

THE PURSUIT OF SAFETY
Sex Offender Policy in the United States

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Executive Summary

Local, state, and federal policymakers have paid ever more attention to sex offenses over the past 20 years. In the wake of several high profile crimes by strangers against children in particular, they have crafted a growing body of legislation intended to protect the public from sexual predators. This legislation has expanded the scope of crimes that qualify as sex offenses, over the past decade more than doubled the number of people required to register as sex offenders, increased sentences for people found guilty of sex offenses, and established strategies designed to manage convicted sex offenders after their incarceration. Examples of these latter strategies include registration, community notification requirements, residency restrictions, electronic monitoring, and civil commitment.

The proliferation of these responses has generated little consensus about which available strategies are most effective. Consequently, many policymakers concerned about using public funds to maximize outcomes (consistent with the principles of fairness and justice) understandably are confused about their options for deterring would-be offenders, reducing recidivism, and incapacitating the most dangerous offenders. With support from the Bureau of Justice Assistance (part of the U.S. Department of Justice, Office of Justice Programs), the Center on Sentencing and Corrections at the Vera Institute of Justice conducted a nationwide review of current sex offender laws, policies, and trends. This report represents the results of that systemic analysis.

Analysis reveals that the public supports current national legislative focus on responding to sex offenses and presume that these responses have contributed to the drop in sex offenses that has been recorded in recent years. However, it is unclear whether any of these measures have had a significant impact on sex offense rates. In large part, this is because most policies are aimed at predation by strangers, whereas sex offenses are more often committed by family members and

acquaintances. In addition, a concurrent overall decrease in violent crime makes it difficult to identify the influence of the sex offender legislation on reductions in sexual offending. And several policies—particularly residency restrictions and community notification—may have negative impacts on public safety due to the impediments they create to successful reintegration of offenders who have completed their sanctions. Registration itself appears to somewhat reduce recidivism, but not for offenses against strangers. Electronic monitoring has shown some positive outcomes in some jurisdictions while having little impact in others, particularly those where it has been recently implemented. And while effective at incapacitating offenders, civil confinement is four times as expensive as incarceration and to date has not been particularly successful at treating offenders.

Finally, it appears that the public opinion that often drives policy in the sex offender realm is based on the belief that sex offenders are dangerous strangers who are apt to victimize children and re-offend. In reality, however, most sex offenders don't re-offend, and the definition of a sex offender is broad and encompasses different types of offenses, some more severe than others. Moreover, children are more at risk of being sexually victimized by a family member or other person known to them than they are by a stranger living a block away from their home or school.

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Introduction

At present, there are more than 636,000 registered sex offenders in the United States—approximately one in 500 Americans.¹ However, given that 99 percent of all sex offenders who have been released from prison are men, it is perhaps more meaningful to state that more than one in 160 adult males are registered sex offenders—and to point out that this figure has more than doubled over the past decade.² Although there is no way to know the total number of sex offenders in all state and federal prisons due to variations in state data collection and registration requirements, sex offenders clearly represent a significant percentage of all inmates. From data that was gathered via public sources and direct communication with state correctional departments, most states indicate that between 10 and 20 percent of prisoners are sex offenders; however, in some states, the rate is as high as 28 percent.³

While high-profile sex crimes routinely grab headlines, the question of how well current sex offense laws are working rarely has been examined. This report provides an overview of sex offense policies, identifying key trends and examining what is known about the effectiveness of different approaches at meeting their aims. Following a brief history of sex offender laws and a discussion of some of the current issues in the field, the report examines six significant trends in recent sex offender legislation:

- **Stricter Sentencing:** Mandatory sentences and longer sentences without parole or early release are becoming more widespread.
- **Enhanced Registration Requirements:** More information is being collected on offenders, the list of crimes for which registration is required has grown, and registered offenders are being required to update registration information at more frequent intervals.
- **Expanded Community Notification:** While specific community notification requirements vary considerably from state to state, the practice of notifying the community of the presence of sex offenders has become more widespread.
- **More Residency Restrictions:** Residency restrictions have ballooned over the past five years. However, these restrictions appear to have few concrete advantages and significant negative impacts on offender reintegration and public safety.
- **Spread of Electronic Monitoring:** In recent years, global positioning system (GPS) technology increasingly has been used to monitor the activities and whereabouts of sex offenders.
- **Growth of Civil Commitment:** Many states now keep high-risk sex offenders locked up indefinitely—even after they have served the maximum prison term—through court orders placing them in facilities that provide some level of sex offender treatment.

In our examination of these trends, we also discuss the effectiveness (in terms of improvements to public safety and reduced recidivism rates), the costs, and the legal challenges to specific policies. Finally, we have included sex offender legislation for every state in the appendix.

¹ National Center for Missing & Exploited Children, *Registered Sex Offenders in the United States per 100,000 Population* (map), March 25, 2008. Some states register offenders at conviction, while others don't require registration until the offender is no longer institutionalized in a correctional or mental health facility.

² Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, "Recidivism of Sex Offenders Released from Prison in 1994," *Bureau of Justice Statistics*: November 2003, NCJ 198281; U.S. Census estimates, population age and gender 2007; <http://www.census.gov>; Devon B. Adams, "Summary of State Sex Offender Registries," *Bureau of Justice Statistics* (Fact Sheet): March 2002, NCJ 192265. Earlier estimates from 1997 of 1-2 percent of the adult male population can no longer be considered valid due to the expansion since then of crimes now considered registerable.

³ Utah Department of Corrections data provided via e-mail; "Sex Offenders in Prison," *Minnesota DOC Backgrounder*: February 2006, http://www.doc.state.mn.us/publications/documents/sexoffenderbackrounder_000.pdf.

Please refer to these tables for more information on statutory regulations.⁴

Who is a Sex Offender?

For the purposes of this report, a sex offender is a person who has been convicted of a crime that requires registration as a sex offender.

There are numerous such crimes. Federal guidelines call for the registration of people convicted of sexual abuse or aggravated sexual abuse. They also call for the registration of people convicted of a number of other crimes when a minor is involved, including kidnapping or false imprisonment except by a parent; criminal sexual conduct; solicitation to engage in sexual conduct or practice prostitution; use in a sexual performance; and production or distribution of child pornography.¹

Many states have gone beyond the federal guidelines by extending the list of crimes that require registration. Among the offenses that have been added to state registration lists are voyeurism, public exposure, adultery, giving obscene material to a minor, displaying obscene material on a bumper sticker, and bestiality. In some states, a person can be required to register as a sex offender for possessing computer-generated images of virtual children; in other states, registration is required only for those who possess images of actual people under age 18.

The Adam Walsh Act of 2006 adds additional federal registration guidelines that will expand the definition in a number of ways; for example, a registerable sex offense now will include any criminal offense that has an element involving a sex act or sexual contact with another person. While states are not legally obligated to adopt the federal definition (or other provisions of the Act), they stand to lose federal funds if the Act is not implemented by July 2009.⁵

⁴ State appendices are generally current as of February 2008 and may have been amended since that time. Please refer to each state's complete statutes for the most up to date information.

⁵ Public Law 109-248—July 27, 2006, 120 STAT. 587.

Historical Background

THE FIRST WAVE OF U.S. SEX OFFENDER LAWS: 1937 – 1955

While sex crimes—and the punishment of those crimes—have long been a part of the fabric of our society and our penal codes,⁶ modern sex offender legislation in the United States can be traced to the period between 1937 and 1955, when, in response to several high-profile crimes, 26 states enacted “sexual psychopath” laws. These laws generally committed people who were guilty of what are now referred to as sex offenses to psychiatric facilities. Many of these laws were later struck down by the courts on due process grounds. Others fell into disuse as hopes for a “cure” for “sexual psychopathy” diminished and punishment and incarceration came to be viewed as a more appropriate response to sex offenders.⁷

The practice of requiring offenders to register began in the 1930s in response to the increased mobility of criminals. At the time, offender registries were viewed primarily as tools for law enforcement, which needed a way of keeping track of high-risk offenders.⁸ Registries were generally operated at the local level; they primarily targeted gangsters rather than sex offenders. In 1937, Florida enacted the first statewide registration law for certain felons.⁹ The first state registration law that focused specifically on sex offenders was passed in California in 1947. By the end of the 1980s, 12 states had enacted sex offender registration laws; none of these states distributed offender information to the public.

⁶ The Code of Hammurabi, dating from the 1700s B.C., specifically mentions incest as a punishable crime.

⁷ Simon A. Cole, “From the Sexual Psychopath Statute to ‘Megan’s Law’: Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949-1999,” *Journal of the History of Medicine* Vol. 55 (2000): 292-314.

⁸ Wayne A. Logan, “Sex Offender Registration and Community Notification: Past, Present and Future,” *New England Journal on Criminal and Civil Confinement* 34, no. 1 (2008): 3-16.

⁹ U.S. Department of Justice. *United States Attorneys Manual, Title 9 (Criminal Resources Manual)* article 1934, appendix D. http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm01934.htm.

THE SECOND WAVE OF SEX OFFENDER LAWS: 1989 – 2008

The past 20 years have witnessed a steady expansion of legislation around sex offenses in response to a number of high-profile child abductions, sexual assaults, and murders. Among the most notable of these incidents are the following:

- In 1989, Jacob Wetterling, age 11, was kidnapped from his neighborhood in St. Joseph, Minnesota. No perpetrator was ever charged, and Jacob has never been found.
- Also in 1989, a 7-year-old Tacoma, Washington, boy was sexually mutilated by a sex offender who had been released on bail.
- In October 1993, Polly Klaas, age 12, was sexually assaulted and murdered after being kidnapped from her home in Petaluma, California. The perpetrator was a paroled sex offender with a long rap sheet.
- In July 1994, Megan Kanka, age 7, was sexually assaulted and murdered by a convicted sex offender after being kidnapped from her neighborhood in Hamilton Township, New Jersey.
- In February 2005, Jessica Lunsford, age 9, was abducted from her Homosassa, Florida home and raped by a convicted sex offender. She later died after being buried alive in a trash sack.

