

Sex Offenders in the Digital Age

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With most youths now using the Internet and social networking sites (SNSs), the public has become increasingly concerned about risks posed by online predators. In response, lawmakers have begun to pass laws that ban or limit sex offenders' use of the Internet and SNSs. At the time of this article, 12 states and the federal government have passed legislation attempting to restrict or ban the use of SNSs by registered sex offenders. These laws have been successfully challenged in 4 states. In this article, we discuss examples of case law that illustrate evolving trends regarding Internet and social networking site restrictions on sex offenders on supervised release, as well as those who have already completed their sentences. We also review constitutional questions and empirical evidence concerning Internet and social networking use by sex offenders. To our knowledge, this is the first paper in the psychiatric literature that addresses the evolving legal landscape in reference to sex offenders and their use of the Internet and SNSs. This article is intended to help inform forensic mental health professionals who work with sex offenders on current concerns in this rapidly evolving legal landscape.

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The use of social networking sites (SNSs) by young people has increased dramatically with the widespread availability of Internet access on computers and mobile devices. According to the Pew Research Center, it is estimated that in 2015, 92 percent of all teens (13–17 years) in the United States went online daily, with 71 percent of online teens using more than one SNS, such as Facebook, Twitter, or Instagram.¹ Teens are also sharing more information about themselves on SNSs, with most users uploading photographs of themselves, posting their school names, interests, birth dates, and other identifying data.²

This increased use of technology has come with rising public consciousness regarding technology-initiated crimes against minors, as suggested by the popularity of television programs, such as *To Catch a Predator*. The typical online sex offender is commonly portrayed in the media as one who uses SNSs to identify and abduct victims, discovering their whereabouts by exploiting sites' GPS locators or posts containing personal information.^{3,4}

In response to this perceived threat that has been propagated through the media, lawmakers have be-

gun to pass legislation in an attempt to protect youths from online predators. The first laws included restricting minors' access to SNSs at schools and libraries⁵ and requiring sex offenders to provide all Internet identifiers (e.g., screen names, e-mail addresses, and social networking profiles) to the National Sex Offender Registry.⁶ More recent legislation prohibits registered sex offenders from accessing SNSs altogether. However, these sweeping restrictions have been the subject of legal challenges on several different grounds.

This article will identify relevant current statutes and discuss examples of case law that illustrate trends and controversies regarding Internet and SNS restrictions on sex offenders on supervised release and those who have served their sentences. It will also review constitutional issues and empirical evidence concerning Internet and social networking use by sex offenders. To our knowledge, this is the first paper in the psychiatric literature that addresses the evolving legal landscape in reference to sex offenders and their use of the Internet and networking sites.

Review of the Literature, Case Law, and Statutes

A search of the psychiatric and psychological literature was performed to find what empirical evidence is available in regard to Internet and SNS use in the commission of sex crimes against minors. To identify relevant case law and statutes, we performed a search

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of the LexisNexis legal database using the terms “sex offender” within the same paragraph as “social network” or “social media” or “Internet.” Relevant case law results were Shepardized to find subsequent appellate history and other citing sources. Resulting statutes were further narrowed to existing codes and examined on the state and federal levels. Results were cross-referenced by reviewing federal and state sex offender registry statutes. To identify new or changing statutes, an e-mail alert was set up to send notifications of news articles containing combinations of the words “sex offender” within the same paragraph as “social networking” or “social media” from August 2015 to April 2016. Select examples of case law have been chosen to illustrate trends and controversies regarding Internet and SNS restrictions on sex offenders on supervised release and those who have served their sentences but remain on sex offender registries. Our review of case law and statutes has been restricted to the United States, and thus may be only partially relevant in other countries.

