

Legislative Trends in Sex Offender Management

November 2008

Introduction

Lawmakers and other public officials have the challenging responsibility for crafting public policies to protect individuals and communities from sexual victimization. Over the past century, a vast number of sex offender-specific laws have been enacted at the federal, state, and local levels. Some of these policies have since been repealed or modified substantially, whereas other laws are now among the cornerstones of contemporary sex offender management efforts.

Top Ten Policy Issues Facing State Legislatures	
1.	Immigration
2.	Homeland security/standardized ID cards
3.	Budget pressures
4.	Health insurance
5.	Sexual offenders and predators
6.	Energy and environment
7.	Minimum wage
8.	Higher education reform
9.	Privacy
10.	Obesity

Source: National Conference of State Legislatures, 2007a

Despite policymakers' sincere desire to reduce sexual victimization in their communities, the effectiveness of the current laws designed for this purpose remains unclear. One thing is clear, however. The ever-increasing numbers of individuals to whom these laws apply have significant resource implications. Questions about effectiveness, coupled with rising costs of implementation, have sparked a growing interest in these policies among multiple stakeholders.

This resource document is designed to provide lawmakers and other interested parties, such as agency directors, court officials, and criminal justice practitioners, with an overview

of legislative trends pertaining to sex offender management, the intended objectives of such laws, and key research regarding the impact of these policy initiatives.¹

Sex Offender Management Is a Top Public Policy Priority in the United States

Because of the nature of sex crimes and the impact that can result from sexual victimization, few other criminal justice populations generate as much public concern as sex offenders. Recent public opinion polls indicate that sex offender management should be a chief priority for lawmakers, with constituents desiring longer sentences and tighter controls for sex offenders as a means of creating safer communities (Levenson, Brannon, Fortney, & Baker, 2007; Mears, Mancini, Gertz, & Bratton, 2008).

Highly influential in shaping public perceptions and legislative responses to sex offenders is the extensive media coverage of sex crimes. The media's interest in this issue is important, because research demonstrates that the nature and emphasis of such attention may instill fears about public safety and the potential for victimization; it can also perpetuate myths and misinformation about the individuals who commit sex offenses and the persons who are most likely to be targeted (see Proctor, Badzinski, & Johnson, 2002; Sample & Kadleck, 2008).

Indeed, the public appears have misconceptions about a number of significant issues with respect to sex offending, as evidenced by the following beliefs (Levenson et al., 2007; Sample & Kadleck, 2008):

¹ Although a significant proportion of sex offenses are committed by juveniles, the majority of contemporary sex offender-specific legislation – with the exception of registration and community notification – pertains to adults.

- Sexual victimization rates are on the rise;
- Sex offenders tend to target strangers; and
- Recidivism rates are high among sex offenders, and higher than for other offender populations.²

These misunderstandings – particularly in the absence of information about the sex offender management strategies that are currently in place – can exacerbate constituents’ already understandable concerns and lead to the call for additional measures for safeguarding themselves and their communities.

Lawmakers nationwide have responded by proposing and enacting sex offender-specific legislation at an unprecedented level over the past few years. These laws include, but are not limited to, civil commitment, mandatory minimum sentences, expanded registration and community notification requirements, and proximity laws such as residency restrictions. In fact, sex offender management policy remains among the principal topics facing legislative bodies nationwide, alongside issues such as immigration, energy, environmental protection, and healthcare (National Conference of State Legislatures (NCSL), 2007a, b).

Sex Offender-Specific Laws Address Multiple Interests

Policymakers and the citizens they represent share a common and overarching desire to reduce sexual victimization and enhance community safety. However, the specific legislative strategies that will best accomplish these goals are not yet evident. Like most criminal justice and correctional policies, sex offender-specific laws are driven by one or more primary interests and objectives:

- *Incapacitation.* Confining sex offenders in an attempt to eliminate the potential for further harm to the community;
- *Retribution/Punishment.* Delivering punishment or sanctions that are perceived to be proportional to the severity and harm of sex crimes;
- *Deterrence.* Threatening a specific response or sanction that is considered to be sufficiently severe to cause individuals (i.e., sex offenders and non-sex offenders alike) to refrain from engaging in sex offending behaviors; and/or
- *Rehabilitation.* Providing treatment and other interventions that are designed to address the underlying factors that are linked to sex offending and other problem behaviors, with a goal of increasing public safety through risk reduction.

The level of emphasis placed on these different tenets has varied historically and is influenced by any number of factors, such as the prevailing agency philosophies of governmental and private entities, political climate, societal values, and public interests.

Most recently, criminal justice and correctional policymakers throughout the country have taken decisive steps to apply the large body of evidence-based correctional literature to inform current policies (see Andrews & Bonta, 2006; Aos, Miller, & Drake, 2006). This represents an ongoing shift from more punitively-based correctional policies that did not result in the desired result of increasing public safety. By creating evidence-based policies, the potential to maximize resources and public safety outcomes is enhanced substantially.

Despite the significant advances toward evidence-based policies in the broader criminal justice field, such a movement has not yet taken hold with respect to sex offender-specific policies (see, e.g., Levenson & D’Amora, 2007). In fact, as discussed in the sections that follow, although some of the early sex offender management laws in the United States emphasized rehabilitative or risk-reducing interests, more recent legislative trends reflect a movement toward strategies that favor incapacitation, punishment, and deterrence.

² Research indicates that observed recidivism rates, although underestimated because of under-detection and under-reporting, may not be as high as what the public believes them to be (see Hanson & Morton-Bourgon, 2005). In addition, sexual victimization data reveals that most victims are abused by persons known to them (Snyder & Sickmund, 2006; Tjaden & Thoennes, 2006). Finally, incidence and prevalence trends provide evidence that sexual and other violent crimes are declining (Catalano, 2005).

