

Sex offense recidivism, risk assessment, and the Adam Walsh Act

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Sex offenses are among the most egregious and frightening crimes committed by criminal offenders. Since the early 1990s, increasingly strict legislation has been enacted to track, monitor, apprehend, and punish sexual criminals. The Jacob Wetterling Act, passed by the U.S. Congress in 1994, established requirements that sex offenders must register their whereabouts with law enforcement agencies. In 1996, Megan's Law allowed for the public disclosure of registry information, and subsequent amendments to the Wetterling Act required states to post information about convicted sex offenders on Internet websites. In 2006, the Adam Walsh Act (AWA) enhanced registration and notification requirements, expanded the duration of registration time periods, and increased penalties for sex offenders who fail to register. States are mandated to comply with federal guidelines or risk losing federal funding. According to the National Center for Missing and Exploited Children, it is estimated that there are currently over 617,000 registered sex offenders in the United States.

Indubitably, sexual violence is a social problem deserving of attention, and communities are entitled to protection from repeat sex predators. The daunting challenge is to determine the strategies most likely to achieve goals of prevention and improved public safety without creating unnecessary or insoluble barriers to offender reintegration. This affidavit will review the existing research regarding sex offense recidivism, risk assessment, and the utility of registration and notification.

Sex offense recidivism

Sex crime policies are often driven by the belief that the overwhelming majority of sex offenders will reoffend. Sex offense recidivism statistics are frequently declared in legislative preambles without citing a source, and even when properly attributed, statistics are sometimes misinterpreted or misrepresented. For example, in the Alaska case of *Smith v.*

Doe in which the U.S. Supreme Court upheld the constitutionality of Megan's Law, the opinion cited the reported findings of a study funded by the National Institute of Justice (Prentky, Knight, & Lee, 1997). While the 25-year recidivism rate of 115 predatory child molesters in that study was cited as 52%, it is important to note that this was a projected, not actual, recidivism rate.

As the authors explained on p. 11 of the article, the reported 52% recidivism rate describes the *estimated* probability that this particular sample of child molesters would “survive” in the community without being charged, convicted, or imprisoned for a sexual offense over a 25-year period. In actuality, 32% of the child molesters in the sample reoffended, and they did so relatively quickly – within 4 years. Ray Knight, one of the authors of the NIJ study, stated in a recent email correspondence to this writer: “There are several things about the ‘97 study that are important to mention. First, the sample is a civilly committed one. The recidivism rates for those referred to the Treatment Center for evaluation and released are significantly lower (see Knight & Thornton, 2007: <http://nij.ncjrs.gov/publications>). Second, the rates that are cited are projected rates using survival curve estimates, and should not be cited as actual rates.” In other words, this is a high risk sample (those who met criteria for civil commitment), and those offenders who were deemed lower risk did indeed reoffend less frequently. Moreover, several recidivism studies indicate that most recidivists are apprehended within the first few years at large, and that risk decreases as offenders spend more time in the community offense-free (Harris & Hanson, 2004).

According to a study by the U.S. Department of Justice, 5.3% of American sex offenders are rearrested for a new sex crime within three years (Bureau of Justice Statistics,

2003). It is true that the sex offenders were four times more likely than other criminals to be arrested again for new sex crimes. Noteworthy, however, is that the DOJ found that many more new sex crimes were committed by other types of criminals (87%) than by previously identified sex offenders (13%). Other sex offense recidivism studies, conducted by Canadian researchers and involving nearly 30,000 sex offenders from North America and England, found an average re-arrest rate of 14% over 4-6 years (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). Recidivism rates fluctuate according to risk factors such as criminal history, victim preferences, and offender age. Longer follow-up periods have revealed that pedophiles who molest boys are most likely to reoffend (35% over 15 years), compared to the average recidivism rate of 24% over 15 years (Harris & Hanson, 2004). But, sex offenders are more likely to be rearrested for non-sexual crimes than sex offenses (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998; Sample & Bray, 2003;2006) and are among the least likely criminals to kill their victims (Sample, 2006).

