence noted that criminal punishment and thereby an *ex post facto* issue should only be determined by “*the analysis of the obligations actually created by [ordinance].*” The Alaska statute did not impose restrictions.

Doe v. Miller, 405 F.3d 700 (8th Cir. 2005)

At issue: Is the Iowa residency restriction statute *ex post facto*?

- No demonstration that housing options weren't available. Restrictions only around schools and daycare centers. Non-urban areas still available for residency. 23% of the housing in one county was unrestricted—most being farm houses or in towns without schools or daycare facilities. Since residency options existed, no *ex post facto* issue.
- State decision by the legislature, reviewed and approved by the governor. The state has discretion to make determinations affecting the public good.

People v. Diack, 26 N.E.3d 674 (N.Y. 2015)

At issue: Does state law preempt local ordinances?

“When the State has created a comprehensive and detailed regulatory scheme with regard to the subject matter that the local law attempts to regulate, the local interest must yield to that of the State in regulating that field. We hold that the State’s comprehensive and detailed statutory and regulatory framework for the identification, regulation and monitoring of registered offenders prohibits the enactment of a residency restriction law such as Local Law 4.”

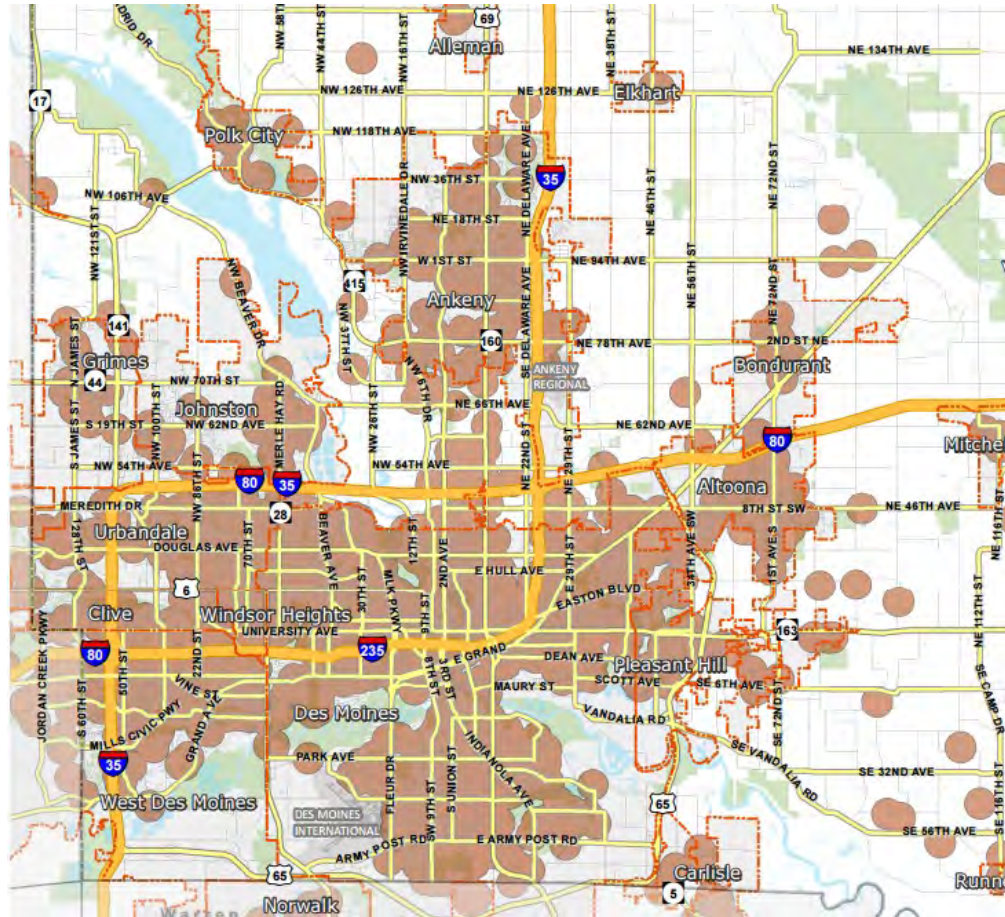
Affirmed Restrictions

- Residency restrictions affirmed by state and federal courts have been statewide restrictions. Court rulings based on the state's ability to preempt local ordinances which created a confusing patchwork of inconsistent requirements.
- All residency restrictions have a limited reach and must allow real options somewhere in the state.
- Consistently, statewide restrictions have forced offenders into less populated areas of the state, primarily in sparsely settled suburban and rural areas.