Promoting Rehabilitative Interests: Sexual Psychopath and Mentally Disordered Sex Offender (MDSO) Laws

Dating back to the 1930s, many states enacted statutes known as “sexual psychopath” and “mentally disordered sex offender” (MDSO) laws. Framed within a medical/psychiatric model, these statutes established an alternative to incarceration for certain dangerous sex offenders who were believed to have a treatable disorder. In lieu of a prison sentence, classified offenders were committed to mental health facilities for indefinite periods of time to receive treatment, and were released once they were determined to have been sufficiently rehabilitated. Multiple questions and issues surfaced about the sexual psychopath and MDSO strategies over time, including a lack of confidence in the validity and reliability of the offender classifications, the relatively short period of time these offenders remained in placement in comparison to prison sentences served by similar sex offenders, and the extent to which this offender subpopulation was amenable to treatment. These and other controversies led to the repeal of most of the sexual psychopath and MDSO statutes during the 1970s and 1980s.

(see, e.g., LaFond, 2005; Winick & LaFond, 2003)

Sexually Violent Predator (SVP) Civil Commitment Laws

In the early 1990s, states began to enact a specialized form of the traditional civil commitment statutes as a sex offender management strategy. Generally speaking, traditional civil commitment statutes are designed for individuals with disabling psychiatric difficulties who pose a significant threat of harm to themselves or others. Through civil proceedings, these individuals can be placed in psychiatric/mental health facilities for safety and treatment purposes until such time that they are stabilized and able to be safely transitioned to the community.

Lawmakers later modified commitment laws in order to incapacitate a very narrow – and presumably highly dangerous – class of sex offenders commonly known as “sexually violent predators” (SVPs).³ The SVP civil commitment laws, however, differ from the more traditional provisions with respect to the criteria that are considered as sufficient for commitment and in terms of the point at which persons are subject to commitment.

For the purpose of the SVP proceedings, the commitment criteria commonly include the following⁴:

³ In some states, “sexually violent predator” terminology designates a high risk group of sex offenders placed in the community, rather than offenders committed to secure mental health facilities. In those states, this high risk subpopulation is subject to stringent registration requirements, expanded notification processes, and intensive supervision and monitoring.

⁴ The specific statutory language for civil commitment statutes varies from state to state.

- The commission of a qualifying sexually violent offense (e.g., aggravated sexual assault, first degree sexual abuse of a child, forcible rape);
- Diagnosis of a mental abnormality or personality disorder (e.g., pedophilia, antisocial personality disorder) that predisposes the individual to engage in sexually violent behavior;
- The predisposing mental abnormality or personality disorder causes the person to have significant difficulties controlling such behavior; and
- The individual is consequently likely to commit additional sexually violent acts if not confined to a secure mental health facility.

The SVP commitment process is generally triggered for convicted sex offenders who are approaching release from prison. Those offenders who are believed to pose a high risk to reoffend and who may meet the criteria for commitment are screened and referred for eligibility consideration. If, during the civil proceedings, offenders are determined to meet the prescribed set of criteria, they are designated as SVPs and committed indefinitely to a secure mental health treatment facility until deemed suitable for release to the community.

Currently, approximately 20 states have specialized commitment laws, and over 4,500 sex offenders are placed in secure civil commitment facilities nationwide (Gookin, 2007).

Mandatory Minimum Sentences

Current statistics from state and federal courts indicate that sex offenders receive longer sentences and serve more time in prisons throughout the country than other violent offenders (Durose & Langan, 2007). At least half of the states in this country now have provisions requiring mandatory minimum prison sentences of 25 years for specific classes of first time felony sex offenders against children (NCSL, 2008).

Many of these state and federal sentencing statutes were enacted as part of what are commonly known as “Jessica’s Laws” which include a number of additional provisions such as lifetime Global Positioning System (GPS) monitoring of sex offenders in the community.

Policymakers assert that mandatory minimum sentences for sex offenders not only speak to punishment and incapacitation interests, but also are intended to deter sex offenders and others from committing sex offenses because of the threat of severe consequences (i.e., specific and general deterrence, respectively).

In addition, mandatory minimum sentencing laws are in part designed to alleviate concerns about observed variations in sentencing practices with sex offense cases, as sentences may otherwise vary considerably as a function of prosecutorial and judicial discretion. For example, as is true in most other criminal cases, sentence disparities are most notable when sex offense cases are resolved through plea negotiations.

On the average, felony sex offenders whose convictions result from pleas receive prison sentences that are nearly half of what felony sex offenders receive following convictions from trials (Durose & Langan, 2007). Such variations in sentencing practices can lead to considerable political, media, and public scrutiny, particularly when sex offenders reoffend after serving what the public perceives to be an inadequate period of incarceration.

Laws Designed to Manage Risk in the Community

In addition to the expansion of policies that emphasize incarceration or other long term facility placement as system responses to sex offenders, significant legislative activity has occurred with respect to managing risk posed by sex offenders residing in the community. Like the civil commitment and mandatory minimum sentence laws, the legislative initiatives focusing on the community aspect of sex offender management are largely driven by high profile and tragic cases that primarily involve sexual and other violence against children.

Sex Offender Registration

Sex offender registration laws require convicted sex offenders to provide identifying information to law enforcement agencies, after which it is entered into a centralized databank. These laws are intended to accomplish two primary objectives:

- *Assist law enforcement with investigating sex crimes and tracking sex offenders.* The detailed information contained in the sex offender registries is designed to help officials identify and rule out potential suspects when investigating new sex crimes, or apprehend known sex offenders who are believed to have committed additional crimes. In addition, by maintaining a databank of the convicted sex offenders in a given jurisdiction, law enforcement officials are presumably better positioned to determine the whereabouts and monitor the behaviors of a specific group of individuals in local communities.
- *Deter individuals from committing sex offenses.* Sex offender registries are also intended to inhibit convicted sex offenders from reoffending for fear of detection (i.e., specific deterrence). The framers of these laws further hoped that individuals who have not yet committed sex offenses, or have not yet been detected, will refrain from sexually victimizing others in order to avoid placement on sex offender registries (i.e., general deterrence).

Prior to the 1990s, only a few states had some form of sex offender registration legislation in place. However, with the federal enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994, these laws became widespread throughout the nation.

This federal legislation essentially required all states, the District of Columbia, and U.S. Territories to create and maintain registry systems for sex offenders who target children and those who commit violent sex crimes. The law also included provisions for collecting registry information from sex offenders upon release from incarceration, updating registry information when sex offenders change residences, and conducting routine address verifications.