Although official recidivism rates do underestimate true reoffense rates, Harris and Hanson (2004) concluded: “Most sexual offenders do not re-offend sexually over time ... this finding is contrary to some strongly held beliefs. After 15 years, 76% of sexual offenders had not been charged with, or convicted of, another sexual offence. The sample was sufficiently large that very strong contradictory evidence is necessary to substantially change these recidivism estimates” (p. 17). There is no dispute that some sex offenders are extremely dangerous or violent and pose a severe threat to public safety. Public policies should utilize strategies best equipped to identify these high-risk offenders and inform the community accordingly.

The myth of “stranger danger” persists despite that most sexual perpetrators are well known to their victims. According to the Department of Justice, most child sexual abuse victims are molested by family members (34%) or close acquaintances (59%) (Bureau of Justice Statistics, 2000). About 40% of sex crimes take place in a victim’s own home, and 20% take place in the home of a friend or relative (Bureau of Justice Statistics, 1997). A Wisconsin study revealed that of 200 cases recidivistic sex offenses, none involved predatory sex crimes against strangers (Zevitz, 2006). Laws tend to be passed in response to anomalous cases rather than the statistical probabilities reported by researchers.

Media attention to child abduction and sexually motivated murder creates a sense of alarm and urgency among parents and often inspires sex crime legislation. Such cases are actually extremely rare; it is estimated that about 100 such events occur in the United States each year (National Center for Missing and Exploited Children, 2005). By comparison, over 500 children under age 15 were killed in 2003 by drunk drivers (National Highway Traffic Safety Administration, 2004), and over 1100 children died in 2002 as a result of physical abuse or neglect at the hands of their own parents or caretakers (Child Welfare League of America, 2003).

Another assumption underlying sex offender laws is that sexual criminals cannot be rehabilitated. It is true that there is no “cure” for Pedophilia, just as there is no cure for medical and mental disorders such as diabetes or schizophrenia. But there is ample evidence to suggest that many sex offenders benefit from therapeutic interventions which focus on helping them to change their thinking patterns and manage their impulses. It is estimated that about 40% of registered sex offenders can be diagnosed with Pedophilia. For these sex offenders, as with individuals suffering from other addictions or compulsions, recovery can

be a lifelong process. Some controlled experimental designs have failed to detect differences in recidivism rates between treated and untreated offenders (Hanson, Broom, & Stephenson, 2004; Marques, Wiederanders, Day, Nelson, & van Ommeren, 2005). Other studies, however, have found that rates of sexual reoffending drop by about 40% after participation in contemporary cognitive-behavioral therapies (Hanson, Gordon, Harris, Marques, Murphy, Quinsey, & Seto, 2002; Losel & Schmucker, 2005), and Marques et al (2005) reported that successful completers demonstrated significantly reduced rates of recidivism.

In summary, sex crime recidivism estimates reflect complex issues that cannot be conveyed and understood without a comprehensive and thoughtful examination. Sex crime policies are often justified by simplistic assumptions that all sex offenders reoffend, that treatment does not work, and that strangers who lurk in playgrounds pose an unparalleled threat to children. These erroneous beliefs are widely propagated by the media, creating strongly held but largely inaccurate public perceptions. These beliefs, in turn, prompt the expansion of sex crime policies which often lack empirical support.

Risk Assessment

Statistical procedures consistently have been shown to improve the accuracy of predictions by setting thresholds for decision-making and by standardizing factors that professionals readily recognize as key diagnostic indicators. This process, known as the actuarial method, estimates the likelihood of a certain outcome by referring to the known (actual) outcomes of individuals with similar characteristics. Actuarial assessment is used in the insurance industry to adjust premiums and its uses are growing in a variety of other disciplines, including criminal justice. The actuarial method cannot predict with certainty that a given individual will behave in a particular way. It can, however, provide probability data

with which to inform one's expectations regarding an individual and to assess the likelihood of a certain outcome. Simply put, the identification of risk factors associated with both violent and sexual reoffending has improved our ability to predict future dangerousness.