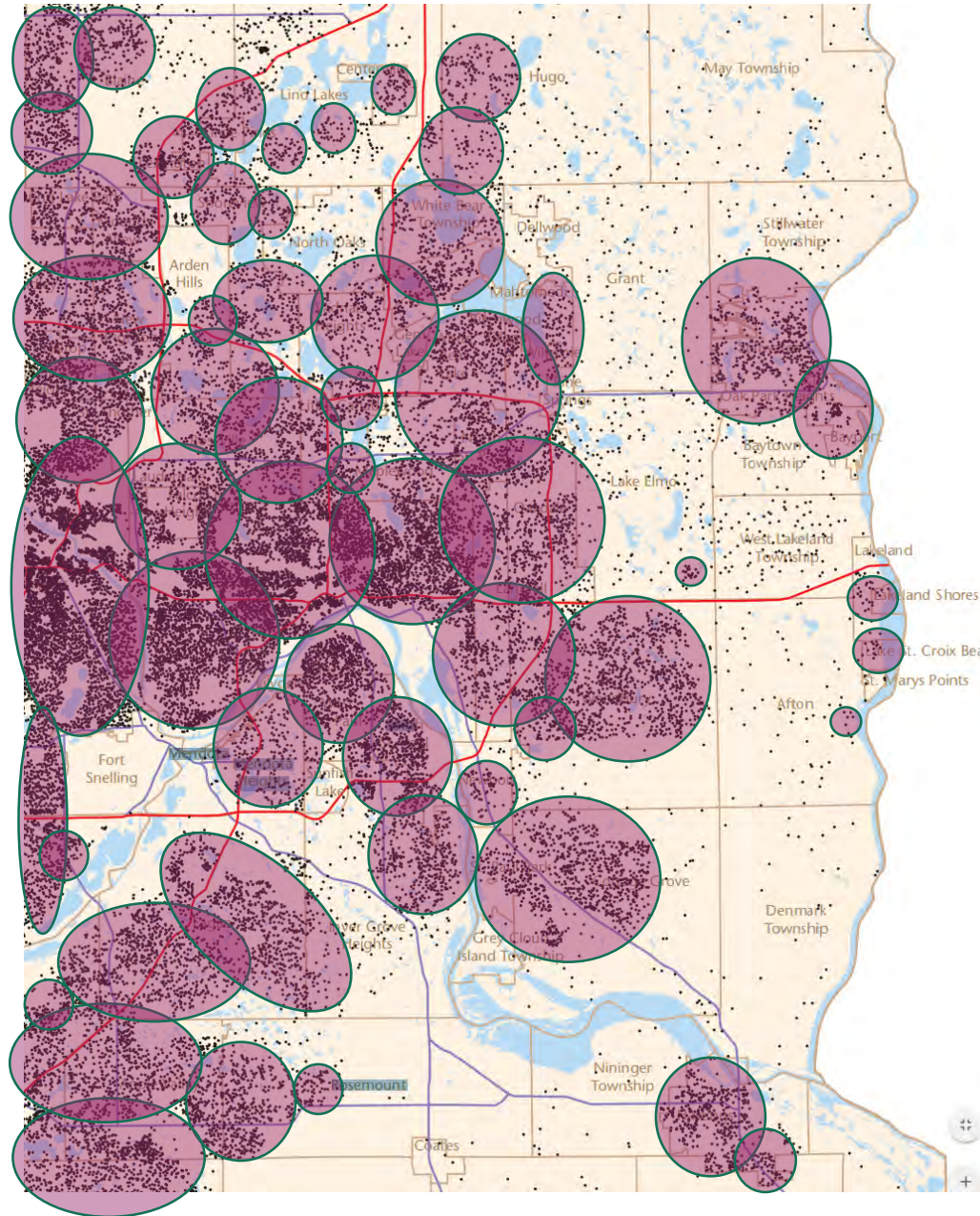
Unintended Consequences

- Homelessness and non-compliance have increased in states that limit residency to less-populated areas
- Rural and suburban areas in the outer range of metropolitan areas would expect to receive offenders forced out of St. Paul, Minneapolis, and other densely populated areas. Iowa is a good example.