Sex Offenders on Supervised Release

Laws imposing restrictions on sex offenders’ use of the Internet and SNSs differ depending on whether the offender has completed his sentence, or whether he is on probation, parole, or another form of supervised release. Federal and state laws allow courts and parole authorities to impose a variety of restrictions on sex offenders following incarceration. These entities are generally afforded broad discretion in determining the conditions of probation and parole, though the conditions must be related to achieving certain goals, such as rehabilitation, deterring future criminal activity, or protection of the public.^{7,8}

Some courts have imposed bans on Internet⁹ and computer use by sex offenders on supervised release.⁷ Federal appellate courts have most often considered Internet bans for individuals convicted of possession of child pornography. Under the Sex Offender Registration and Notification Act,¹⁰ those who have been convicted of crimes involving child pornography are required to register as sex offenders. However, even in cases of child pornography offenses, appellate courts have found that these mandated Internet restrictions must be reasonably related to an individual’s crime and not more restrictive than is necessary to achieve the state’s goals. This trend in rulings is illustrated by *United States v. Freeman*,¹¹ in which the defendant, a convicted child molester,

pleaded guilty to receipt and possession of child pornography and was sentenced to 70 months’ imprisonment. As a condition of his supervised release, he was banned from accessing the Internet or possessing computer equipment. Mr. Freeman ultimately appealed to the United States Court of Appeals, Third Circuit, which found that the district court had erred in imposing a restriction that was “overly broad; it involved a greater deprivation of liberty than is reasonably necessary to deter future criminal conduct and to protect the public” (Ref. 11, p 392).

In general, the appellate courts have not upheld such sweeping bans on Internet usage unless the individual has been convicted not only of child pornography possession, but also has used the Internet to engage in direct exploitation of children.⁷ In some instances, appellate courts have allowed bans on Internet usage by sex offenders if the ban contains exceptions (e.g., if the ban allows an offender to use the Internet only when specifically approved by a probation officer or when used for employment).¹² Federal appellate courts have increasingly struggled with balancing two opposing views: that such bans protect society, particularly children, from sex offenders against opposing reasoning that the Internet has become a virtually indispensable basic freedom of all people in society, including convicted criminals.¹³

As Internet bans have faced challenges in the courts, legislators in several states have passed narrower laws that ban SNS use by sex offenders on supervised release. Although SNSs use the Internet to allow subscribers to maintain profiles and communicate with one another, such bans are more limited in scope than restricting the Internet as a whole.⁷ Illinois, Minnesota, New Jersey, Texas, New York, and South Carolina currently have statutes that specifically prohibit sex offenders on supervised release from accessing SNSs. Such laws have been challenged with plaintiffs arguing that such restrictions violate the First Amendment of the constitution.¹⁴ However, at the time of this article, these statutes have not yet been challenged successfully (Table 1).

Sex Offenders Who Have Completed Sentences

Sex offenders who have been released from prison may enjoy more constitutional freedoms than those who are on probation, parole, or supervised release. However, those offenders required to register their sex offender status still must obey certain conditions

Table 1 Jurisdictions With Statutes Limiting Sex Offenders' Social Networking Site Use

Statute Content	Jurisdiction
Social networking sites may access information contained in government registry	Federal, ¹⁵ Florida, ¹⁶ New York, ¹⁷ Texas ¹⁸
Prohibits all sex offenders from using social networking sites, regardless of whether sentence completed/no longer on any form of supervised release	Indiana, ^{19*} Kentucky, ²⁰ Louisiana, ^{21†} Nebraska ^{22*} North Carolina ^{23‡}
Sex offenders on supervised release prohibited from accessing social networking sites	Illinois, ²⁴ Minnesota, ²⁵ New Jersey, ²⁶ New York, ¹⁷ South Carolina, ²⁷ Texas ¹⁸

* Law successfully challenged.

† Law successfully challenged, new law in place.³⁴

‡ Law successfully challenged, later upheld on appeal.²⁹

such as community notification and residency restrictions. At the time of this article, eight states and the federal government have laws that place some form of restriction on the use of SNSs by all sex offenders, regardless of whether they have completed their sentences. Some states have passed laws banning sex offenders from using SNSs altogether. Others require registrants to list their sex offender status on online profiles or allow SNSs access to sex offender registries. In addition, although all sex offenders are required to disclose Internet identifiers to the authorities upon registration, such reporting requirements have been successfully challenged in four states.

The Supreme Court has not yet evaluated the constitutionality of laws restricting Internet and SNS use. However, several federal district courts have reviewed these statutes, particularly with regard to violations of First Amendment rights.⁷ The following examples have been chosen to illustrate the different approaches lawmakers have used to restrict Internet and social networking use by sex offenders, and to illustrate how such laws have been successfully challenged on various constitutional grounds.

