RUNNING HEAD: SEX OFFENDER LEGISLATION

Efficacy and Constitutionality of Sex Offender Legislation – At What Price Perceived Safety?

Melanie Cabrera, MA

Abstract

One of the most hotly debated topics between and amongst the psychological and legal communities is how to manage high-risk sex offenders effectively. In 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was enacted by Congress requiring states to create registries to maintain the addresses of sex offenders (Levenson, D'Amora, & Hern, 2007). In 1996, Congress amended the Wetterling Act to include public notification. Community notification, known as Megan's Law, alerts residents of sex offenders moving to or living in their neighborhood. Since Megan's Law, several states have placed residency restrictions upon sex offenders, which forbid them from living within a certain distance from a school, daycare, or other places where children gather. The Adam Walsh Act adds mandatory minimum sentencing and further pressure upon states to maintain registries with complete profiles of offenders. Little research has been done to determine the efficacy of community notification and registration laws (Levenson, D'Amora & Hern, 2007). However, an emerging area of research lies in the negative impact sex offender laws have on the sex offenders, their friends and their families (Levenson et al, 2007). Moreover, there is indication the laws may be unconstitutional (Agudo, 2008). The purpose of this research is to 1) explore whether the laws are making us safer, 2) examine the negative effects on sex offenders, family and friends, and 3) examine the constitutionality of the laws. Research will indicate the laws have not had their intended effect, but instead have produced collateral damage. Further, there exists serious doubt regarding the constitutionality of the laws.

Efficacy and Constitutionality of Sex Offender Legislation – At What Price Perceived Safety?

Introduction

One of the most hotly debated topics between and amongst the psychological and legal communities is how to manage high-risk sex offenders effectively. In 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was enacted by Congress requiring states to create registries to maintain the addresses of sex offenders (Levenson, D'Amora, & Hern, 2007). In 1996, the Wetterling Act was amended to include public notification. Community notification, known as Megan's Law, alerts residents of sex offenders moving to or living in their neighborhood. Since Megan's Law, several states have placed residency restrictions upon sex offenders, which forbid them from living within a certain distance from a school, daycare, or other places where children gather.

Little research has been done to determine the efficacy of community notification and registration laws (Levenson, D'Amora & Hern, 2007). However, an emerging area of research lies in the negative impact sex offender laws have on the sex offenders, their friends and their families (Levenson et al, 2007). Moreover, there is indication the laws may be unconstitutional (Agudo, 2008). The purpose of this research is to 1) explore whether the laws are making us safer, 2) examine the negative effects on sex offenders, family and friends, and 3) explore the constitutionality of the laws. Research will indicate the laws have not had their intended effect, but instead have produced collateral damage. Further, there exists serious doubt regarding the constitutionality of the notification laws.

History of legislation

In 1989, 11-year old Jacob Wetterling of Minnesota was abducted from his small neighborhood. Although the case remains unsolved, the parents speculated a convicted sex offender was responsible for the crime. The parents became advocates for policies allowing law enforcement to track the whereabouts of convicted sexual offenders so they could be quickly apprehended should they reoffend. In 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was enacted by Congress requiring states to create registries to maintain the addresses of sex offenders (Levenson et al 2007)..

In 1994, Jesse Timmendequas, a convicted sexual offender, brutally raped and murdered seven-year-old Megan Kanka in Hamilton, New Jersey, sparking national outrage (Zgoba, Witt, Dalessandro, & Veysey, 2008). As a result, in 1996, Congress amended the Wetterling Act to include public notification. The law, known as Megan's Law, requires that the community be notified of registered sex offenders living or working in their communities. States provide information via a website and, in some cases, via a mailing to residents' homes, which include the offender's name, address, crime information, and photograph. The premise was that an informed community is better able to take protective measures to keep their children safe from sexual predators. Since the enactment of Megan's Law, twenty-two states have passed ordinances or laws placing some form of residency restriction on convicted sexual offenders (Nieto et al, 2006). The restrictions prohibit sexual offenders from living within 500 to 2500 feet of schools, daycare centers, or other places where children tend to congregate.

In 2005, the Jessica Lunsford Act was enacted in Florida following the brutal murder of nine-year-old Jessica (Nieto, Jung & Leno, 2006). A repeat sex offender, John Couey, abducted Jessica from her home and raped her at least twice before burying her alive. Jessica's law, now

being replicated in other states, requires a mandatory minimum sentence of 25 years in prison and lifetime monitoring of persons convicted of sexual battery of a child under the age of 13 (Nieto et al, 2006).

In 2006, Adam Walsh Child Protection and Safety Act was signed into law mandating a federal registry requirement, minimum sentencing requirements for sexual offenses, and made failure to register a federal crime. There is no longer a statute of limitations for any sexual offense (Marain, 2010). Under the Adam Walsh Act Tier I, or low risk, offenders must maintain their registration for 15 years, which can be reduced to 10 years. Tier II, or moderate risk, offenders must maintain their registration for 25 years. Tier III, or high risk, offenders must maintain their registration for life, which can be reduced to 25 years (Marain, 2010). The offender must petition the court on the 10th, 15th, or 25th year to be released from registration requirements. A psychologist must perform an assessment on the individual and provide a comprehensive risk assessment report to the court based on the assessment. If the offender has not committed an offense and is otherwise not deemed a risk, he is released from the requirement. Failure of any state to implement the law results in a ten percent loss of Byrne grant funding (Bonnar-Kidd, 2010).