Des Moines, IA



Brown areas represent restricted areas. Residency available only in less-populated suburban communities.



**Directive to move if
restrictions in place.**

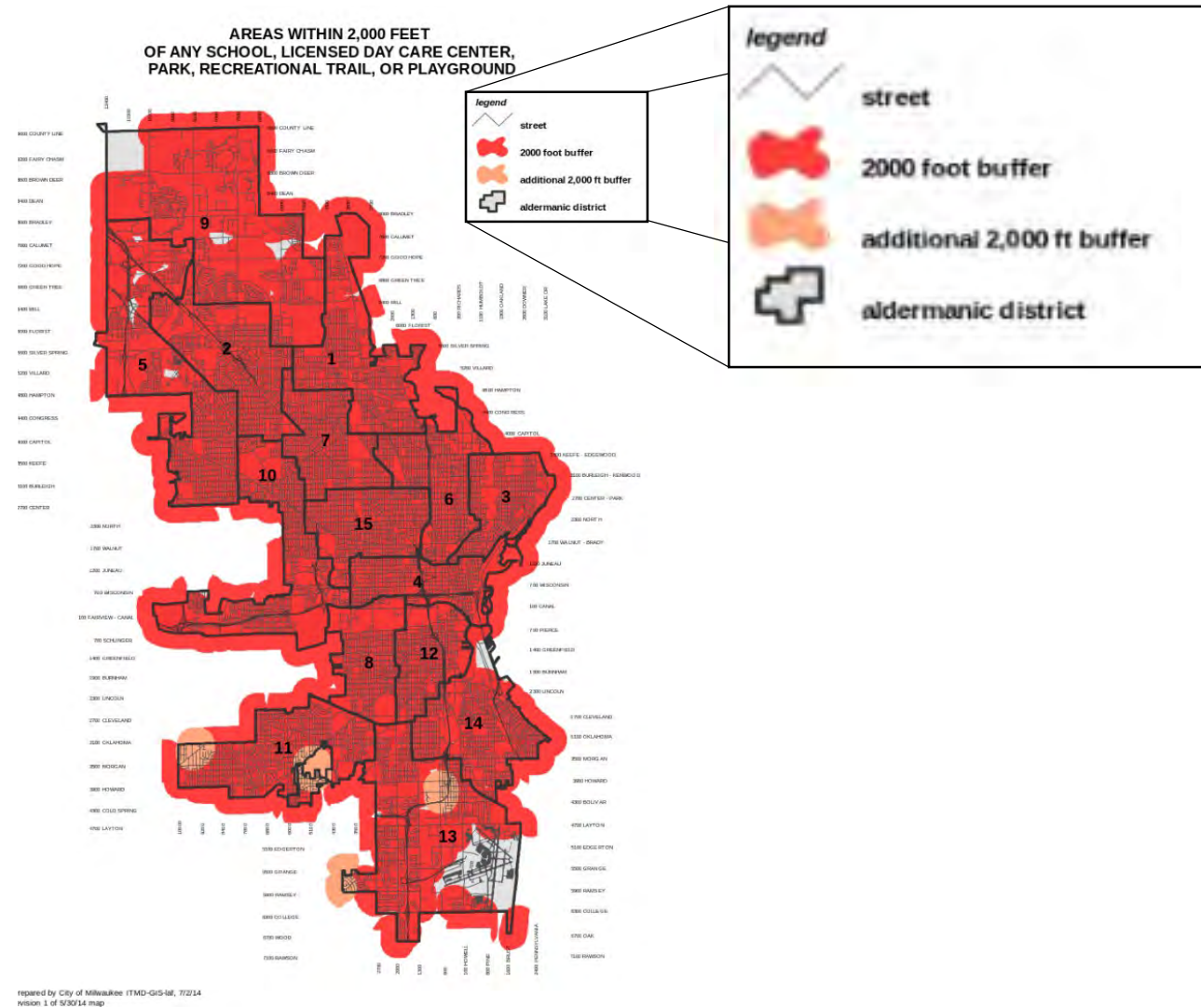
North Dakota Statewide Restriction: 500' from schools