Sex Offenders on Public Registries	
•	In 1996, roughly 185,000 convicted sex offenders were listed on sex offender registries nationwide.
•	Over 660,000 convicted sex offenders were registered as of September 2008.
Sources: Matson, 1996; National Center for Missing and Exploited Children, 2008.	

Community Notification

During the time at which states were rapidly implementing sex offender registry laws, public demands surfaced regarding the need to be informed about convicted sex offenders residing in their communities. Subsequently, federal legislation established the expectations that all states and other applicable jurisdictions create provisions allowing public access to registries and permitting public safety agencies to notify communities about specific sex offenders when deemed necessary for community protection purposes. These notification statutes are known collectively as Megan's Laws.⁵

Community notification, therefore, is the process through which specific information about sex offenders, generally maintained in sex offender registries, is made accessible and/or released to specific agencies, entities, or the general public. Although at times the terminology is used

⁵ Community notification laws existed in at least two states prior to the enactment of the federal legislation.

interchangeably with registration, community notification is a distinct process. Community notification laws are dependent upon – but not synonymous with – sex offender registration.

The central goal of community notification laws is to raise public awareness about specific sex offenders in local jurisdictions. The heightened visibility of these sex offenders is intended to empower citizens to make informed decisions about the need for taking further protective measures to prevent victimization.

Community notification laws have been implemented in different ways throughout the country and, in some instances, the policies and practices vary within a given state. For example, laws in some states initially reflected a passive notification approach, whereby individual citizens or entities could request sex offender registry information by contacting the law enforcement agencies that maintained these databases. At present, passive notification is most commonly accomplished through state-operated Internet websites that post information about registered sex offenders in a given jurisdiction; citizens can access this information if so desired. Other laws have required active notification efforts, whereby officials issue special bulletins, post flyers, conduct door-to-door notifications, or convene community meetings to alert citizens about sex offenders residing in the area.

Many states have developed tiered processes for community notification that are based on sex offenders' assessed levels of risk. In those instances, sex offenders who are assessed to pose a high risk to recidivate are often subject to more active notification practices, and greater amounts of information may be released about these persons and their crimes. Conversely, for lower risk sex offenders, community notification may be passive and involve the release of limited amounts of identifying information.

Increasing Consistency of Registration and Notification Laws

Registration and notification policies were originally designed as management strategies for adult sex offenders who were deemed to pose a high risk to the community. Several federal statutes have since expanded the scope and purpose of these laws. These federal

The Evolving Nature of Registration and Notification Laws

While not exhaustive, the following are among key federal provisions linked to the establishment and amendments of sex offender registration and notification laws.

- 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act: Established sex offender registration guidelines; required routine tracking through address verifications.
- 1996 Megan's Law: Provided authorization for states to allow public access to sex offender registry information; permitted enforcement or other agencies to notify communities when necessary for public protection.
- 1996 Pam Lychner Sex Offender Tracking and Identification Act: Required the creation of a national database to ensure registration and address verification for sex offenders residing in states with insufficient registries.
- 1998 Jacob Wetterling Improvements Act: Required registration for persons convicted in federal and military courts; required sex offenders who relocate to register in the new state of residence; mandated sex offenders to register in the state in which they work or attend school.
- 2000 Campus Sex Crimes Prevention Act: Required registered sex offenders attending, employed by, or working at institutions of higher education to notify those institutions of their registry status and required institutions to forward that information to the state's registry.
- 2006 Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act: Replaced previously established federal registration and notification laws and created national standards; includes requirements for states to routinely transfer prescribed registry data to the National Sex Offender Registry; requires specific information to be posted on state websites for notification purposes.

amendments and other state-specific changes resulted in more broadly inclusive laws, some of which are now applicable to juveniles who have committed sex offenses – a policy that has become the source of much debate.⁶

Most recently, national standards for sex offender registration and community notification were established through the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006. This legislation replaces all of the previous federal laws and amendments pertaining to registration and notification and provides a single set of standards as a means of promoting consistency throughout the country.

In June of 2008, the Final National Guidelines for Sex Offender Registration and Notification were released. These guidelines are intended to provide clarity and direction to all states, the District of Columbia, the five principal

⁶ Although there are similarities between adults and juveniles who commit sex offenses, research demonstrates that a number of differences exist, not the least of which are developmental factors. Hence, experts express concerns about the potential negative impact of applying laws designed for adults to juveniles without taking into account developmental and other differences (see, e.g., Chaffin, 2008). Moreover, research does not support the effectiveness of sex offender registration for juveniles (Letourneau & Armstrong, 2008).

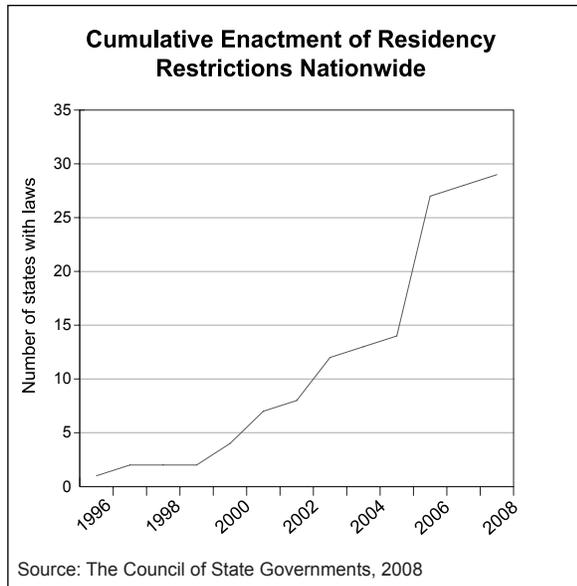
U.S. Territories, and tribal governments for achieving substantial compliance in implementing the SORNA standards. Included among the provisions is a three-tiered classification system that prescribes minimum registration requirements for certain categories of sex offenders, generally determined by crime of conviction.