Data collection methodology

To identify the articles and studies to be used, the author focused on the keywords "SORNA", "Sex Offender Law", "Megan's Law", and "Adam Walsh Act" Other keywords included "constitutionality" and "collateral damage". The reader is urged to be cognizant that most studies and articles chosen were originally designed for purposes other than that of this report. As a result, the author is limited by the original researcher's selectivity in choosing their sources. Any articles written prior to 1997 were excluded. Each article located through the

PsycNet, PsycArticles, ProQuest Psychology Journals, and Google Scholar was analyzed for relevancy. Studies not yet replicated were excluded to minimize false inference. For the analysis of constitutionality, recent court matters were located via LexisNexis.

Literature Review

Therapeutic jurisprudence: effects of legislation on offenders

Therapeutic jurisprudence, as defined by Winick (1998), is a "field of social inquiry that focuses on law's healing potential" (p.506). Law has the ability to help or hinder the mental health and psychological well-being of those it affects. For example, competency to stand trial, as defined by the United States Supreme Court in *Dusky v US* and most state jurisdictions, dictates the defendant must have "sufficient *present* ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of proceedings against him" (Melton, Petrila, Poythress, & Slobogin, 2007, p.127 [emphasis added]). The *Dusky* standard ensures justice is imparted only to those able to understand the nature of the crime and why they are being punished. "It is not 'due process of law' to subject an insane person to trial upon an indictment involving liberty or life" (Melton et al, 2007, p.126). Persons found incompetent undergo treatment in an effort to restore competency (i.e. enhance mental well-being). Another example of therapeutic jurisprudence may be found within the court structure. Drug courts have the ability to refer offenders for treatment, thereby promoting the offender's psychological well being. Family courts may require mediation of family disputes or child custody hearings.

Sex offender registration and notification laws (SORNA laws) do appear to have some therapeutic effect on certain offenders. Levenson and Cotter (2005) found that many of the offenders in their study found the law to be motivational. The offenders felt the need to prove

they were not sexual predators, had served their time, and were changed people. Other offenders felt the notification process reduced their access to victims because of the increased public awareness and were thankful for the additional risk management tool. Finally, some offenders indicated that Megan's Law forced them "to be honest with others in a way that had not previously been possible for them, and that honesty resulted in support" (Levenson & Cotter, 2005, p.62). In their replication of Levenson and Cotter's 2005 study, Levenson, D'Amora, and Hern (2007) found that nearly three quarters of the participants agreed that community notification provided additional motivation to prevent reoffense. Participants reported that the law forced them to be honest regarding their crimes, an important factor in rehabilitation. However, the participants did not see the law as preventing access to children, increasing public safety, or that the law otherwise prevented recidivism (Levenson et al, 2007). Caldwell, Ziemke, and Vitacco (2008) share the therapeutic jurisprudence view yet acknowledge notification laws need be revisited to reduce harm to the offenders.

Numerous studies have outlined the negative effects of sex offender laws on rehabilitation and overall well-being of offenders. A reoccurring theme in many self-report studies is that positive change is hopeless. A societal misconception is that sex offender treatment is largely ineffective. However, "many studies report a highly selective process at intake, accepting only those men who are deemed most suitable for the program" (Barbaree & Marshall, 1998, p. 271). For example, certain programs exclude persons who exhibit violence, are psychotic, have addiction problems, an extensive nonsexual criminal history, counterproductive attitudes, poor motivational levels or are otherwise "grossly inadequate" (as cited in Barbaree & Marshall, 1998, p. 271). Thus, we cannot say with certainty just how effective treatment programs are, as they tend to exclude those who need treatment most.

Treatment for sexual offenders must be based on individual needs. Nonetheless, the societal perception is that the sex offender population is homogenous – with disastrous results. As one offender in Levenson and Cotter's 2005 study states,

> "I thought of suicide because I felt people were talking bad about me. Some people want for me to die. That's what this law is about, to cause enough stress on the offender so he will take his own life" (p. 59)

Stress is a reoccurring theme in many studies. Offenders worry about effects on their family, who are not responsible for their crimes, vigilantism, and effects on employers (Loss, 2010). In Levenson, D'Amora, and Hern's (2007) study, 62% of offenders reported the law makes recovery more difficult due to the stress. Humiliation, isolation, vigilantism, property damage, physical harm, loss of employment, and loss of residence all contribute to the registered sex offender's stress levels and hinder treatment.

In a 2000 study of 30 registered sex offenders in Wisconsin, 77 percent reported harassment and threats (as cited in Human Rights Watch, 2007). In Levenson, D'Amora, and Hern's (2007) study, almost a quarter of the participants reported that neighbors harassed them as a result of the notification. Many offenders reported isolation as a result of community notification (Human Rights Watch, 2007; Levenson et al, 2007; Levenson & Cotter, 2005; Winick, 1998).