In *Doe v. Nebraska*, two plaintiffs challenged the constitutionality of the 2009 amendments to the Nebraska Sex Offender Registration Act. The amendments required sex offender registrants to disclose their online identifiers and profiles to law enforcement and to consent to warrantless searches of personal computers and installation of monitoring software onto their devices. Sex offenders were also

banned from using any “social networking website, instant messaging, or chat room service” (Ref. 22, p 1119) that could be accessed by minors. Ultimately, the court determined that these statutes severely limited the use of the Internet and were unconstitutional on the basis of the First Amendment, the Due Process Clause, the Ex Post Facto Clause, and the Fourth Amendment. The appellate court took issue with the statute’s definition of terms such as “instant messaging” services, and questioned whether text messaging would fall under the umbrella of instantaneous messaging. Thus, the statute was in violation of the Due Process Clause, for vagueness. The statute’s allowance for warrantless searches and monitoring of computers belonging to sex offenders who were no longer on court-monitored supervision was found to be in violation of the Fourth Amendment protection against unreasonable search and seizure. Citing statistics demonstrating the exponential increases in use of SNSs in recent years, the court stated that the “ban precludes the offenders described in the statute from an enormous portion of the Internet to engage in expressive activity” (Ref. 22, p 1111). In addition, the ban was found to be “not contingent upon the past use of the banned utilities to prey upon minors” (Ref. 22, p 1111) and therefore not narrowly tailored enough to address the specific conduct that was proscribed. Nebraska’s requirement that sex offenders disclose all online identifiers was also found facially unconstitutional, as it would trigger a broad “consent to search,” thus removing the right to anonymous online speech. Furthermore, the court found that the Nebraska statute violated the Ex Post Facto Clause as it was punitive toward offenders who had been already served their sentences or were convicted before its passage.

Requiring sex offenders to publish all Internet identifiers was also challenged in *Doe v. Harris*.³⁰ In 2012, California voters passed Proposition 35 (also known as the Californians Against Sexual Exploitation Act), which increased prison terms for human traffickers and required human traffickers to be registered as sex offenders. The act also required registered sex offenders to provide a list of all “Internet identifiers established or used,” and a list of all “service providers used by the person.”³¹ Under the act, “Internet identifiers” were defined as e-mail addresses and any identifiers used in Internet forum discussions, chat rooms, instant messaging, and social networking. Registered sex offenders would be

required to send written notice of additions or changes to Internet identifiers to law enforcement agencies within 24 hours.³¹

Immediately after the act was passed, an injunction was issued on the provisions in the act pertaining to the disclosure of Internet identifiers. The Ninth Circuit Court of Appeals ultimately affirmed the district court's decision. While recognizing the state's legitimate interest in preventing sexual exploitation and sex trafficking, the court found that the act "unnecessarily chills protected speech" (Ref. 30, p 578). The court ruled that although the statute attempted to narrowly define Internet identifiers and Internet service providers, ambiguities in their definitions and within the statute itself would lead sex offenders to either overreport their activities or limit their use of the Internet because of their difficulty in understanding what exactly they must report. Thus, the statute was not narrowly tailored to address the state's goal of protecting minors. The court also found that registrants' fears over how law enforcement might use their Internet identifiers would lead to unnecessary deterrence from engaging in anonymous online speech. In addition, the 24-hour reporting requirement was found to be unnecessarily onerous and overbroad, as it:

... applies to all registered sex offenders, regardless of their offense, their history of recidivism (or lack thereof), or any other relevant circumstance If for example a sex offender establishes a username on a news outlet's website for purposes of posting comments to news articles, it is hard to imagine how speedily reporting that identifier will serve the government's interests [Ref. 30, p 582].