Residency Restrictions

The current decade marked the onset of the newest trend in sex offender-specific legislation: laws that restrict sex offenders from living in close proximity to specific locations in which children or other particularly vulnerable citizens are commonly present. These residency restriction laws create exclusion or buffer zones by establishing 500 to 2,500 feet perimeters around locations such as parks, playgrounds, daycare centers, schools and, in some instances, bus stops. Well over half of the states in the nation now have some type of residency restrictions (Council of State Governments, 2008).

The enactment of residency restrictions is intended to eliminate sex offenders' access to potential victims through geographical lines. The underlying rationale is that sexual victimization, particularly involving children, will

decrease if sex offenders are not in proximity to these specific locations; this is further based upon the assumption that children tend to be victimized outside of the home and likely by individuals previously unknown to them.⁷



Residency restriction laws are not explicitly framed as a deterrence measure, per se. Nor are they tied to supervision or treatment strategies. Rather, these laws simply establish formal parameters regarding where sex offenders can or cannot reside.

Blanket residency bans are distinct from the case-by-case application of specialized supervision conditions that are designed as a risk-reducing intervention (e.g., restricting sex offenders who have victimized children from having unsupervised contact with children or cohabitating with individuals who have young children), which are one aspect of a broader, collaborative supervision and treatment strategy. Such a strategy emphasizes working with sex offenders to identify stable and suitable housing and employment, establish prosocial support networks, and develop effective coping and self-management skills, which are important for reducing reoffense risk. Indeed, research demonstrates that sex offenders with these supports and skills are less likely to reoffend

⁷ As noted previously, national victimization statistics consistently indicate that sex offenses are most often committed by individuals related or otherwise known to the persons who are victimized (Snyder & Sickmund, 2006; Tjaden & Thoennes, 2006).

than those who do not have them (Hanson & Harris, 2000; Hanson, Harris, Scott, & Helmus, 2007).

Research on the Impact and Effectiveness of Sex Offender-Specific Laws

Lawmakers and other policymakers have demonstrated a considerable commitment over the past several decades to enact public protection policies. As highlighted below, these laws have substantial resource implications, yet to date very little research has been conducted to examine the extent to which these investments have yielded significant public safety returns.

Impact and Effectiveness: Civil Commitment

Specialized civil commitment of sexually violent predators undoubtedly addresses the intent of incapacitation, albeit for a relatively small proportion of sex offenders. Outside of incapacitation, there is no empirical evidence of additional public safety benefits over the long term. There are, however, a number of potential unintended ramifications of civil commitment.

High Costs of Long-Term Placement

The indefinite nature of civil commitment, limited formal release mechanisms in some states, and the concerns about risks associated with releases have resulted in relatively few sex offenders being released from the commitment facilities (Gookin, 2007). Operating these secure facilities with escalating client populations, particularly with the need to staff these programs with medical and mental health professionals, results in greater costs than incarcerating offenders. Indeed, SVP programs cost, on the average, approximately \$100,000 per person annually (Gookin, 2007).

Potential Misallocation of Resources

Resource concerns have also been raised from a “misallocation” perspective, in that SVP laws may divert limited program funding for persons with significant and persistent mental health difficulties who are in need of intensive

psychiatric services (see, e.g., Janus, 2003; Winick & LaFond, 2003). This position stems from the argument that the primary intent of SVP statutes is to incapacitate sex offenders who do not meet “traditional” definitions of mental illness. It has been suggested that this goal is most appropriately met through the criminal justice system by imposing longer sentences, thus preserving the mental health system’s resources (Winick & LaFond, 2003).

In addition, critics posit that the considerable expenditures on a “minority” subpopulation of sex offenders likely reduces funds necessary for responding to the “majority” of sex offenders (Janus, 2003). The absolute numbers of non-civilly committed sex offenders (the majority), relative to the SVPs committed to these facilities (the minority), means that intervening with the non-committed sex offenders arguably will result in greater public safety benefits and fewer new instances of sexual victimization.

Disincentives for Participating in Specialized Treatment

One of the intended goals of some SVP civil commitment laws is to provide risk-reducing interventions while the offenders remain in these facilities. However, because full disclosure is encouraged during the treatment process as a means of promoting responsibility-taking, some civilly committed sex offenders may fear that disclosing additional sex crimes will result in greater concerns among the program professionals and the courts pertaining to their level of risk. This can inadvertently create a disincentive regarding treatment participation (Janus, 2003).

This can apply similarly with respect to prison-based sex offender programs in states in which civil commitment laws are in place. Incarcerated sex offenders could believe that their candor regarding additional, undetected sex offenses during the course of prison-based treatment may increase the likelihood of referral for civil commitment at the end of their sentence. As such, they might elect not to participate in the kinds of specialized programming, whether in prison or in civil commitment facilities, that can reduce their risk of reoffending post-release.

Research on Effectiveness

At present, there is no research that explores the effectiveness of civil commitment for sexually violent predators, particularly in contrast to alternative approaches to sex offender management, such as intensive supervision that may include GPS monitoring, paired with specialized treatment in the community. Therefore, beyond presumably meeting the goal of incapacitating a relatively small – albeit high risk – group of sex offenders, there is no evidence that the significant resource demands needed to support this policy initiative ultimately result in considerable public safety benefits.

Impact and Effectiveness: Mandatory Minimum Sentences for Sex Offenders

Enacting mandatory minimum sentence laws for sex offenders is likely to address the public’s expectations for severe punishment, such as extended prison sentences, for sex crimes (Levenson et al., 2007; Mears et al., 2008). And much like civil commitment laws, mandatory minimum provisions also serve the goal of incapacitation – at least with respect to those sex offenders who remain incarcerated. However, the intended benefits of mandatory minimum sentencing schemes do not come without potential monetary and social costs.

Some of the key concerns regarding the impact of civil commitment laws for sex offenders apply similarly to mandatory minimum sentencing legislation, namely the high costs of long term placement in secure facilities and the potential reduction of the number of sex offenders receiving specialized sex offender treatment.

Strained Correctional Resources

The high costs of incarcerating a greater number of sex offenders for longer periods of time threatens correctional budgets and potentially diverts resources from other important agency efforts, particularly as states struggle with maintaining sufficient prison capacity to accommodate this growing prison subpopulation. In addition, many states require sex offenders to participate in prison-based sex offender treatment to be considered for early release or parole. This will likely require

additional resources to support specialized programming in prisons so that offenders have reasonable access to sex offender treatment and, ultimately, opportunities for release.