- Rep. Lisa Meier, the main sponsor said the offender's presence put parents and students *"on guard a little bit and gave them a real uneasy feeling."*
- The lone dissenting vote against Meier's bill came from Rep. Luke Simons, R-Dickinson who said several representatives approached him after the vote and told him they wished they could have voted with him. *"But they were afraid the news media would have ripped them up too much,"* he said. *"It's such an unpopular opinion that nobody wants to talk about."*

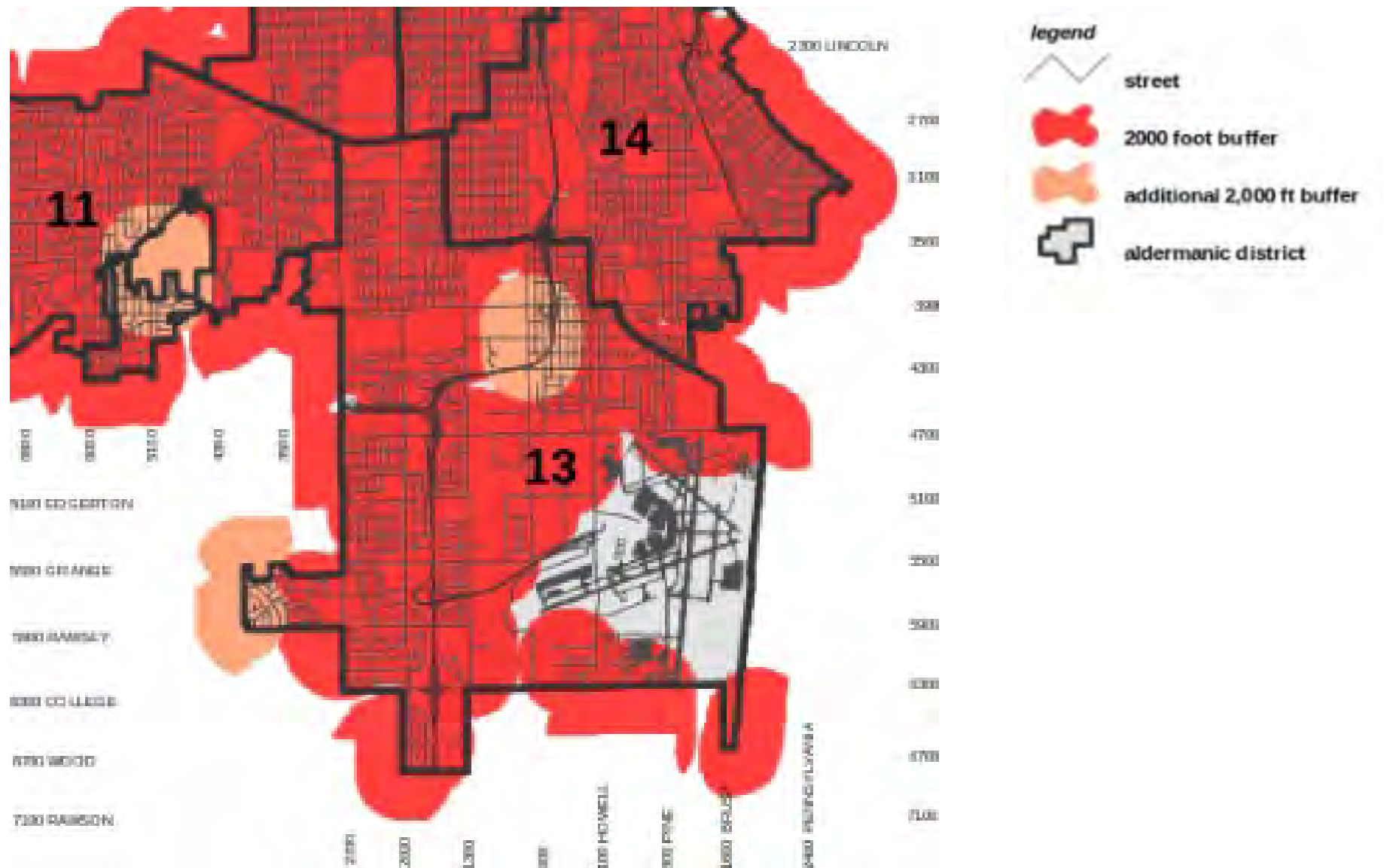
Despite research, ND lawmakers OK bill keeping high-risk sex offenders from living near schools