Prediction of sexual dangerousness has improved markedly over the past decade as a result of studies identifying risk factors correlated with violent and sexual recidivism. These factors informed the development of actuarial risk assessment instruments. The poor record of clinical judgment in the prediction of human behavior is well established and its use when more accurate methods are available has been said to be inefficient and unethical. This is especially crucial in the present context, where the consequences of misjudgments can be grave for both sex offenders and communities. When sexual violence risk assessment procedures have been directly compared, actuarial risk scales were better able to predict recidivism ($r = .61$) than clinical judgment alone ($r = .40$) or empirically guided assessments ($r = .41$) (Hanson & Morton-Bourgon, 2004).

In fact, the most commonly used risk assessment instrument, the Static-99, which is easily scored by anyone trained to do so (e.g. probation agents, clinicians, case managers), has demonstrated good predictive accuracy in multiple validation studies over the past several years. Risk assessment scales have been formulated, tested, and refined to yield the best possible predictions as to which offenders are most likely to re-offend. They are used nationwide in all states that have sex offender civil commitment laws and have become the gold standard for risk assessment. They are not perfect, but they give us a firm scientific basis for assessing the likelihood that a convicted sex offender will re-offend and assigning that individual to a risk category. Of additional interest with regard to Nevada's newly enacted lifetime registration and supervision requirements is that the Static-99 scoring

guidelines state on page 59 that “the expected offense recidivism rate should be reduced by about half if the offender has five to ten years of offense-free behavior in the community... as offenders successfully live in the community without incurring new offenses, their recidivism risk declines.”

Empirically validated risk assessment instruments stand in stark contrast to the yet-unproven offense-based classification system required by the Adam Walsh Act. Where actuarial assessment procedures evaluate known risk factors and screen offenders into relative risk categories, offense-based schemes classify offenders based on the severity of the offense of conviction. Offense-based categories are likely to inflate risk in many cases, but will also underestimate the risk of offenders who pleaded down to lesser offenses. The result will be a registry with so many seemingly high risk offenders that the public’s ability to truly identify sexually dangerous persons is significantly diluted. As well, overly inclusive registries aggravate the stigma and collateral consequences of registration for lower risk offenders, perhaps inadvertently obstructing any deterrence effect. Because AWA tier levels are not based on empirically derived risk assessment, many lower risk offenders will be erroneously classified as high risk and publicly identified while a number of dangerous offenders with more favorable court outcomes will have less limits placed upon them.

The effectiveness of registration and notification in reducing recidivism

The research evaluating the impact of sex offender registration and notification laws on recidivism is somewhat limited. There are two conventional methodologies for studying the effectiveness of such laws. Some researchers have compared the sex offense recidivism rates of groups of sex offenders who were subjected to public registration policies with the recidivism rates of sex offenders who are not required to register. Other researchers have

conducted trend analyses (also called time-series analyses) in which sex crime rates in general and recidivism rates specifically are tracked over time to see if they change after the implementation of the law. To date, few studies have found significant effects of registration or notification on sex crimes.

Group Comparisons

The earliest study found no statistically significant difference in recidivism rates between high risk offenders who were subjected to notification in Washington (19% recidivism) and those who were not (22% recidivism) (Schram & Milloy, 1995). There was, however, evidence that registration assisted law enforcement agents to apprehend registered suspects more quickly for new sex crimes (Schram & Milloy, 1995). Interestingly, most (63%) of the new offenses occurred in the jurisdiction of notification, suggesting that notification did little to deter offending or protect citizens. In Iowa, 223 sex offenders subjected to sex offender registration were tracked for an average of 4.3 years. Their sex offense recidivism rate (3%) was not significantly different from a control group of 201 sex offenders (3.5%) who were not required to register because they were adjudicated before the law went into effect (Adkins, Huff, & Stageberg, 2000). In Wisconsin, there were no statistically significant differences between 47 high-risk sex offenders exposed to aggressive community notification (19% recidivism) and 166 high-risk sex offenders who were not aggressively identified (12% recidivism) (Zevitz, 2006). None of the recidivistic offenses in Wisconsin involved predatory crimes against unknown children.

