

HOUSING SEX OFFENDERS IN EMERGENCY SHELTERS

A memorandum developed for the International Association of Emergency Managers Children in
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I. OVERVIEW: SHELTERING SEX OFFENDERS IN EMERGENCY SHELTERS

Natural disasters pose many problems to the communities they affect. Along with more common issues, such as how to protect infrastructure and whether to evacuate, there are less commonly discussed issues. One of these issues is where to house sex offenders in the event of an evacuation. Though previously an overlooked concern, after disasters such as Hurricane Katrina, more states have begun focusing on the problem. In fact, many states addressing the issue are doing so head-on, enacting statutes that mandate sex offenders are housed separately from the general population during evacuations. However, not all states are taking this stance, and the National Sexual Violence Resource Center has published recommendations to implement in shelters in which sex offenders are housed with the general public.

II. LESSONS LEARNED: WHAT CAN THE AFTERMATH OF HURRICANE KATRINA TEACH POLICY MAKERS ABOUT THE HOUSING OF SEX OFFENDERS?

After Hurricane Katrina hit in 2005, there was a subsequent tragedy as the number of sexual assaults rose sharply. Over the six months following the hurricane, 47 sexual assaults were reported to the National Sexual Violence Resource Center. This number is alarming, especially when the nature of reporting sexual assaults is taken into account, as many go unreported. Of these 47 reported assaults, nearly 31% of the attacks took place in an evacuation site or shelter.¹

At the same time the sexual assault numbers were on the rise, law enforcement was scrambling to locate displaced registered sex offenders.*² While some reports estimated that there were about 2,000 registered sex offenders among the other evacuees that fled the Gulf region,³ other reports stated the number was closer to 15,000.⁴ Many of these offenders were found residing in the emergency shelters with the general population, unbeknownst to law enforcement.⁵

¹ NAT'L SEXUAL VIOLENCE RES. CTR., HURRICANES KATRINA/RITA AND SEXUAL VIOLENCE: REPORT ON DATABASE OF SEXUAL VIOLENCE PREVALENCE AND INCIDENCE RELATED TO HURRICANES KATRINA AND RITA (2006), available at http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Reports_Report-on-Database-of-Sexual-Violence-Prevalence-and-Incidence-Related-to-Hurricane-Katrina-and-Rita.pdf

² *It is important to note that though these two issues occurred simultaneously, there have not been reports confirming a causal relationship between the two.

³ ASSOCIATED PRESS, *Feds: 2,000 Registered Sex Offenders Among Katrina Evacuees*, Fox News, Dec. 30, 2005, <http://www.foxnews.com/story/2005/12/30/feds-2000-registered-sex-offenders-among-katrina-evacuees.html>.

⁴ MSNBC, *Sex offenders scattered after Katrina*, NBC News, Sept. 9, 2005, http://www.nbcnews.com/id/9426538/ns/msnbc-countdown_with_keith_olbermann/t/sex-offenders-scattered-after-katrina/#.VjuduGAipFI.

⁵ Sarah Muench, *Lost sex offenders land here*, THE ARIZONA REPUBLIC, Nov. 1, 2005, <http://www.nlada.org/DMS/Documents/1130864036.3/1101katrinaoffenders01.html>.

The Louisiana Commission on Law Enforcement proposed possible solutions to the many problems encountered as a result of Hurricane Katrina, including suggestions regarding sex offenders.⁶ The Commission advocated that a plan needed to be developed to address the special population of sex offenders. The plan needs to include making a current State Sex Offender Registry available to any shelter organization and further procedures must be developed to enable law enforcement to track down offenders during the evacuation process.

Louisiana State's legislature determined the best way to keep track of the offenders and to protect the public during emergencies was to house sex offenders in separate emergency shelter facilities.⁷ The legislature further noted that this method would also protect sex offenders' own safety, as it will prevent retaliatory actions by other evacuees.