Milwaukee, WI



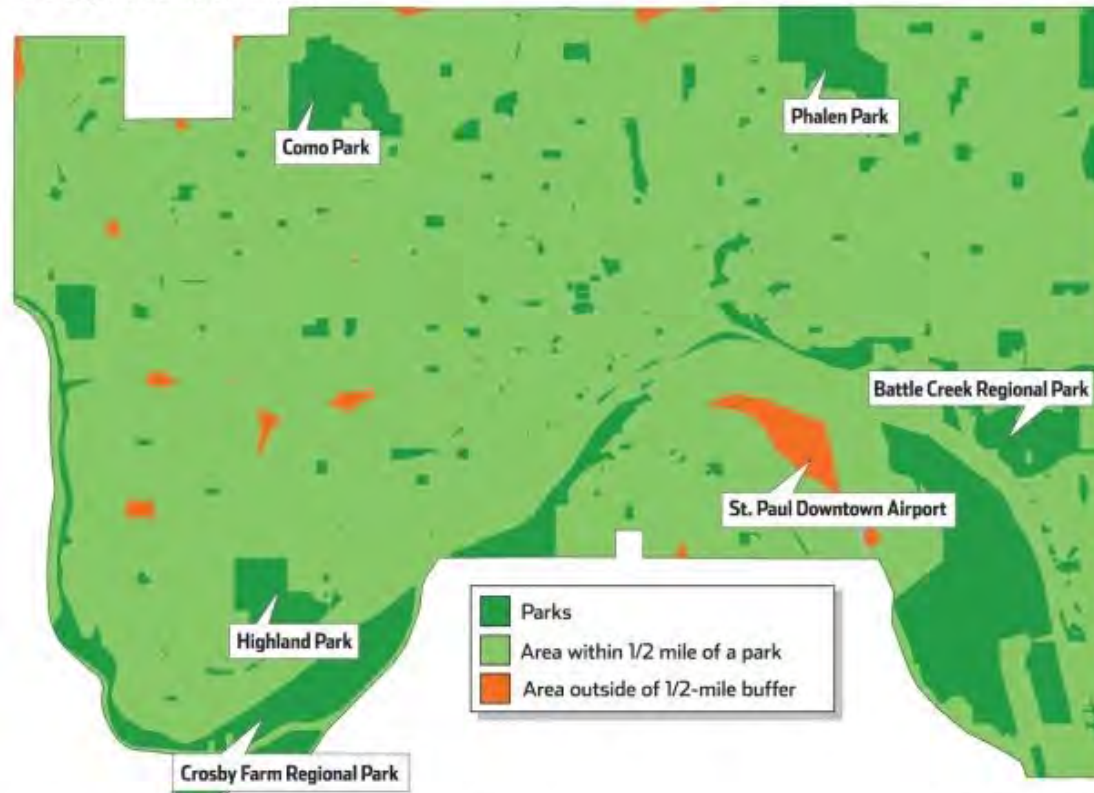
Milwaukee, WI



St. Paul, MN—*Parks Only*

Bill would limit where sex offenders would live

A proposal would limit how near to parks Level 3 sex offenders could live. While the bill doesn't mandate a specific distance for the buffer, if such a buffer were a half-mile (2,640 feet), 97 percent of the city would be off limits.