Fewer Sex Offenders Receiving Specialized Treatment and Post-Release Supervision

Although rehabilitative interests are not a driving goal of mandatory minimum sentences, the potential positive impact that sex offender treatment can have on recidivism following release from prison warrants consideration. Specifically, research suggests that sex offenders who receive specialized treatment recidivate at lower rates than those who do not receive such services (Aos et al., 2006; Hanson et al., 2002).

When release decisions are discretionary and in part influenced by participation in prison-based treatment, the prospect of early release offers a significant external motivator for sex offenders to participate in specialized treatment. However, under mandatory minimum sentence structures, sex offenders are required to serve an extended term of imprisonment regardless of whether they elect to participate in prison-based treatment. If treatment completion does not significantly accelerate their eligibility for release, sex offenders may have little incentive to invest in the often intensive and challenging treatment process (Edwards & Hensley, 2001).

And as noted previously, when faced with the potential for civil commitment at the end of their prison term, some sex offenders may be less inclined to participate in prison-based treatment, particularly when they perceive that well-intentioned disclosures place them at risk for civil commitment (Janus, 2003).

In addition, with mandatory minimum sentences, sex offenders are more likely to discharge or closely approximate the full sentence that was imposed. This ultimately means that specialized post-release supervision – and the increased structure, monitoring, and public safety benefits that it offers – may be either non-existent or considerably limited.

Exacerbated Community Reintegration Barriers

Although sex offenders who are sentenced under mandatory minimum laws will be incarcerated for extended periods of time, the vast majority will be released from prison eventually.⁸ Successful reentry therefore becomes an important consideration for those sex offenders who are serving mandatory minimum sentences. This is because successful reentry translates into safer communities.

Reentry challenges are oftentimes more pronounced for sex offenders than for other offender populations for multiple reasons, including greater barriers to employment and housing, heightened community opposition to sex offenders returning to communities, and increased degrees of stigma overall (Mercado, Alvarez, & Levenson, 2008). Successful reentry is dependent upon positive social supports, stable housing, and gainful employment. Extending the period of time that sex offenders are disconnected from positive community ties may further reduce the already limited social capital of sex offenders and further contribute to reentry challenges, which ultimately can increase their risk for recidivism (Petersilia, 2003).

Paradoxical Effect on the Original Intent of the Laws

With fewer sentencing options available to judges under mandatory minimum sentencing schemes, prosecutors lack leverage for negotiating pleas. In turn, defendants have fewer incentives to plead guilty in sex offense cases in exchange for reduced sentences (Edwards & Hensley, 2001; National Alliance to End Sexual Violence (NAESV), n.d.). Hence, particularly for cases with limited evidence – as is oftentimes true with those involving sexual victimization – prosecutors may be in the difficult position of reducing charges from sex crimes that carry mandatory minimum sentences to non sex crimes in order to preserve some type of conviction.

Alternatively, they may opt to proceed with resource-intensive trials that may further impact

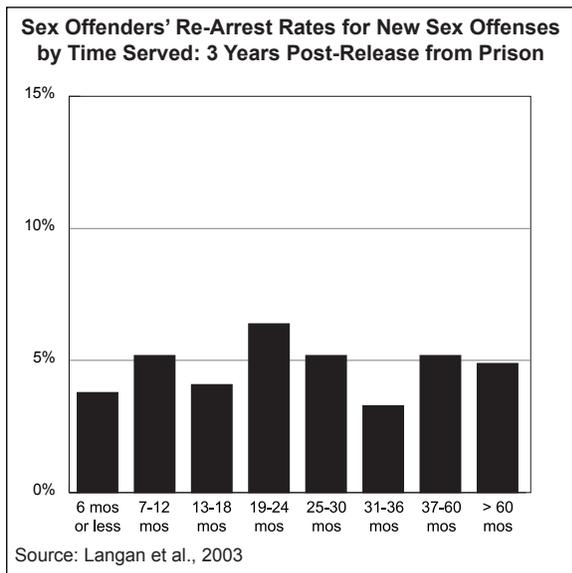
⁸ Approximately 95% of all incarcerated offenders return to the community (Hughes & Wilson, 2003).

victims and present a greater risk of acquittal. If the resulting conviction is for a non sex crime, traditional sex offender management strategies that are often mandated in sex offense cases (e.g., sex offender treatment, specialized supervision, registration, community notification) generally will not be applicable.

Moreover, when the individuals who commit sex offenses are family members or close acquaintances of victims, there is an increased likelihood that victims will recant (or fail to disclose at the outset) because of concerns about the severe punishment that may result for the offender (Edwards & Hensley, 2001; NAESV, n.d.). These scenarios highlight the potential for mandatory minimum sentencing initiatives to undermine the very objectives that they were intended to address (e.g., punishment, incapacitation, deterrence).

Effectiveness of Longer Sentences and Mandatory Minimums for Sex Offenders

Little is known about the extent to which mandatory minimum prison terms deter sex offenders from reoffending, but research involving other offenders consistently suggests that longer periods of incarceration and other punishment-driven sanctions tend not to be effective in deterring additional criminal behaviors (see, e.g., Aos et al., 2006; Smith, Goggin, & Gendreau, 2002).



Recidivism data from studies involving sex offenders yield similar results (Barnoski, 2004; Langan, Schmitt, & Durose, 2003). For example, in a large scale national study of sex offenders released from prison, recidivism rates remained relatively stable regardless of the amount of time sex offenders served in prison; in other words, incrementally longer periods of incarceration did not appear to have an effect on deterring sex offenders from committing additional sex crimes (Langan et al., 2003).

Impact and Effectiveness: Registration and Community Notification Laws

Sex offender registration and community notification laws have been in place for roughly a decade in most states, yet only a limited body of research exists regarding the extent to which these laws are achieving their intended purposes. Researchers have evaluated registration and notification laws from two broad perspectives (i.e., impact and effectiveness), both of which offer important insights.