In other instances, community members have moved beyond mere threats to acts of vigilantism, despite the disclaimer within Megan's Law that the registry cannot be used to threaten or harass sex offenders (Bonnar-Kidd, 2010). In one study, ten percent of participants had been physically assaulted and eighteen percent reported property damage as a result of notification (Levenson et al, 2007). Some offenders paid the ultimate price for having their names on a sex offender registry. In Michigan, one offender was beheaded and burned by a group of teenagers (Bonnar-Kidd, 2010). In Tennessee, the wife of a sexual offender perished

after neighbors set their house on fire (Bonnar-Kidd, 2010). In 2006, a man traveled from Canada murdered two sex offenders in Maine after collecting their information from Maine's sex offender registry (Bonnar-Kidd, 2010). When apprehended, he had thirty-two more names on his list.

In addition to stress regarding their own safety, registered sex offenders need be concerned about losing basic human needs due to loss of employment and their homes. Twenty-one percent of the offenders in Levenson, D'Amora, and Hern's study (2007) reported they lost their job due to notification. Human Rights Watch (2007) describes how one individual had been fired four times after colleagues found his profile on the state registry. "Private employers are reluctant to hire sex offenders even if their offense has no bearing on the nature of the job" (Human Rights Watch, 2007, p. 81). Offenders face a catch-22 during job interviews. If they disclose their registration requirement, they are likely to be denied employment. However, if they fail to disclose and the employer finds out, they will be fired. Offenders face the same problem when seeking adequate housing. In Levenson, D'Amora, and Hern's study (2007), twenty-one percent were forced to move from their homes due to the notification law. Residency restrictions have forced sexual offenders to move from their homes. One such offender, despite having been offense-free for over a decade, was forced to move from the home he shared with his mother for all of his life (Durling, 2006). Sex offender legislation generally and residency restrictions specifically lead to instability, transience and hopelessness (Durling, 2006). Such laws "contradict decades of criminological research identifying factors associated with successful offender re-integration" (Tewksbury & Levenson, 2007, p. 3). Key factors in successful offender rehabilitation and reintegration back into society include stable employment and a stable environment.

Collateral damage

Recently, a growing body of research involves the effects of sex offender legislation on families of registered sex offenders. Researchers have discovered the legislation has produced unintended negative consequences (Human Rights Watch, 2007; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009; Zevitz & Farkas, 2000). Such negative consequences have been termed collateral damage (Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009).

Using online surveys, Levenson and Tewksbury (2009) conducted two separate studies to explore the impact registration and notification laws have on family members of registered sex offenders. Sixty-two percent reported they lived with the registered sex offender (Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009). Forty-three percent of respondents reported they lived in a state that does not assign risk levels (Levenson & Tewksbury, 2009). More than half of the participants reported feeling alone and isolated as a result of the notification (Tewksbury & Levenson, 2009). Nearly one-half reported fearing for their safety and a third had to move due to residency restrictions (Tewksbury & Levenson, 2009). Seven percent had been physically assaulted (Levenson & Tewksbury, 2009). Twenty-seven percent reported property damage (Levenson & Tewksbury, 2009). An astonishing 82 percent reported financial hardship as notification made it nearly impossible for the registered offender to find stable employment (Levenson & Tewksbury, 2009).

Ironically, sex offender legislation harms children within the community – the population the laws were meant to protect. In one study, more than half of the children of registered sex offenders said they were treated differently at school, lost friends, were teased, and ridiculed (Levenson & Tewksbury, 2009). More than half reported that other parents were reluctant to let the child of the registered offender play with their children (Levenson & Tewksbury, 2009). As

Figure 1 shows, more than three quarters of the sample reported their child experienced depression and anger as a result of the community notification (Levenson & Tewksbury). Thirteen percent of the children experienced suicidal ideation (Levenson & Tewksbury, 2009).