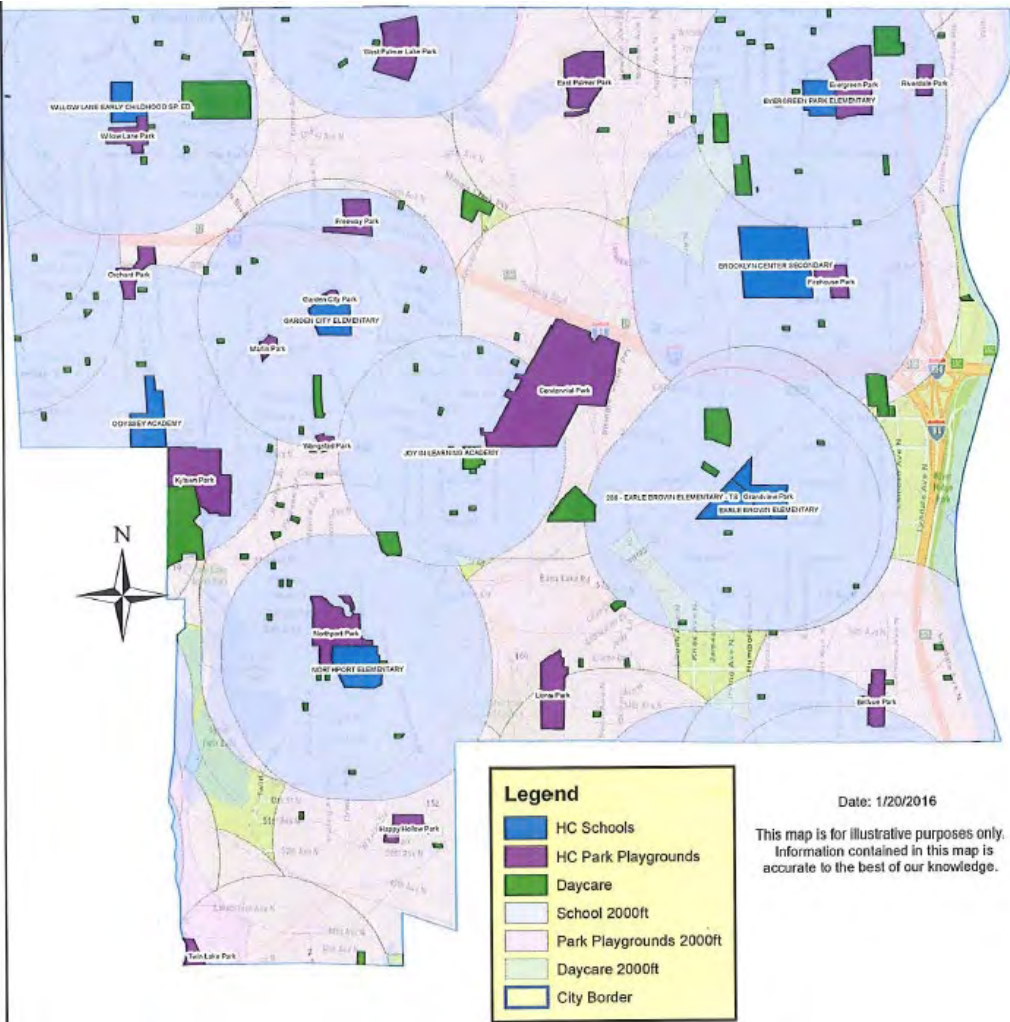


Source: Ramsey County and the City of St. Paul

PIONEER PRESS

- St. Paul—97% of all properties are within a half-mile of a park
- Minneapolis—95% of all properties are within a half-mile of a park
- Adoption of this limited ordinance either by state statute or local proliferation would force all targeted registrants out of the metropolitan area and into suburban and rural Minnesota

Brooklyn Center, MN



- Areas depicted in bright red are available for L3 residency



In re Taylor, 60 Cal.4th 1019 (2015)

At issue: Constitutionality of Jessica's Law (2,000' buffer school/park)

The court ruled unanimously in favor of four parolees who sued San Diego County, holding such restrictions *“hamper, rather than foster, efforts to monitor, supervise and rehabilitate,”* bore *“no rational relationship to advancing the state’s legitimate goal of protecting children,”* and infringed on the parolees’ *“basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive.”*

Miami Beach, FL Ordinance (2005)

Sec. 70-400. Findings and Intent.