The court cited *Doe v. Nebraska* and statutes struck down in Utah³² and Indiana¹⁹ in support of their ruling. Utah, California, Georgia,³³ and Nebraska have had successful challenges of statutes requiring disclosure of Internet identifiers to the government. After being challenged in Utah, the statute was amended to eliminate password disclosure requirements and restrictions were placed on the state's ability to share offenders' information with the public. Subsequent challenges to the revised statute were unsuccessful.³⁴

In 2012, New Jersey lawmakers introduced Senate Bill No. 2142. The bill, which did not pass the house, would have required that state sex offender registrants using SNSs indicate on their profiles their sex offender status, a notice of the crimes for which they were convicted, the jurisdiction of conviction, a physical description of themselves, a residential ad-

dress, and a link to the offender's profile on the state's Internet sex offender registry.³⁵ This law was modeled after a similar statute passed in Louisiana,²⁸ where legislators had first attempted to pass a sweeping prohibition of sex offenders from using social media that was struck down in 2012.²¹ These statutes serve as further examples of lawmakers' attempts to create newer legislation that would dissuade SNS use by registered sex offenders, while avoiding the constitutional questions that accompany outright bans. Critics of such laws have argued that sites such as Facebook already have policies that ban sex offenders from joining,³⁶ making these statutes redundant. In addition, such laws would be potentially unenforceable, given the ease with which anonymous accounts can be created on such sites.³⁷

In November 2015, North Carolina's Supreme Court upheld a 2008 law³⁸ banning all registered sex offenders from using social networking websites.²⁹ This reversed a 2013 decision³⁹ made by the court of appeals, which had ruled that the law was overbroad and vague. The North Carolina Supreme Court ruled that the burden imposed upon convicted sex offenders was "narrowly tailored to serve a significant governmental interest" (Ref. 29, p 746) and still allowed for such communications as e-mail and texting.²⁹

The case law examples above illustrate a continued trend of states passing legislation aimed at limiting sex offenders' use of the Internet and social media via a variety of different mechanisms: outright bans, stricter reporting requirements for online identifiers, and required posting of sex offender status on all online profiles. However, such statutes have faced rejection by the courts, most often on the basis of First Amendment rights.

Trends and Epidemiology of Online Sex Offenses

Internet-facilitated sex crimes represent a heterogeneous group of offenses that vary from exchange of child pornography, to locating potential victims for abuse, engaging in inappropriate sexual communication, or corresponding with other individuals with a sexual interest in children.⁴⁰ Available estimates of the prevalence of Internet-initiated sex crimes against youths vary, but data suggest that these crimes may be increasing in frequency. A 2006 survey of a nationally representative sample of local, state, and federal law enforcement agencies in the United States

estimated 503 arrests for sex crimes involving minors and SNSs in some way.⁴¹ SNSs were used to initiate relationships and to communicate with or to disseminate information or pictures of the victims. They were also used to look at pictures of victims or access information about them, such as likes or interests, and home or school locations. A small number of cases involved an offender attempting to contact friends of the victim or to distribute child pornography. Most of the arrests resulted from undercover operations in which the police portrayed minors online. Similarly, the National Juvenile Online Victimization (N-JOV) Study collected information from a national sample of law enforcement agencies, and reported an estimated 844 arrests of online predators (those who used the Internet to meet their victims) in 2009.⁴²

The Growing up with Media survey of 1,588 youth aged 10 to 15 years found that 15 percent of respondents reported unwanted sexual solicitation online in the last year. Unwanted sexual solicitation was defined as “when youth[s] are asked to engage in sexual talk or sexual behavior or to provide personal sexual information when they do not want to” (Ref. 43, p 351). Four percent of respondents in the study reported an incident occurring on an SNS, specifically.

The Child Exploitation and Online Protection Centre (CEOP) in the United Kingdom receives reports from approximately 1,000 children each year concerning online sexual victimization by adults. The 2013 CEOP summary⁴⁴ of all the 1,145 online child sexual exploitation reports indicated that 13 and 14 year olds represent the largest victim group, with female victims constituting 80 percent of the reports. In addition, SNSs were the most commonly reported offending environment, followed by instant messaging and chat. The researchers found that the number of reports of online child sexual exploitation (described as communication between an adult and a child for the purposes of sexual exploitation) had fallen by more than 25 percent between 2011 and 2012. Two thirds of reports to the CEOP described an attempted contact by an adult that had failed because of the victim’s vigilance.

A study of three separate cross-sectional national telephone surveys of youthful Internet users found the prevalence of online sexual solicitation was 2 percent among 10 to 12 year olds, 8 percent among 13 to 15 year olds, and 14 percent among 16 and 17 year

olds in 2010. However, the data also indicated a decline in unwanted sexual solicitation over the period of 2000 to 2010, decreasing from 19 percent to 9 percent of youth Internet users surveyed.⁴⁵ This and the CEOP report data suggest that Internet platform security and protective adaptations aimed at educating youths about Internet safety may have been successful in reducing sexual solicitation. Of those receiving solicitations online, a minority are pursued offline, with 3 percent of youths aged 10 to 17 reporting aggressive solicitations in which offline contact was attempted or made. It remains difficult to relate findings on online sexual solicitation to offline sexual abuse based on a lack of available data.