III. CURRENT TREND: THE MAJORITY OF STATES ARE CHOOSING TO IMPLEMENT MANDATORY SEPARATION LAWS AND SHELTERS

Though the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA) take the lead role in disaster response nationwide, these agencies have not published a stance on the issue. Instead, FEMA leaves the decision to state and local jurisdictions.⁸ Taking the initiative, some jurisdictions around the nation have enacted county or statewide policy and law. There are currently three different methods being implemented by these jurisdictions: notification, in-shelter separation if necessary, and independent shelters. Through the assessment of states with relevant laws in place, it appears that independent sheltering is becoming the most commonly used method.

Mississippi is an example of a notification state. As set out by Miss. Code Ann. §45-33-28, during a declaration of emergency, any registered sex offender that enters an emergency shelter must notify the management, the sheriff of the county, and the chief of police (where applicable) within twenty-four hours. The statute does not provide any information as to what should be done once the shelter is on notification.

The method that is becoming most commonly used in the jurisdictions with laws specifically written to address the issue of sex offenders in emergency shelters is creating requirements for sex offenders to be housed in separate shelters. In West Palm Beach, Florida, once registered sexual predators and offenders notify the individuals operating

⁶ JUDY MOUTON ET AL., *MANAGING CATASTROPHIC EVENTS: THE LESSON OF KATRINA* (2005), http://www.cole.state.la.us/programs%5Cuploads%5Ckatrina_managing.pdf.

⁷ Brian Skollogg, *Sex Offenders Segregated at Hurricane Shelters*, *The Associated Press*, July 14, 2006, <http://www.seattlepi.com/national/article/Sex-offenders-segregated-at-hurricane-shelters-1208969.php>.

⁸ Sudha Arlikatti et al., *Challenges for Multi-sector Organizations in Tracking and Sheltering Registered Sex Offenders in Disasters*, 9 *J. HOMELAND SECURITY & EMERGENCY MANAGEMENT* 1 (2012), available at http://www.researchgate.net/publication/262637447_Sheltering_Registered_Sex_Offenders_in_Disasters_2012.

the shelter, as required, the shelter managers shall assign the offenders to designated shelters. The statute, Ord. No. 4159-08, §2, 7-28-2008, further notes that a police chief may designate a public building, jail, or other correctional facility as temporary shelter for sex offenders.

Similarly, Louisiana has created a statewide statute, LA Rev. Stat. § 29:726, which states that during a state of emergency, a “registered sex offender shall not knowingly be housed or sheltered in the same area with other evacuees,” and “if possible, shall be provided shelter in an alternative shelter separate and apart from the general population.” This separate housing requirement also extends to after the state of emergency, and to FEMA funded housing.

In addition, Suffolk County, New York has enacted a local statute, §745-13, that provides that separate shelters may be established and used solely for housing sex offenders during a public emergency. Sex offenders are to be removed from general population shelters, when the shelter is notified of their presence, and transported to the sex offender shelter.

However, some jurisdictions allow offenders to be housed with the general population, but in separate areas, when separate shelters are not available. For example, Lee County, Florida requires that sex offenders report to pre-designated sex offender shelters and the government may use all or part of one or more public buildings, jails, or other correctional facilities as designated shelters. However, if one is unavailable, the sex offender must immediately upon entering a general public emergency shelter notify a law enforcement officer on duty and the individuals operating the shelter. In this case, law enforcement or shelter operators can house sex offenders in a specific location within the general public emergency shelter, where they must remain at all times.⁹

New York’s State legislature has even looked past the narrow scope of emergency sheltering and addressed the issue of housing sex offenders near children or other vulnerable populations in any circumstance. A proposed bill, the Klein Bill, §851-2015, would prohibit level two and level three sex offenders from living in temporary emergency housing and homeless shelters that are used to house families with children. Instead, the sex offenders would be restricted to adult-only shelters or those without children. This bill passed the State Senate unanimously in early 2015¹⁰ but is still pending approval.

⁹ LEE COUNTY, FLA. ORDINANCE 06-08.