Current Research on Impact

Because sex offender registration and notification laws are designed to enhance sex offender management efforts and public safety in multiple ways, understanding the views of a range of vested parties can be a helpful barometer for gauging impact. To date, various stakeholder groups have been surveyed regarding their attitudes, perceptions, and experiences relative to these laws. These groups include law enforcement officials, supervision officers, judges, treatment professionals, community members, and sex offenders themselves.⁹

The findings across studies have been mixed, but some of the reported benefits of registration and community notification initiatives include the following:

- Enhanced surveillance and policing efforts;

⁹ See Anderson and Sample, 2008; Bumby & Maddox, 1999; Elbogen, Patry, & Scalora, 2003; Levenson & Cotter, 2005a; Lieb & Nunlist, 2008; Malesky & Keim, 2001; Matson & Lieb, 1996; Mercado et al., 2008; Tewksbury, 2005, 2006; Zevitz & Farkas, 2000.

- Heightened visibility of sex offenders to the public;
- Greater opportunities for public education about sex offenders and prevention; and
- A perception that sex offenders may be more motivated to change or restrain their behaviors.

At the same time, the following concerns about registration and community notification have been revealed through this survey research:

- Inaccuracies with registry data and the associated tracking difficulties;
- A false sense of security within communities;
- More fear among citizens;
- Increased negative public sentiment and potential for vigilantism;
- Loss of positive community supports for sex offenders; and
- Barriers to housing and employment for sex offenders.

The latter two factors are particularly noteworthy because research demonstrates a link between these variables and increased risk for recidivism among sex offenders (Hanson & Harris, 2000; Hanson et al., 2007; Hanson & Morton-Bourgon, 2005).

Available Research on a Deterrent Effect

Sex offender registration and community notification policies have also been evaluated with respect to changes in key indicators (i.e., recidivism rates, sex crime reporting rates) following enactment of the laws. These indicators may provide evidence of the extent to which registration and notification laws have an effect on increasing public safety through specific and/or general deterrence.

The initial research was conducted in individual states, whereby investigators contrasted the recidivism rates from cohorts of sex offenders who were released from prisons prior to the enactment of registration and/or notification

statutes against the recidivism rates of sex offenders who had been released after the laws were implemented. The findings have been inconsistent. Significant differences in the detected recidivism rates between the pre- and post-implementation groups were found in some states (e.g., Barnoski, 2005), but not in another (Adkins, Huff, & Stageberg, 2000; Schram & Milloy, 1995). Even for the state in which a significantly lower recidivism rate was identified post-implementation of the laws, the investigator noted that the reduction could have been influenced by other contextual variables, such as decreasing crime rates overall and the increasing incarceration rates of sex offenders in that state (Barnoski, 2005).

Larger scale efforts have been undertaken recently to evaluate the effectiveness of registration and notification policies on deterring sex offenses. To illustrate, in one multi-state analysis, researchers explored the potential for a deterrent effect from registration and notification on the incidence of forcible rapes as measured by reporting rates (Vasquez, Maddan, & Walker, 2008). The rates were contrasted pre-enactment and post-enactment of registration and notification laws. The analyses revealed considerable variations in state-by-state rape reporting rates prior to and subsequent to the respective states' enactment and implementation of these laws. In several states, no statistically significant changes were observed. Opposing findings were revealed in other states; increases in the rape reporting rates were identified in some, yet decreases were noted for others. Overall, no evidence of a systematic impact of registration and notification laws on the defined incidence rates of sexual assaults was identified.

Another recent cross-state investigation explored incidence rates for a variety of sex crimes as a function of the timing of the enactment of registration and notification laws (Prescott & Rockoff, 2008). One key finding was the significant reduction in the incidence of sex crimes associated with the registration laws. Interestingly, registration appeared to affect specific deterrence (i.e., decreased sexual recidivism by known sex offenders), but not general deterrence (i.e., no change in the incidence of sex crimes committed by individuals not known to have offended previously). On the other hand, the research suggested that

Collateral Consequences Associated with Sex Offender-Specific Laws May Be a Function of Interacting Influences

Clusters of risk-increasing collateral effects (e.g., housing and employment instability, loss of community supports, social rejection/isolation) have been attributed to sex-offender specific laws. Concerns about unintentionally exacerbating such factors are justified and warrant consideration. Yet it is also important to recognize that these issues may be pre-existing and influenced by a combination of interacting barriers at multiple levels (see Burchfield & Mings, 2008):

- *Community barriers.* Negative public sentiment about sex offenders is not uncommon in local communities, and is further fueled by myths, misinformation, and extensive media coverage. Such sentiment can lead citizens to actively oppose sex offenders living in their communities, impact their willingness to provide employment or housing and, in some instances, result in mobilization efforts specifically designed to force these individuals from one community to another.
- *Structural barriers.* By virtue of economic constraints, some sex offenders, much like other offenders released from prison, may have limited housing options and therefore may have to establish residence in communities that are disorganized, disadvantaged and lacking in social capital. This makes it difficult to establish prosocial supports, find suitable housing, secure gainful employment, and access other important resources that can promote stabilization and public safety.
- *Individual barriers.* Some sex offenders experience shame, embarrassment, and negative self-perceptions because of the nature of their crimes. Fears of rejection, loss of support, and concerns about harassment may lead them to purposefully limit the extent to which they interact with others, and they may withdraw or further isolate themselves for self-protective or other reasons.
- *Formal barriers.* Stringent controls such as GPS monitoring, house arrest, curfews, and other restrictions (as well as the laws already discussed) can preclude sex offenders from some activities and interactions that could facilitate positive ties to the community, and may limit, disrupt, and/or eliminate employment and housing options.

The degree to which these variables are present for a given offender and in a given community varies, but such influences are likely to be operating concurrently and interactively in many circumstances. Hence, these risk-increasing factors are not casually linked to sex offender-specific legislative trends. Moreover, the multiple levels of barriers may ultimately limit the potential for such laws to have a positive demonstrable effect overall.

community notification produced a general deterrence effect, but did not result in specific deterrence. In fact, community notification was associated with an *increase* in sex offenders' recidivism.

Taken together, these various studies provide rather mixed and inconclusive evidence regarding the impact and effectiveness of sex offender registration and community notification laws, both in terms of various stakeholders' perceptions and experiences and the effect on increasing public safety through deterrence.