(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

- ***Findings:*** *A statement or document containing an authoritative decision or conclusion.*
- This language, which is inaccurately labeled as “findings,” has been appropriated and used in every Minnesota ordinance to date. Absolutely no basis for this language as it relates to the context of Level 3 offenders in Minnesota.

Miami Beach Preempted County Ordinance

TO: Mayor Matti Herrera Bower and
Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager



DATE: February 4, 2010

SUBJECT: **Miami-Dade County Ordinance No. 10-01 Regarding Sexual Offenders and Predators**

The purpose of this LTC is to advise the Mayor and City Commission of Miami-Dade County Ordinance No. 10-01 (attached), which was adopted by the Miami-Dade Board of County Commissioners on January 21, 2010, regarding residency restrictions for sexual offenders and predators. This ordinance preempts all municipal ordinances relating to residency restrictions, and establishes a "child safety zone."

The effect of the ordinance is the repeal of the City of Miami Beach's residency restriction ordinance, which prohibits residency by sexual offenders and predators within 2,500 feet of schools, child care facilities, and parks. Residency restrictions in Miami Beach are governed by the Miami-Dade County Ordinance as of January 31, 2010. The County Ordinance is not as strict as the City Ordinance since the prohibition on residency by sexual offenders and predators is only within 2,500 feet of a school, not child care facilities and parks.

“Designated Offender” in MN

Taylors Falls (2006)

Subd. 1 **Designated offender** means any person who has been convicted of a designated sexual offense, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, or has been categorized as a Level III sex offender under Minnesota Statute § 244.052 or successor statute.

Grand Rapids (2011)

- (1) *Designated offender* means any person who has been convicted of a designated sexual offense, regardless of whether adjudication has been withheld, and who has been categorized as a Level III sex offender under Minn. Stat. § 244.052 or successor statute.

West St. Paul (2016)

Predatory offender means any person who is required to register as a predatory offender under Minn. Stat. § 243.166, or has been convicted of a designated sexual offense, regardless of whether the adjudication has been withheld, in which the victim of the offense was less than sixteen (16) years of age. However, the terms do not include persons required to register based solely on a delinquency adjudication.

Newport, MN (March 2017)—2,000'

FACILITIES FOR CHILDREN: All public parks, parkways, park facilities, parkland, public or private schools, designated public school bus stops, libraries, group homes, foster homes, day care and child care facilities, public recreation centers, non-profit or commercial recreation centers, public or private playgrounds, public or commercial swimming pools, public beaches, youth centers, athletic fields used by children, crisis centers or shelters, care facilities for children's skate park or rink, movie theaters, bowling alleys, facilities for children's clubs, e.g. scouting, public recreational areas and trails including conservation areas, jogging trails, hiking trails, walking trails, bicycle trails, Offices for Child Protective Services, places of assembly, and specialized schools for children, including but not limited to, tutoring, gymnastics, dance and music schools.

Conclusions

The most powerful and often the single argument in support of residency restrictions is that they **reduce recidivism** by keeping potential victims **safe and apart** from offenders.

However...

- Only a fraction of the offending population is known to the criminal justice system
- Level 3 offenders represent **2%** of all known predatory offenders
- In **90%** of all sexual abuse cases, the offender had an established relationship with the victim or was entrusted to the care of a child by parents
- Residency restrictions isolate offenders, create homelessness, cause non-compliance with registration, and prevent offenders from living with supportive family members within restricted areas
- Social proximity is far more predictive than geographic proximity

What is the Solution?