¹⁰Jeffrey D. Klein, Ind. Democratic Conference Leader Senator, Address: State Senate Passes Klein Bill Banning Sex Offenders From Family Homeless Shelters (Jan. 26, 2015), *available at* <http://www.nysenate.gov/newsroom/press-releases/jeffrey-d-klein/state-senate-passes-klein-bill-banning-sex-offenders-family>.

IV. ARISING CONCERNS: HOUSING A SPECIAL POPULATION SEPARATELY RAISES BOTH UNIQUE AND TRADITIONAL CONCERNS

Though there are apparent policy justifications for housing sex offenders separately, there are also concerns. One of the main issues that may arise is in limiting shelters available to sex offenders, some offenders may actually be left without shelter. This issue has arisen in the availability of homeless shelters to sex offenders where offenders are denied access either under a general policy or because the shelter is within the restricted zones surrounding schools and parks. In Michigan, a case arose after a sex offender froze to death, as he was not able to find an overnight shelter because those in his area were within 1000 feet of a school or park. The court decided that sex offenders staying in overnight shelters, even those within 1000 feet of a school, did not violate residency restrictions, as the temporary stay did not constitute ‘residing’ in the shelter.¹¹

In California, the state’s Supreme Court deemed the state’s law banning sex offenders from living within 2,000 feet of a school or park unconstitutional as it severely restricted offenders’ ability to find housing and leaves many homeless.¹² A similar concern may arise with restricting sex offenders to separate shelters as the availability will likely be limited, and in the event of an emergency, may leave some offenders without shelter.

Another concern is the opposition states may face from the local communities in which these sex offender shelters are to be located. This concern was brought to light in a case that arose in Louisiana: *City of Baton Rouge Parish v. State*.¹³ The City of Baton Rouge disapproved of the designation of a center within its jurisdiction as a sex offender shelter in the event of a state of emergency. However, the court ruled that the state’s interest in protecting the general public during a time of emergency could not be effectuated through means other than the physical separation of sex offenders and the designation of the site as an emergency sex offender shelter.

Lastly, some civil rights advocacy groups have raised concerns about the new restrictions, including the American Civil Liberties Union (ACLU) of Florida. The ACLU believes the legislation should not be enforced as is, singling out sex offenders from all persons with criminal records. Other groups, like the Southern Center for Human Rights, believe there is a need to distinguish between the different types of sex offenders instead of making an all-encompassing policy.¹⁴ Though the American Red Cross (Red Cross), which traditionally runs most of the shelters in the nation, has not published its exact policy on the issue, this may be a factor the organization takes into account. In

¹¹ Poe v. Snyder, 834 F. Supp. 2d 721 (W.D.Mich. 2011).

¹²Maura Dolan, *California Justices Void Blanket Ban on Where Sex Offenders Can Live*, L.A. TIMES, Mar. 2, 2015, <http://www.latimes.com/local/california/la-me-court-sex-offenders-20150303-story.html>.

¹³ 2007-0005 (La. App. 1 Cir 9/14/07), 970 So. 2d 985.

¹⁴Brian Skoloff, *Sex Offenders Segregated at Hurricane Shelters*, The Associated Press, July 14, 2006, <http://www.seattlepi.com/national/article/Sex-offenders-segregated-at-hurricane-shelters-1208969.php>.

responding to reports that the organization allowed sex offenders in shelters, the Red Cross explained that there are procedures in place to handle the presence of sex offenders. Part of the procedure is to require all persons admitted to complete an intake form, which includes a question regarding whether the person is required to register with the state for any reason. If answered ‘yes,’ the individual must immediately speak to the shelter management. Further, if a shelter resident is identified as a sex offender, the shelter management works with local law enforcement to determine what is best for the safety of others in the shelter.¹⁵ Though they are required to identify as a sex offender, the Red Cross has not stated that this means immediate rejection, unless required by an applicable statute. Instead, the organization’s ethical imperative “to protect life and health, and ensure respect for all human beings without discrimination” may shed some light on their unpublished policy.¹⁶

V. RECOMMENDATIONS: IMPLEMENTING BEST PRACTICES WILL REDUCE INSTANCES OF SEXUAL VIOLENCE IN EMERGENCY SHELTERS

The National Sexual Violence Resource Center published a planning guide for preventing and responding to sexual violence during disasters.¹⁷ Though this guide recommended considering the establishment of separate emergency shelter sites for sex offenders, a larger portion focused on prevention recommendations to implement in emergency shelters if sex offenders were to be housed with the general population.