Although most sexual abuse of youths is perpetrated by persons known to the victim,⁴⁶ the public tends to focus attention on so-called stranger danger. Indeed, the concept of who is considered friend or stranger continues to evolve with social media and expanding social networks.⁴⁷ The 2010 EU Kids Online survey⁴⁸ studied European youths aged 9 to 16 and found that, in the past year, 30 percent had made contact with an individual they did not already know. The survey found that nine percent of youths had actually gone to see someone whom they had met online; however, this was more common with teenagers than with younger children. These findings were compared with the Net Children Go Mobile 2014 survey⁴⁹ of European 9 to 16 year olds, which indicated a decrease in children making online contact with someone they did not know in person. The survey’s authors hypothesized that awareness-raising efforts on the risks posed by strangers online have been effective.⁵⁰

Characteristics of Online Sex Offenders

Laws restricting sex offenders from the Internet and SNSs seek to protect minors, and are often driven by certain conceptions of sexual predators propagated by news media. However, popular stereotypes of sex offenders may not necessarily be based on empirical evidence. Available evidence indicates that the common public perception of online offenders as violent strangers and pedophiles who use deception to lure and abduct victims is generally false.⁵¹ Online child molesters are generally not pedophiles, as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).⁵² That is, they are generally not sexually attracted to prepubescent children. Rather, they tend to be adult men

who attempt to seduce underage adolescents into sexual encounters by gaining trust and developing intimate relationships with their victims, a process commonly referred to as “grooming.” Motivations for pursuing sexual relationships with adolescents may vary from seeking admiration, desire for power and control, or fear of adult partners. Danger and excitement in seducing underage youths may also play a role for some offenders.⁵¹ Deception about the offender’s age is uncommon, and most victims are aware that they are speaking with an adult. Online child molesters are among the minority of offenders who abduct or assault victims, but rather attempt to develop relationships with victims while attempting to pursue the relationships offline.⁵¹

Although laws have been passed that treat sex offenders as one entity, data suggest that there are differences between types of sex offenders. Some states require sex offender registration for individuals whose crimes are nonviolent sex offenses that have little or nothing to do with children or the Internet. These may include crimes such as exposing genitals in public, public urination, or consensual sexual activity between teenagers.⁵³ There is evidence suggesting that child pornography offenders are a subgroup of sex offenders who possess different characteristics compared with contact offenders. Those convicted of child pornography crimes tend to be professionals, with higher levels of education and more stable work and relationship histories. This group is also at a lower risk for committing a contact sexual offense. Meanwhile, child pornography offenders who commit contact offenses tend to have lower educational and vocational achievement. These dual offenders score higher on measures of antisociality and have a higher likelihood of recidivism.⁵⁴

Despite the focus on passing laws for registering and regulating known sex offenders, comparisons of offenders who met their victims online versus those who knew victims in person before the Internet-related offense has shown that online-meeting offenders were less likely to have criminal backgrounds.⁵⁵ In addition, the type of crimes committed by offenders who met victims online did not differ significantly from those who knew the victims in person. Most offenses committed by both types of offenders were statutory rape or non-contact offenses, such as child pornography or sexual solicitation.⁵⁵ The N-JOV study demonstrated an increase in perpetrators using technology as

part of the offense from 2006 through 2009. However, most offenders who used technology to facilitate sex crimes against youths were not strangers and already met their victims.⁴²

Discussion

Internet trends and SNSs evolve at an extremely rapid pace. Data indicate that more youths than ever before are using the Internet and SNSs, and it is not uncommon for them to be sexually solicited online. However, studies have also shown that the stereotype of sex offenders as deceptive, violent predators using the Internet to lure and abduct strangers is largely unfounded. Nearly all sex offenses continue to be committed by individuals known to the victims,⁵⁶ rather than by strangers met online. Of those youths being solicited by strangers online, it is likely that only a small percentage are pursued offline. Based on public health survey data, researchers have suggested that efforts to educate children about online risks have been effective in reducing online and in-person contacts with strangers.^{44,50} Sex crimes committed by individuals known to the victim versus those met online tend to be similar. However, media coverage and high-profile cases have raised intense public concern about how sex offenders operate in the digital age.