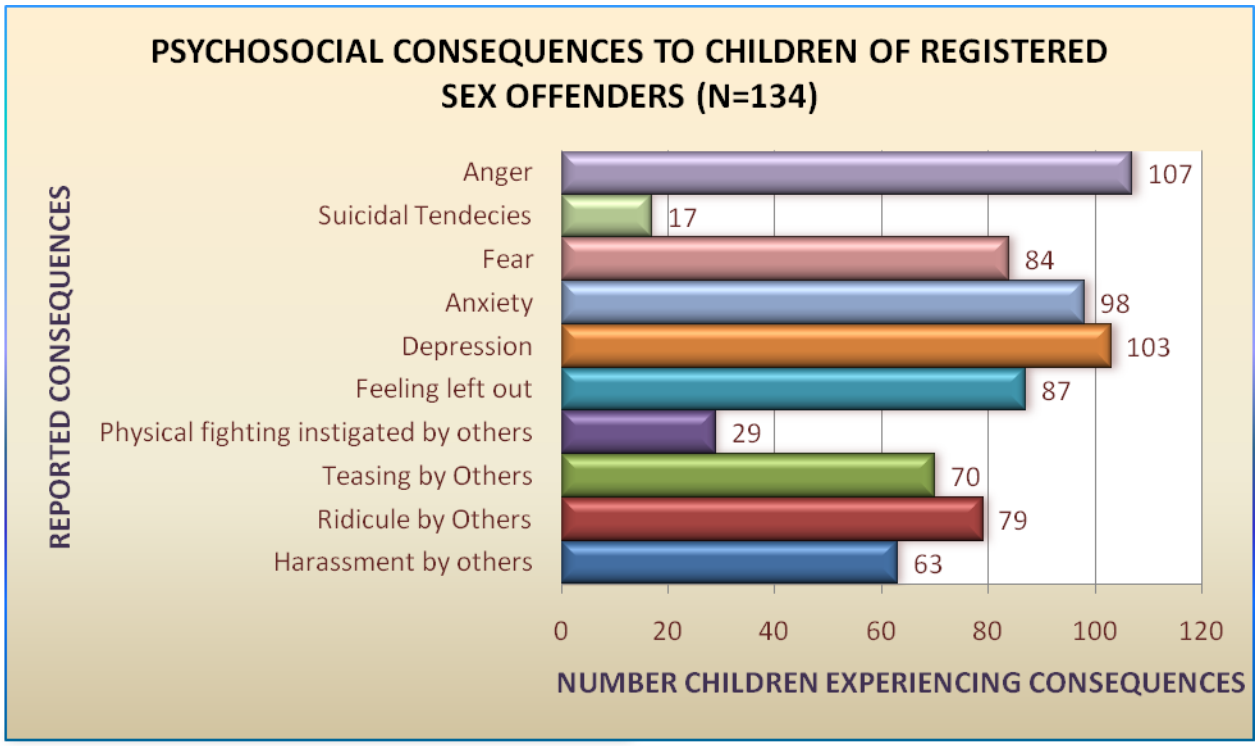

Figure 1–psychosocial consequences to children of registered sex offenders (Levenson & Tewksbury, 2009)

Legislative effects on sexual offense rates

To date, literature seems to indicate Megan's Law and residency restrictions have not served their intended purpose to reduce the rate of sexual offenses. In a 2008 study of the practical and monetary efficacy of Megan's Law in New Jersey, the researchers found that although New Jersey as a whole experienced a decline in the number of sexual offenses, county trends exhibited significant variation (Zgoba et al, 2008). The authors concluded that Megan's Law resulted in no discernable effect in reducing sexual recidivism, first time offenses, or the number of victims (Zgoba et al, 2008). Levenson, Letourneau, Armstrong, and Zgoba (2009) further found that there were no significant differences in recidivism rates between registered sex

offender and offenders who failed to register. Of particular interest is that those individuals who failed to register tended to be younger and have adult victims (Levenson et al, 2009). Further, both groups had the same risk of recidivism after 10 years (Levenson et al, 2009). Research further indicates that residency restrictions have no discernable effect on sexual offense rates or recidivism (Tewksbury & Levenson, 2009). In a recent study, Levenson, Zandbergen, and Hart (2008) found that offenders living within 1000 to 2500 feet of schools or daycares were no more likely to recidivate than offenders who lived farther away. In fact, more nonrecidivists lived within 1000 feet of schools and daycares (Levenson et al, 2008). In another study, of the 500 sex offenders living near schools and daycares, only one offender was subsequently arrested a year following release – for a parole violation (Durling, 2006).

Constitutionality

Several critics challenge the constitutionality of sex offender laws (Agudo, 2008; Durling, 2006). The most common constitutional challenges fall under four specific arguments – due process violation, ex post facto prohibition, violation of right against self-incrimination, and violation of the right to inter/intrastate travel (Agudo, 2008; Durling, 2006). The Due Process Clause and ex post facto challenges will be discussed here as they are the most common and decisions have been split.

The Fourteenth Amendment of the U.S. Constitution requires that no person "shall be deprived of life, liberty, or property, without the due process of law" (Legal Information Institute, 2010). Offenders are not afforded a hearing prior to notification requirements to determine whether said notification holds a high likelihood of harm. In *Connecticut Dept. of Public Safety v. Doe,* 538 U.S. 1 (2003), the U.S. Supreme Court ruled SORNA law did not violate procedural due process. The Court expressed "no opinion as to whether the State's law

violates substantive due process principles" (Connecticut Dept. of Public Safety v Doe, 2003). However, in *State v. Bani*, 36 P.3d 1255 (Haw. 2001), the Hawaii Supreme Court found SORNA law did violate the Due Process Clause as it deprived offenders of a right to privacy without affording them an opportunity to be heard at hearing, notified of the offender's living arrangements and other personal information without notice, and provided said information without "preliminary determination of whether and to what extent (the offender) actually represents a danger to society".

The second most common challenge to sex offender legislation is the retrospective application of SORNA and residency restrictions violates the ex post facto prohibition. The Ex Post Facto Clause prohibits "retroactive application of criminal laws, including an increase in punishment beyond what was prescribed when the crime was committed" (Agudo, 2008, p. 321). The prohibition is absolute in that any punishment for a crime cannot be retroactive. Some courts have found SORNA and residency restrictions violate the ex post facto prohibition. In *Doe v Gregoire*, 960 F. Supp. 1478 (1997), the court found the laws to be punitive and highly likely to cause irreparable harm. However, in *Smith v. Doe*, 538 U.S. 84 (2003), the U.S. Supreme Court upheld Alaska's sex offender registration statute. The Supreme Court held in a 6 to 3 decision that SORNA was civil and not punitive in nature (Smith v Doe, 2003). The dissenting judges warned the decision should not be extended to residency restrictions as such restrictions may effectively constitute as banishment, a punitive measure (Smith v Doe, 2003). The dissenting judges in *Doe v Miller*, 405 F.3d 700 (8th Cir. 2005), concurred with the Supreme Court's dissenting judges. In *U.S. v. Waddle*, Case No. 09-3607 (C.A. 8, Jul. 22, 2010), the court ruled Waddle's subsequent prosecution under §2250(a) did not constitute as an ex post facto

violation as it did not punish Waddle for his prior conviction as a sexual offender. Instead, it punished him for his failure to register and then attempt interstate travel.