Impact and Effectiveness: Residency Restrictions

Because residency restrictions are the most rapidly growing legislative trend at present, it may not be surprising that evaluative research pertaining to these laws is very limited. The current available information suggests that, although designed to increase public safety, residency restrictions may possibly create a paradoxical effect in some ways.

Limited Allowable Housing Options

Using geographic and mapping analyses, researchers have explored the impact of

imposing exclusionary zones in both urban and rural areas (see, e.g., Chajewski & Mercado, 2008; Colorado Department of Public Safety, 2004; Zandbergen & Hart, 2006). Predictably, when these zones are established – and when the scope of “protected” locations increases (i.e., multiple combinations of schools, daycare centers, parks, playgrounds) – permissible housing options are nearly or completely eliminated. What often remain are dense industrial districts, commercial spaces, agricultural fields, remote rural locations, or areas that are otherwise uninhabitable.

Consequently, access to important resources such as employment, specialized treatment, and social services is limited considerably. As noted previously, these and other types of community supports are important for reducing recidivism risk among sex offenders and non sex offenders alike (see Hanson et al., 2007; Petersilia, 2003).

Barriers to Enforcement and Monitoring

In most states and local jurisdictions, residency restrictions are applied to broad classes of sex offenders. This can make verification and enforcement efforts extremely challenging and

impractical for some law enforcement and corrections agencies. The increased demands placed on these agencies as a result of these laws can also divert time and resources from other important public safety responsibilities, particularly in the absence of additional manpower.

Additionally, the locations of acceptable housing alternatives (i.e., outside of the exclusion zones) may significantly increase sex offenders' distance from supervision agency offices, thus limiting officers' abilities to routinely monitor sex offenders and intervene in a timely manner when risk factors quickly surface. Experts further argue that because suitable housing options are ruled out by residency restriction laws, sex offenders may provide inaccurate addresses or become homeless or otherwise transient (see Levenson, 2008). This creates obvious barriers for law enforcement and other officials who are responsible for tracking and monitoring sex offenders in the short and long term.

Risk-Related Collateral Consequences

Evidence of the potential negative effects associated with residency restrictions also comes from survey research with sex offenders across multiple jurisdictions (see, e.g., Levenson, 2008; Levenson & Cotter, 2005b; Levenson & Hern, 2007; Mercado et al., 2008). The following are consistently identified:

- Reduced access to stabilizing resources;
- Housing instability caused by forced relocation;
- Difficulty finding or maintaining employment; and
- Loss of positive community supports.

These issues are not unexpected given the dearth of housing locations for sex offenders revealed through geographic mapping studies and other similar research in which residency restriction zones have been generated in various cities and countries (Chajewski & Mercado, 2008; Colorado Department of Public Safety, 2004; Duwe, Donay, & Tewksbury, 2008; Zandbergen & Hart, 2006).

Research on Effectiveness

At present, no research directly examines the effectiveness of residency restrictions laws on safeguarding communities. The investigations that appear to have come closest are based largely on analyses of sex offenders' recidivism patterns within the context of hypothetically imposed exclusion zones (Colorado Department of Public Safety, 2004; Duwe et al., 2008; Minnesota Department of Corrections, 2003). These studies neither suggest a link between sexual offending as a function of residential proximity to child-congregating areas, nor imply that enacting residency restrictions would have prevented any of the new sex crimes.

Indeed, the results indicate that initial contacts with victims and/or actual reoffenses occurred almost exclusively *outside* of zones that would have been prohibited had residency restrictions been in place at the time (Colorado Department of Public Safety, 2003; Duwe et al., 2008). As an aside, this is consistent with survey research in which sex offenders themselves indicate that such laws are unlikely to prevent them from engaging in sex offending behaviors if the desire to do so exists (Levenson, 2008; Levenson & Hern, 2007; Mercado et al., 2008).

Legislative bodies in some states have therefore elected to forgo blanket residency restriction laws and are instead considering alternative measures (see, e.g., Council of State Governments, 2008). Such alternatives include enacting proximity laws that prohibit time-limited activities such as loitering or working within buffer zones (rather than establishing outright bans on living within these zones), limiting the applicability of residency restrictions to high risk sex offenders, or using electronic monitoring to track sex offenders' whereabouts and to deter them from entering potentially high risk areas.

Taking Pause and Moving Forward

The nation has experienced a considerable increase in sex offender-specific legislation over the past decade. Unlike previous eras in which sex offender-specific laws were repealed as new laws were enacted, the current trends appear to be primarily cumulative. And unfortunately,

research regarding the impact and effectiveness of these laws and policies has not kept pace.

Many researchers are making concerted efforts to fill significant information gaps, but additional research is necessary to identify the extent to which these various legislative initiatives are increasing public safety and reducing sexual victimization as intended. There is, however, some evidence that suggests a potential association between some of these well-intentioned laws and effects that run counter to the desired outcomes.

Moreover, many sex offender-specific laws have been the focus of constitutional challenges on a number of grounds, including, but not limited

to, ex-post facto, double jeopardy, and cruel and unusual punishment grounds.¹⁰

Should such legislative trends continue, the net effect may be an increasing investment of resources over time without the demonstrated return as intended.

Emerging Approaches to Creating Well-Informed Sex Offender Management Policy

Public demands for tougher laws typically occur in response to tragic cases that have an enormous impact on the victims, families, and

¹⁰ Because of the ever evolving legal landscape, a review of case law pertaining to the various sex offender-specific legislative trends is not included in this document.