Legislators have attempted to keep up with technological advancements by enacting laws intended to protect the public, particularly youths, from online predators. Such statutes generally garner strong public support as they target a very unpopular group of individuals, who may already lack certain rights and privileges as a result of their sex offender status. States vary in what types of restrictions may be imposed during parole, probation, or supervised release. Registered sex offenders who have served sentences may still face legislation that limits their use of SNSs or requires strict reporting on Internet identifiers and activities. A review of the legal literature shows that multiple states have passed such laws in recent years, indicating a developing trend.

However, recent court rulings suggest that legislators should be cautious that their proposed laws are not overbroad in restrictions of freedom of association and speech, privacy protections, and *ex post facto* concerns. Such statutes have been successfully challenged in multiple states on these grounds, forcing lawmakers to more narrowly tailor the scope of their laws. Appellate courts have generally ruled that blan-

ket restrictions on Internet and social network use by all sex offenders, regardless of the nature of the offense or the use of this technology in the commission of the offense, are overbroad.

As discussed above, variations of laws restricting social networking use by sex offenders continue to be proposed. However, to our knowledge, no data have yet demonstrated that banning sex offenders from the Internet or SNSs actually reduces recidivism rates. In fact, research has shown that online-meeting offenders are less likely to have criminal backgrounds, and thus are not initially subject to these restrictions. It is possible that banning sex offenders from using social networking platforms such as LinkedIn, a resumé-sharing site, or from advertising a business on sites like Facebook or Twitter, may preclude them from being able to successfully reintegrate into society. This consequence could have the unintended effect of increasing some offenders' risk of recidivism by contributing to stress or homelessness. Proponents of these restrictions, however, argue that the laws have a deterrent effect and simply reflect common sense. Regardless, the courts have recognized the importance of the Internet and SNSs in society today, as they are increasingly viewed as a First Amendment right.⁷

The government has an obvious interest in protecting its citizens, but must pursue this interest without revoking basic rights of citizenship provided under the constitution. Ultimately, case-by-case approaches to Internet and SNS restrictions that take into account scientific data and individualized assessment of risk factors and criminal history will be more likely to pass constitutional muster than will sweeping bans. Lawmakers will be challenged to narrowly tailor the language of laws as social media continues to rapidly evolve, incorporating new platforms, such as mobile networks. With mobile applications such as Venmo, Snapchat, and Tinder, social networking is increasingly integrated into everyday activities such as banking, messaging, dating, and more.

Implications for Forensic Mental Health Professionals

Sex offender patients and evaluatees are often knowledgeable on the subject of the restrictions imposed on them. Forensic psychiatrists and other mental health professionals working with sex offenders should keep up to date with concerns related to the quickly evolving landscape of technology and

trends in legislation that follow. Furthermore, forensic mental health professionals should be able to distinguish fact from stereotypes regarding the ways in which sex offenders operate in an increasingly digitally connected world. Having knowledge on this subject allows forensic mental health professionals to communicate more effectively the actual risks posed by these offenders, and may have important public policy implications. It is important to recognize that sex offenders are a heterogeneous group. Different types of offenses may present different risks for recidivism. Forensic mental health professionals should inquire about the role of the Internet and SNSs in the commission of crimes, as this may play a role in conducting risk assessments or creating treatment plans with other disciplines, such as law enforcement.

This article also reveals areas for further research. Our literature review found no evidence that restrictions or bans on the Internet or SNSs have been effective in reducing sex offenses. Mental and public health professionals may continue to evaluate the efficacy of efforts to reduce online sex offenses, such as cyber-educational programs aimed at children and their parents. Such approaches may prove to be more effective than legislative attempts to ban whole groups of individuals from using technology. The development of new technologies and social media often outpaces the study of its use in the commission of crimes, which poses a unique challenge for further study. Ultimately, forensic mental health professionals and lawmakers should continue to use available evidence to find ways to protect the public while still protecting the rights afforded to all individuals under the United States Constitution.

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