Discussion

According to Allan Marain (2010), former Assistant Deputy Public Defender for the State of New Jersey, Megan's Law was a severe overreaction fueled by public fear and outrage. "I have no doubt that most sex offenders are not chronic offenders and they can be treated. However, society does not wish to think that psychological dysfunction precipitated the offense – they're just vile and evil men" (Marain, 2010). Griffin and West (2006) accurately describe the disparities, as alluded to by Mr. Marain (2010), between the public, judicial, and some professionals' views of the sex offender population and what has been evidenced as fact. Sex offender legislation while constructed with good intentions, ignores the fact that most sexual abuse occurs between persons in a preexisting relationship. "No more than 10% of child sexual abuse cases involve strangers to the victim" (as cited in Potter, 2007, p. 14). In addition, the laws only punish those offenders attempting to reintegrate back into society as law-abiding citizens. The offenders fitting the community perception stereotype as morally corrupt and "untreatable" simply fail to register and hide in the shadows until they recidivate. In fact, Schram and Milloy (1995) found no statistically significant difference in recidivism rates between offenders who were subjected to notification in Washington (19% recidivated) and those who were not (22% recidivated). Further, the laws ignore differences amongst the sex offender population. A person convicted of third degree child molestation is quite different from the 18-year old boy who had consensual relations with his 15-year old girlfriend. Yet, if both are deemed low risk offenders (Tier I), they will be subject to registration for 10 to 15 years.

Application to juveniles

Applying the registration requirement to juveniles is particularly troublesome and apt to do more harm than good. A far cry from therapeutic, SORNA laws affect juveniles who offend after their 14th birthday by requiring registration and notification (Caldwell, Ziemke & Vitacco, 2008). The laws are detrimental to rehabilitation efforts for largely the same reasons as with adult offenders. However, the labeling effect is particularly troublesome. "By definition, all juvenile offenders included under SORNA would qualify to be placed on the Tier 3 level," thereby subjecting the juvenile to at least 25 years of registration (Caldwell et al, 2008, p. 90).

In Texas, 1,389 of the 26,769 sex offenders posted to the Internet registry in the fall of 2000 were between the ages of 11 and 16, many of which were convicted of minor crimes (as cited in Trivits and Reppucci, 2002). One such posting, which included a photo, was of a 12-year-old boy who had mooned a group of five and six-year old children as a joke (Trivits and Reppucci, 2002). Now, because of the joke, the boy is faced with social ostracism and is labeled as a sex offender. Juveniles face particular difficulty in a school setting following registry. Parents protest the presence of juvenile sex offenders in the schools, no matter how minor the offense. Academic achievement is amongst the top protective factors for juvenile delinquency, including sex offenses (Bartol & Bartol, 2008).

Disparity and collateral damage

The disparity between community view, public policy, and treatment effectiveness for sex offenders is largely caused by misrepresentation and stereotyping of sex offenders, as further perpetuated by media sensationalism. Legislators bend to the whims of the community at large, particularly in election years. Thus, it is imperative the community be fully informed. Failure to do so results in over-reactions such as Megan's Law and the recently enacted Adam Walsh Child

Protection and Safety Act. Such acts, when applied to the general sex offender population, undermine treatment. In a 2000 study of the impact of notification requirements in Wisconsin, offenders faced loss of employment, exclusion of residence, break-ups of support systems, and ostracism (Zevitz & Farkas, 2000). "Seventy-seven percent told of being humiliated in their daily lives, ostracized by neighbors and lifetime acquaintances, and harassed or threatened by nearby residents or strangers" (Zevitz & Farkas, 2000, p.9). One was the victim of vigilantism. Offenders also spoke of the negative impacts the requirement had on their families. Families were the subject of scorn and ostracism in their own communities. One offender spoke of his son's decision to quit his high school football team because of constant ridicule from teammates (Zevitz & Farkas, 2000). Five were concerned about how the notification would psychologically affect their victims.

Attribution theory and the effects of labeling

Attribution theory dictates that individuals who experience failure fault an internal or external deficit, or handicap, as responsible for their problem (Winick, 1998). Therefore, the effects of labeling an offender as a sex offender for the public to see may be likened to placing the scarlet letter on their lapel. The offender, over time, may internalize the label and view their behaviors as largely unchangeable. Moreover, they may view their offending as largely out of their own control. In other words, the label prevents the offender from taking responsibility for his or her own actions. Offenders who take responsibility for their actions are typically more amenable to treatment (Loss, 2010).

Another major problem with community registration and notification laws as it pertains to labeling is that it gives the perception that, despite serving their sentence, they are not redeemed or forgiven by the community. "By denying them a variety of employment social and

educational opportunities, the sex offender label may prevent these individuals from starting a new life" (Winick, 1998, p. 556). The continued ostracism and stigmatism may further lead to norm deviance or even physical violence (Winick, 1998).