Many of the best practices outlined are seemingly easy security provisions to implement. These recommendations include:

- Limiting the shelter population to a manageable size (no more than 2,000 people)
- Ensuring sufficient electrical capacity to keep the shelter lit
- Ensuring comprehensive communication systems, both internal and external
- Providing private spaces for changing and personal hygiene practices
- Ensuring presence of adequately trained security personnel
- Enforcing a curfew and lights out period
- Creating separate sleep and habitation areas for females and males that wish to be separated

¹⁵ The American Red Cross, *Red Cross Responds to Inaccuracies in ProPublica and NPR Stories* (Oct. 29, 2014), <http://www.redcross.org/news/press-release/American-Red-Cross-Responds-to-Inaccuracies-in-ProPublica-and-NPR-Stories>.

¹⁶Sudha Arlikatti et al., *Challenges for Multi-sector Organizations in Tracking and Sheltering Registered Sex Offenders in Disasters*, 9 J. HOMELAND SECURITY & EMERGENCY MANAGEMENT 1, 13 (2012), available at http://www.researchgate.net/publication/262637447_Sheltering_Registered_Sex_Offenders_in_Disasters_2012.

¹⁷NAT’L SEXUAL VIOLENCE RES. CTR., PREVENTING AND RESPONDING TO SEXUAL VIOLENCE IN DISASTERS: A PLANNING GUIDE FOR PREVENTION AND RESPONSE (2008), available at http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Guides_Sexual-Violence-in-Disasters_A-planning-guide-for-prevention-and-response_0.pdf.

These practices, and many others outlined in the guide, should be implemented in shelters that house sex offenders *and* those that don't to prevent any sexual violence.

Further, upon entrance, all evacuees and workers should follow safety intake measures. This includes registering as they enter and receiving a wristband or photo ID that is required for entering and exiting the shelter. All persons should also turn in all weapons upon intake and partake in periodic headcounts.

Finally, the guide specifically lays out sex offender protocol. A sex offender should immediately report their status upon entering an emergency shelter and check in with security staff at regular intervals. The shelter should keep a list of registered sex offenders on hand to cross check when evacuees enter. This will allow the shelter to identify offenders that don't self-identify. Lastly, as stated before, local and state governments should consider establishing separate emergency shelter sites for sex offenders.

VI. CONCLUSION: THE TREND OF HOUSING OFFENDERS SEPARATELY CONTINUES TO GROW, WHILE FACING OPPOSITION, AS THE STATES' PRIMARY CONCERN IS PUBLIC SAFETY

Hurricane Katrina sparked debate regarding the safety and security of emergency shelters in disasters. After an increase in sexual assaults and the scramble to locate sex offenders after the hurricane, the need to examine emergency sheltering for sex offenders became apparent. For a growing number of states, mandatory housing of sex offenders in separate shelters provides the best solution to take in protecting the general public and preventing the issues seen in the aftermath of Hurricane Katrina. Sex offenders are either mandated to report to the separate shelters, or are mandated to report their status to the management of general population shelters where they are then removed from and placed in separate housing, if available. However, the trend of housing sex offenders separately is met with some opposition from civil rights advocacy groups and legal concerns, including the constitutionality of targeting one group of persons, and more specifically, one group of offenders. Until these concerns are resolved, the National Sexual Violence Resource Center has issued guidelines to assist shelters in maintaining a safe environment for all evacuees, the ultimate concern for emergency shelters.