In a recent Minnesota study, the notification group was significantly less likely to sexually reoffend (5%) than the non-notification group (15%) (Duwe & Donnay, 2008). The recidivism rates of the notification group were significantly lower than both the pre-

notification group (those matched on risk but released before the law went into effect) and the non-notification group (lower risk offenders not subject to disclosure). Importantly, however, the authors noted that because intensive parole supervision was implemented in Minnesota at the same time as Megan's Law, it was difficult for the analyses to separate out the effects of intensive supervision from community notification. The authors further cautioned that community notification may be a "double edged sword"...even if it decreases recidivism, "it also creates adverse consequences which make it difficult for them to re-enter the community successfully" (p. 443).

Trend analyses

Four studies have examined the effects of public registration and notification policies by examining changes in sex crime rates over time. Data from Washington State were used to examine recidivism trends for convicted sex offenders across three time periods: 1986-1989 (prior to public registration); 1990-1996 (following enactment of a public registration statute) and 1997-1999 (following significant revision of that statute). After controlling for generally decreasing crime trends, researchers found a significant decrease in sex offense recidivism (from 5% to 1%) after 1997 (Washington State Institute for Public Policy, 2005). While the authors acknowledged they were unable to account for other possible explanations for this reduction (e.g., more severe sentencing guidelines, or improved probationary supervision), they concluded that community notification has likely contributed somewhat to reductions in sexual offending. Notably, Washington reserves its most aggressive community notification for its highest risk offenders, and the absolute recidivism rates were quite low both before (5%) and after (1%) implementation. Consequently, the results might be generalizable only

to those states that continue to discriminate between high and low risk offenders and reserve public notification for those at highest risk.

An interrupted time-series analysis investigated the impact of registration and notification laws on sexual assault rates in ten states (Vasquez, Maddan, & Walker, 2008). The authors concluded that registration and notification policies did not appear to systematically reduce sex crime rates. Of 10 states examined, California had a significant increase in rape rates following implementation of registration, Hawaii, Idaho, and Ohio had significant decreases in rape rates, and the remaining six states (Arkansas, Connecticut, Nebraska, Nevada, Oklahoma, & West Virginia) had non-significant trends.

A third trend analysis (Veysey, Zgoba, & Dalessandro, 2008) indicated that enactment of public registration in New Jersey (of level 2 and 3 offenders only) was associated with changes in sex crime rates. Sex offenses decreased rapidly in the post-Megan's law period. However, the authors noted that they were unable to determine whether the decreases can be attributed to specific deterrence or a more general deterrent effect. The intent of Megan's law was to reduce repeat arrests among known sex offenders (specific deterrence), but increased attention and public contempt of sex offenses and offenders may also contribute to general deterrence of first time offenders. The authors could not differentiate whether the reduction was due to reductions in new first-time sex offenses (general deterrence) or to decreases in sexual re-offenses (specific deterrence).

Using data from the National Incident Based Reporting System (NIBRS), the most comprehensive study to date (Prescott & Rockoff, 2008) analyzed data from 15 states with a total of 328,260 sex offenses, and separated the impact of registration versus notification. Results revealed a significant decrease in recidivism rates after *registration* went into effect.