Sexual offending and recidivism

Ideally, sex offender legislation should result in a reduction of sexual offenses. However, literature regarding recidivism and statistical data indicates legislation such as Megan's Law cannot be assumed to cause the decline. Zgoba and his colleagues (2008) found that, in New Jersey, most counties experienced a decline in the rate of sexual offenses following Megan's Law implementation. However, two counties actually experienced their highest rate of offenses after the implementation. Further, the lowest rates were not seen until 2007 (Bureau of Justice Statistics, 2010). Figure 2 below depicts similar trends. In Washington, the Community Protection Act (marked by a ** in Figure 2), which is similar to Megan's Law, was implemented in 1990. However, their highest rate was in 1992 and the lowest rate mirrored New York and Indiana. Indiana, which established Zachary's Law in 2003, saw their highest rate in 1992 as in New Jersey and the lowest rate in 2008. If Megan's Law were the cause of the change, we might expect to see the highest rates predating Megan's law and change points immediately following implementation.

State	Year Megan's Law Implemented	Change Point	Highest Rate (Year)	Lowest Rate (Year)
Connecticut	1998	1993	1991	2001
Indiana	2003 *	1999	1992	2008
New Jersey	1994	1994	1992	2007
New York	1996	1995	1990	2008
Washington	1990**	1996	1992	2008

Figure 2 –Implementation of Megan's Law, change points, highest rates of sexual offenses, and lowest rates of sexual offenses, by State (Bureau of Justice Statistics, 2010; Zgoba et al, 2008).

In Figure 3 below, we see the actual rates of sexual offenses for Connecticut, New Jersey, New York, Washington, and Indiana from 1990 to 2008. The second lowest and highest years have been highlighted to show the fluctuation in rates. Most states did not see the lowest rates until 2007 and 2008. However, Connecticut experienced wide fluctuations. The lowest rate was not seen until 2001, followed by a significant increase in 2002. To date, Connecticut has not seen the 2001 levels. Such fluctuation indicates SORNA may not be the cause of the rate decline.

Sexual Offense Rates by Year

Year	Connecticut	New Jersey	New York	Washington	Indiana
1990	27.9	29.8	29.8	64	37.9
1991	29.2	29.1	28.2	70.3	41.3
1992	26.9	30.7	28.4	72	42.4
1993	24.4	28.1	27.5	64.4	39.1
1994	24.6	24.9	25.9	60.5	35.6
1995	23.7	24.3	23.7	59.2	33.3
1996	23.1	24.7	23	51.1	34.1
1997	22.6	21.5	22.5	51.4	32.9
1998	22.2	20	21.1	48.2	33.1
1999	19.9	17.3	19.6	47.1	27
2000	19.9	16.1	18.6	46.4	28.9
2001	18.6	15	18.6	43.4	28
2002	21.4	15.9	20.3	45.1	29.9
2003	20	14.9	19.6	46.7	27.7
2004	21.6	15.3	18.7	46	29
2005	20.3	13.9	18.8	44.7	29.6
2006	19.8	13.8	16.4	42.6	28.9
2007	19.7	11.9	15.3	40.8	27.3
2008	19.4	13	14.4	40	26.7

Legend

- Change point
- Highest Year
- 2nd Highest Year
- Lowest Year
- 2nd Lowest Year
- Midrange

Figure 3 - sexual offense rates by state, by year (Bureau of Justice Statistics, 2010)

As we can see by Figure 3 and Figure 4 (next page), Washington's sexual offense rate peaked after implementation of the Community Protection Act, after which the reduction in rate mirrors other states. New Jersey's change point, overall, appears to have begun in 1992 and

actually increased in 1996 before declining once again. Figure 4 below further shows no significant change occurred that could be attributed to the implementation of community registration and notification laws.