SUMMARY OF KEY SEX OFFENDER-SPECIFIC LEGISLATIVE TRENDS		
<i>Policy Initiative</i>	<i>Primary Goals, Potential Benefits</i>	<i>Identified Concerns, Potential Impact</i>
Civil Commitment	Incapacitate a narrow group of high risk sex offenders; provide treatment to reduce recidivism risk.	High costs of long term placement; strains system capacity because of few releases; potentially reduces the number of sex offenders receiving risk-reducing treatment; no research evidence of recidivism reductions or other long term public safety benefits.
Mandatory Minimums	Incapacitate and punish sex offenders; reduce sentence disparities; deter sex offenders and others.	Potentially decreases victim disclosures in family/acquaintance cases; may increase charge bargaining to non sex crimes; high costs of long-term incarceration; can exacerbate risk-increasing reentry barriers; no research evidence of recidivism reductions or deterrence.
Registration	Provide investigative and tracking tool for law enforcement; deter sex offenders and others.	Expanded applicability increases agency workload demands; inaccuracies in registry data can undermine monitoring efforts and reduce public confidence; research on deterrence is mixed and inconclusive.
Community Notification	Increase public awareness and heighten visibility of local sex offenders; empower citizens to take preventative measures; deter sex offenders and others.	May increase public fears and create a false sense of security because the laws imply that the greatest risk of victimization comes from strangers; possibly exposes victims' identities; potential for risk-increasing effects such as employment and housing instability; mixed and inconclusive research on public safety outcomes.
Residency Restrictions	Prevent victimization by prohibiting sex offenders from living near "at risk" locations.	Limited housing options may undermine public safety interests by reducing access to services and increasing risk factors such as lifestyle instability and social isolation; offenders may provide false addresses or become transient, thus negatively affecting supervision, monitoring, and tracking efforts; no research evidence of increased public safety.

communities. Policymakers are then placed in a difficult position as they attempt to respond in an effective and timely manner that meets the needs and interests of multiple vested parties. These challenging circumstances, and the heightened pressures that accompany them, understandably may not allow for thorough and measured policy analysis and well-informed legislative proposals.

On an increasing basis, however, policymakers and other stakeholders throughout the country are taking proactive steps to develop informed sex offender management policies that are based on what is known about sexual victimization, sex offenders, and strategies that increase public safety.

For example, some have hosted legislative briefings or policy forums – with the support of governmental funding or at their own expense – to engage national, state, and local experts in strategic dialogues about effective sex offender management policies.¹¹

Other state legislatures have established multidisciplinary sex offender management boards or committees composed of representatives from all aspects of the system (e.g., corrections, victim advocacy, treatment, law enforcement, courts). These entities are often charged with providing public policy

¹¹ See, for example, the Council of State Governments: <http://www.csg.org/policy/pubsafety/Introduction.aspx>

recommendations, creating statewide standards and guidelines and, in some instances, having regulating authority for the professional disciplines, agencies, and organizations responsible for sex offender management (Lobanov-Rostovsky, 2007).

Still other legislative bodies have created research institutions to conduct non-partisan research to address key policy questions, including sex offender management issues, as a means of advising legislators and other public officials on developing effective laws and policies.¹²

And in other states, multidisciplinary, collaborative working teams have been formed at the policy level to participate in structured systemwide assessments in order to promote comprehensive and data-driven understandings of a number of sex offender management areas, including – but not limited to – the following (see Center for Sex Offender Management, 2007a,b):

- The nature and scope of sexual victimization in their state, such as the characteristics of the sex offender population, the types of crimes committed, and the individuals who are victimized;

¹² See the Washington State Institute for Public Policy: <http://www.wsipp.wa.gov/>

Risk-Based Sex Offender Management Policies Maximize Public Safety Outcomes and Resources

Perhaps one of the most significant steps that legislators and agency policymakers have taken in multiple jurisdictions nationwide is the development of laws, policies, and practices that take into account the varied levels of risk posed by different sex offenders. The evidence-based correctional literature is instructive in this respect, particularly in terms of the risk principle, which consistently demonstrates the significant public safety value of implementing strategies that are driven by risk level (Andrews & Bonta, 2006). Examples of these risk-based sex offender management policies include the following:

- Imposing longer sentences for sex offenders who pose a greater risk for recidivism, and allowing for alternative sentencing options for lower risk sex offenders;
- Reserving intensive supervision, lifetime supervision, and GPS tracking strategies for high risk sex offenders;
- Establishing a continuum of sex offender treatment programs ranging from high intensity prison-based services to community-based programming, and matching offenders to programming based on risk level; and
- Creating tiered systems of registration and notification that are based on empirically-derived levels of risk, with varied applicability, scope, and periods of registration, as well as differing approaches to community notification.

Through risk-based strategies that prioritize resources for higher risk sex offenders, the desired impact and effectiveness for reducing sexual victimization and increasing public safety are more likely to be achieved.

- The existing resources for sex offenders, victims, and their families, and the extent to which these services are matched to the offender and victim populations and needs of the state;
- The typical flow of case processing with sex offenders, from the point of the investigation, prosecution and sentencing phases, throughout the rest of the system (e.g., prison, community supervision), and to the point of discharge;
- The laws, agency policies, and practices in place throughout the system, both in terms of the underlying rationale and the extent to which they are aligned with research-supported and other promising practices;
- The strengths and gaps in the system, including priority policy needs; and
- The range of potential policy options that can be implemented to effectuate community safety in their states.

The aforementioned strategies are but a few key examples of the efforts that lawmakers and other policymakers are making to begin exploring and developing well-informed, data-driven and, to some extent, evidence-based sex offender management policies. In so doing, the benefits can include:

- A greater level of internal confidence in legislative and other policy decisions regarding sex offender management;
- Explanatory power to external stakeholders about the rationale underlying sex offender management policies and practices;
- Rational deployment of resources that can maximize impact and desired outcomes within the sex offender management system, whether driven by goals of deterrence, punishment, incapacitation, and/or rehabilitation; and
- Increased accountability for the system in terms of evaluating the impact and effectiveness of policies through ongoing research and monitoring, and making informed policy adjustments accordingly.

Conclusion

Recent legislative trends demonstrate heightened concerns about sexual victimization and the individuals who perpetrate sex crimes. The steadfast commitment of lawmakers and other stakeholders to take swift and decisive steps to address this problem is clearly evident. Indeed, never before have so many invested parties from such diverse perspectives and disciplines expressed interest in critically examining public policy in this arena. As such, this is an opportune time to continue to foster and expand collaborative partnerships to strive toward developing evidence-based policies, funding additional research regarding the effectiveness of existing legislative trends and other sex offender management strategies, and determining what additional actions can be taken to enhance the safety of the nation's communities.

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