However, reduced recidivism rates applied only to offenders whose victims were known to the offender (family and friends). The researchers hypothesized that this was due to intensive supervision and probation monitoring of these offenders and their relationships. The data demonstrated no evidence of a decrease in crimes against strangers as a result of registration -- which is notable since registration laws were enacted largely in response to predatory stranger abductions. On the other hand, it was found that *notification* laws seemed to reduce overall sex crime rates but not sex offense recidivism. In other words, notification might deter new sex offenders but did not seem to prevent recidivism for those already convicted. The authors speculated that public registries exacerbate the collateral consequences of registration for lower risk offenders, perhaps unwittingly obstructing any protective effect, and concluded that the benefits of registration may be diminished by the use of notification. They recommended that states should consider a narrow notification scheme, in which all or most sex offenders are required to register but only a small subset are subject to public notification.

Given the paltry evidence indicating that public notification protects children, prevents recidivism, or improves public safety, lawmakers should consider the unintended consequences of these laws. The problems of re-entry commonly faced by other criminal offenders are exacerbated for registered sex offenders. The stigma of sex offender registration and community notification is well documented as are the ways in which they can impede community re-entry and adjustment (Levenson & Cotter, 2005; Levenson, D'Amora, & Hern, 2007; Mercado, Alvarez, & Levenson, 2008; Sample & Streveler, 2003; Tewksbury, 2004; Tewksbury, 2005; Tewksbury & Lees, 2006;2007; Zevitz, 2006; Zevitz & Farkas, 2000). Sex offenders have been surveyed in Florida, Indiana, Connecticut, New

Jersey, Wisconsin, Oklahoma, Kansas and Kentucky and consistently reported adverse consequences such as unemployment, relationship loss, threats, harassment, physical assault, and property damage as well as psychological symptoms such as shame, embarrassment, depression, or hopelessness as result of public disclosure. Housing difficulties are commonly noted by registered sex offenders, and the proliferation of residential restriction laws compounds this problem.

Ironically, social stability and support increase the likelihood of successful reintegration for criminal offenders, and public policies that create obstacles to community re-entry may compromise public safety. Stable employment and supportive relationships lead to lower recidivism rates for sex offenders (Colorado Department of Public Safety, 2004; Kruttschnitt, Uggen, & Shelton, 2000). It is well established that the stigma of felony conviction can inhibit participation in prosocial roles such as employment, education, parenting, and property ownership (Tewksbury & Lees, 2007; Uggen, Manza, & Behrens, 2004). Uggen et al. (2004) highlighted that self-concept, civic engagement, and stability are essential to an offender's identity as a conforming citizen and therefore to desistance from crime.

The availability of publicly accessible sex offender registries has created an interesting conundrum. Though there appears to be a certain fascination with the ability to go online and identify sex offenders living nearby, research suggests that most individuals do not make substantive changes in their behavior after obtaining information. Community notification can potentially assist parents to make informed decisions about those with whom their children have contact. Emphasis on publicly identifying sex criminals, however, belies the importance of vigilant scrutiny regarding any adult with whom a child may spend time.

Since most victims are assaulted by individuals known to them, increasing public education about the dynamics of sexual assault would help potential victims to recognize suspicious behaviors rather than rely on the rather simplistic strategy of attempting to avoid known perpetrators.

Summary

Sex offense recidivism rates are much lower than commonly believed. The best estimates suggest that 5-14% of known sex offenders will commit a subsequent sex crime within three to six years, and after 15 years, three-quarters will *not* have recidivated. These recidivism rates are far lower than those for other types of criminals. It is also important to note that as time in the community lengthens, an offender's likelihood of committing a new sex offense diminishes each year. Some sex offenders will repeat their crimes, however, and therefore public safety can be enhanced when states adopt empirically derived risk assessment schemes to validly and reliably identify high risk individuals. By reserving public disclosure for those who pose the greatest threat, resources can be more efficiently allocated, citizens can be appropriately warned, and reintegration obstacles can be minimized. The stigma of sex offender notification is known to impede successful community re-entry, ironically exacerbating the factors (e.g. housing instability, unemployment) known to correlate with increased criminal recidivism. The offense-based classification system mandated by the Adam Walsh Act is not empirically grounded and is unlikely to correctly classify risk. Public safety is best enhanced when crime prevention policies employ research evidence in their development and implementation.

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