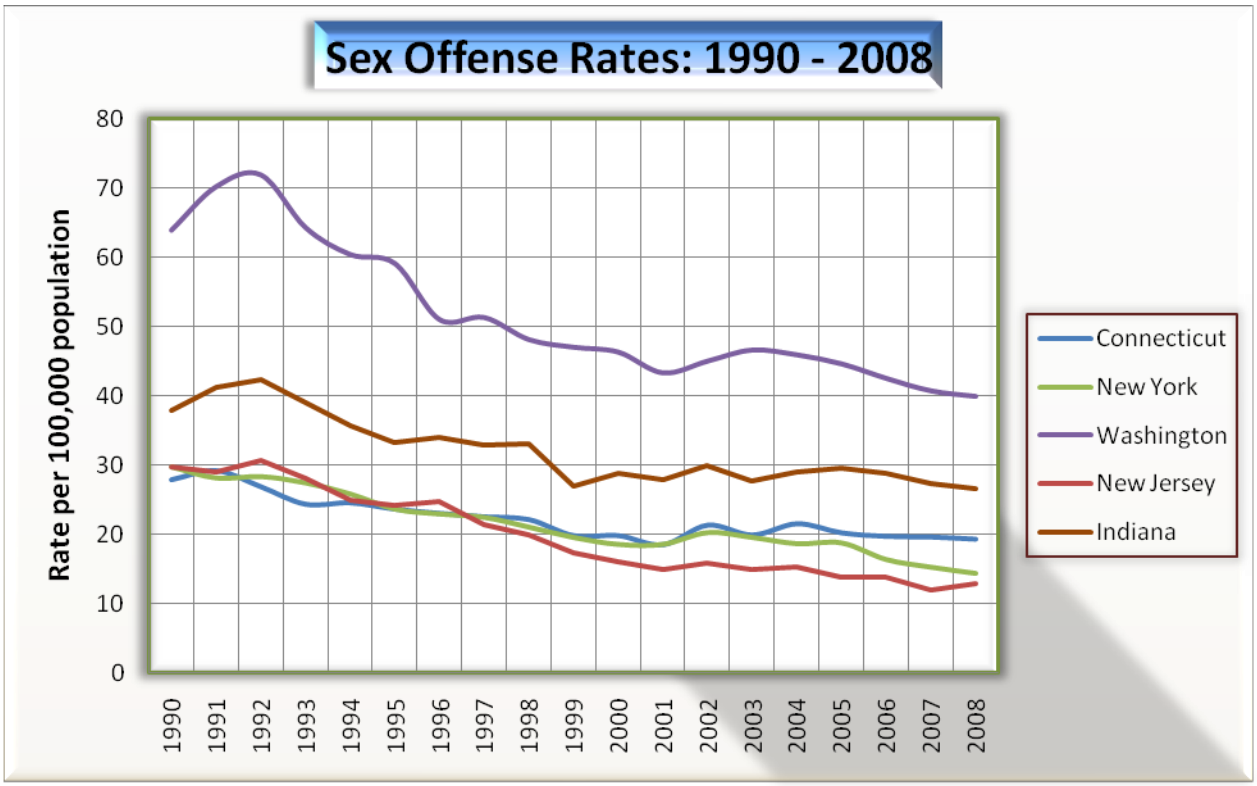

Figure 4 - decline in sexual offenses from 1990 – 2008 (Bureau of Justice Statistics, 2010).

Implementation of Megan's Law has been a costly undertaking and requires at least $3.5 million a year to maintain (Zgoba et al, 2008). Given the negative effects on offenders, family, and the lack of effect on sexual offenses, is it truly worth the cost?

Constitutionality

Although an in-depth analysis of the constitutionality of sex offender legislation is beyond the scope of this report, there exists serious doubt notification and residency restriction laws are constitutional. Despite recent rulings by the U.S. Supreme Court upholding SORNA applications, evidence suggests the courts have been misinformed. As Agudo (2008) and Durling (2006) aptly point out, the *Smith* ruling that Alaska's version of SORNA was not

punitive was based on the false assumption that sex offenders have unusually high rates of recidivism. In reviewing the factors that must be taken into consideration when contemplating if a law violates the Due Process Clause, one must balance the needs of one against the needs of the public. If sex offenders recidivated at an alarming high rate, one may logically come to the same conclusions as the *Smith* court. However, recidivism rates for juveniles approximate seven to thirteen percent for those who attend some form of treatment (Jordan Institute for Families, 2002). The rate of recidivism for nonsexual offenses is much higher at 25 percent to 50 percent (Jordan Institute for Families, 2002). For adults, the recidivism rate is approximately fourteen percent if we look only at new sexual offenses (Tewksbury & Levenson, 2009).

Limitations of current research

Most studies and articles chosen for inclusion in a literature review were originally designed for purposes other than that of the resulting report. As a result, the author is limited by the original researcher's selectivity in choosing their sources. "As with all research, the investigator must be aware of potential errors or biases in the documents she is using as data sources" (Fitzgerald & Cox, 2002, p.127). At the forefront is an assessment of the validity and reliability of sources. Research is deemed reliable if it produces "similar results when repeated measurements are made under identical conditions" (Bordens & Abbott, 2008, p. 126). For example, we may conclude that the research finding Megan's Law and similar sex offender legislation result in collateral damage to family members of sex offenders is reliable, as at least three studies have shown such effects (Human Rights Watch, 2007; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009). However, the studies are not without flaws. In Levenson and Tewksbury's works (2009), self-report surveys and online surveys were used. In the former, one runs the risk that the reporters will be less than truthful. With the latter method, one cannot

be sure the offenders did not answer the questions. Furthermore, speaking to validity, the method of study targets only a certain section of the population – those that are computer literate, most likely white lower middle class or upper lower class. The validity of research is the degree to which it measures what it is intended to measure (Bordens & Abbott, 2008). One cannot be sure the studies specifically measure the general population or only a specific subset. Nonetheless, one cannot shun a study for having methodological flaws. To the contrary, such flaws should be mentioned in the research so that others may attempt to replicate (or disprove) the results while strengthening the method.

Conclusion

Sex offender legislation does not constitute as therapeutic jurisprudence. Registration and notification can cause job loss while residency restrictions move offenders away from jobs and needed therapy (Durling, 2006; Human Rights Watch, 2007; Levenson et al, 2007; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2007; Winick, 1998). Both severely undermine the ethical principles of autonomy and justice. Autonomy refers to an individual's ability to make decisions on his or her own behalf (APA, 2010; Bush, Connell & Denney, 2009). Justice refers to fairness and equitability in psychological services for all persons (APA, 2010). This principle provides psychologists have a duty to perform the highest quality services to all individuals, regardless of status.

The principle of justice further dictates psychologists have a duty to ensure their services are used in a fair and just manner. The legislation is based upon flawed assumptions that risk assessment instruments can predict recidivism and that the laws resulted in a lower rate of recidivism (Caldwell et al, 2008; Human Rights Watch, 2007; Levenson et al, 2009; Levenson et al, 2008; Zgoba et al, 2008). Certainly, the assumptions are not true and researchers have a duty

to ensure their works are not used for purposes that may cause harm in accordance with the principles of nonmaleficence and beneficence. The flawed registration harms children and families of the offender resulting in depression, anxiety, and suicidal ideation (Human Rights Watch, 2007; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009). Sex offender legislation has not fulfilled its intended purpose.

Recommendations for modification of SORNA laws

Many states have opted to lose Byrne funding by not adopting the Adam Walsh Act. One of the arguments is that posting the offender's employer on the notification website would discourage employment and therefore destabilize offender recovery and safety (Loss, 2010). Peter Loss, Director of the Rhode Island Department of Corrections Sex Offender Treatment Program, concurs with the concern the increased notification would hinder rehabilitation efforts and recommends increased supervision as an alternative. Increased supervision would include more use of probation and parole officers, Global Positioning Systems (GPS), treatment, and Electronic Monitoring Program (EMP) monitors before any notification system (Loss, 2010).

Sex offenders are not a homogenous population. Treatment providers have realized this fact and provide treatments based upon the individual offender's needs. To that end, not all offenders present a high risk of reoffending. Therefore, SORNA laws should be modified accordingly instead of taking a one-size-fits-all approach. Notification requirements should only be enacted for high-risk offenders. Historically, protective measures, such as Sexually Violent Predator laws, have been put into place to protect the public against high risk, dangerous offenders. In some states, such as Massachusetts, higher risk offenders are subject to civil commitment. Although the negative therapeutic effects previously discussed are still operative with high-risk offenders, those offenders may pose a high enough risk that public safety

outweighs the individual risk. For low risk offenders, registration and human personal supervision with adjunct electronics is sufficient. Even though it is passive, human and electronic supervision allows for notification of law enforcement. Further, offenders can be put under surveillance and monitored directly. Registration and notification cannot pinpoint the location of an offender if he or she moves and fails to update the registry, leaving law enforcement to wonder where they are.

Whether for tier classification under Megan's Law or for purposes of classifying a sexual offender as a Sexually Violent Predator (SVP), the law has relied upon a prediction model. Under the prediction model, offenders undergo a risk assessment in order to "predict" future dangerousness within a particular timeframe. A major ethical implication arises in that as the reliance is on an accurate prediction of risk, the methods used by the evaluator must be reliable and valid. It has been argued that risk assessment instruments may not be valid when applied to individuals, as they do not take into consideration the diversity of the sex offender population (Hart, Webster, & Menzies, 1993). Moreover, that the basis of the assessment tools has been derived solely from population-based probabilities, many have questioned the validity of the tools when applied to individuals. However, if we move from a prediction model, which is essentially static, to a risk management model, which is largely dynamic, treatment considerations and other factors may be taken into account (Winick, 1998). Therefore, the question moves from a black or white prediction of dangerousness to a question of an individual's response to treatment interventions. "Because it involves a dynamic process that factors in new information about individuals as it unfolds, the risk management model provides a feedback loop to individuals that can help them shape their behavior to effect a reduction in the

level of risk presented" (Winick, 1998, p. 561). The prediction model gives individuals little incentive to change their behaviors.

Thirteen states use only one tier in their classification of risk, in line with a true prediction model (Winick, 1998). Other states use a three-tier system, which is more in line with a risk management model. However, offenders must petition the court to change tiers. Not only is the process lengthy, but it is also unlikely to result in a change of classification. A more therapeutic process would entail building steps within the law that allow for prosecutorial classification decision-making (Winick, 1998). With this process, prosecutors could receive periodic updates concerning offenders and change classification according. If used in conjunction with the previous recommendation that only high-risk offenders face community notification, the laws provide a harmonious balance of accountability and public safety.

Recommendations for future research

Recall that the legislation is in place largely to protect the children in our society. However, the studies only briefly touch upon the negative effects legislation has on the children of registered sex offenders. Although Levenson and Tewksbury (2009) briefly mention children's experiences due to the legislation, no mention is made as to the long-term effects. How do children of registered sex offenders develop compared to children of non-offenders?

Griffin and West (2006) argue that solid research need be conducted to determine the efficacy of treatment and prevention methods, mental health professionals need confront those spreading misinformation, and collaboration is needed between practitioners, judges, and victim advocates to determine what is best for individual offenders and the public. The authors' recommendations regarding research are at the forefront. There needs to be consistency in the definition of recidivism, treatment methods must be empirically tested and highly scrutinized,

and the junk science needs to be thrown out. Until this is done and the results are publicized wide, the latter recommendations may end up on the back burner. “What [this field] needs [is] some smart people with big mouths – social control agents on a mission” (Loss, 2010). The forensic psychologist must be willing to educate the courts and society yet one cannot confront misinformation unless one has fact.

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