In the aftermath of each of these crimes, the state where the incident occurred responded by passing legislation. In 1990, for example, in the wake of the Tacoma killing, Washington State passed the Community Protection Act, a comprehensive set of laws that increased prison terms for sex offenders, established registration and notification laws, and authorized civil commitment of sexually violent predators. Similarly, Minnesota implemented a state sex offender registration act in 1991 in response to the abduction of Jacob Wetterling. California passed its “three strikes” law in 1994, largely in response to the murder of Polly Klaas. Also in 1994,

New Jersey enacted Megan's Law, which required active community notification whenever a sex offender moved into a locality. Many of these laws were later emulated in states around the country.

1994: Sex Offense Legislation Attains Federal Level with the Jacob Wetterling Act. In 1994, the federal government responded to the increase in state sex offense legislation by enacting the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. This law calls for states to implement a registry of sex offenders and those convicted of certain crimes against children.¹⁰ Over the next few years, a number of key amendments were added as well:

- **1996:** A federal version of Megan's Law requires states to establish a community notification system. Also, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 requires lifetime registration for recidivists and offenders who commit certain aggravated offenses.
- **1998:** An amendment to the Jacob Wetterling Act calls for stricter registration requirements for sexually violent offenders; registration of federal and military offenders; registration of nonresident workers and students; and state participation in the National Sex Offender Registry.
- **2000:** The Campus Sex Crimes Prevention Act requires sex offenders to report information regarding enrollment or employment at an institution of higher education and to provide this information to local law enforcement agencies.¹¹

¹⁰ Note that Constitutional limits on the power of the federal government prevent it from actually requiring states to implement specific provisions. Instead, it penalizes states that do not comply with these laws by withholding 10 percent of the Justice Assistance Grants it usually provides—an amount that can range from approximately \$100,000 (in Wyoming) to \$5 million (in California).
¹¹ <http://www.ojp.usdoj.gov/BJA/what/2a1jwacthistory.html>

2005: States Follow Florida’s Lead with Tougher Penalties, More Restrictions. Soon after the murder of Jessica Lunsford, in 2005, Florida passed what has come to be known as Jessica’s Law. This law increased minimum sentences and registration and monitoring requirements and created restrictions on where sex offenders can live. Thirty-three states have since passed some version of Jessica’s Law. California’s version, which is fairly typical, calls for mandatory minimum prison sentences of 25 years to life for child molesters when the victim is under the age of 14; the elimination of all “good-time” credits (reduced prison terms for good behavior) for sex offenders; lifetime electronic monitoring of convicted sex offenders; and the creation of a 2,000-foot “predator-free” zone around schools and parks.¹²

SORNA: The Next Wave of Federal Legislation. In 2006, Congress passed the Sex Offender Registration and Notification Act (SORNA), which is also known as the Adam Walsh Child Protection and Safety Act, in memory of a boy who was abducted from a mall and murdered in 1981. In an indication of the tremendous support for this legislation, both houses passed it on a voice vote. SORNA further extended the federal government’s influence over the direction and scope of sex offense policy. It called for increased registration requirements for states; it also called for a number of studies (to date unfunded) on sex offender policies.¹³ Finally, SORNA attempted to create a federal civil commitment program. The viability of this provision may be in doubt, however; at least one federal court has held that such a program is unconstitutional.¹⁴ Another SORNA provision may also be in doubt: federal courts in two states have held that the United States

government does not have the authority to prosecute a person who fails to re-register when moving from one state to another.¹⁵

As is true of other federal sex offender laws, the federal government cannot directly require states to implement SORNA provisions. Instead, the legislation specifies that states that fail to implement its provisions within three years of its passage stand to lose 10 percent of their Justice Assistance Grant funds. For many states, complying with SORNA guidelines will require significant legislative changes.

Current Issues in Sex Offender Policy

The recent wave of sex offender laws has spurred discussion about the impact of those laws on the criminal justice system—especially in light of the drop in crime rates over the last few decades and the public’s strong support for strict sex offender laws.

WHAT IS BEHIND THE RECENT WAVE OF SEX OFFENDER LAWS?

There have been numerous efforts to account for the recent wave of sex offender laws—especially in light of the fact that violent crime rates, including those for sex offenses such as rape, have been in decline for 30 years (see figure 1).¹⁶ Some sociologists believe that the recent wave of sex offender laws has been the result of a “moral panic,” an exaggerated public response to a perceived threat.¹⁷ However, as figure 2 shows, 93 percent of offenses against children are committed by family members and acquaintances; the “stranger danger” crimes, which spurred the creation of most sex

¹² Summary from <http://www.83yes.com/provisions>. Actual initiative language was over 17,000 words long.

¹³ An excellent resource on this is the National Conference of State Legislatures, <http://www.ncsl.org/standcomm/sclaw/sorna.htm>. Key provisions of SORNA are included in the appendix.

¹⁴ *United States v. Comstock*, case no. 5:06-HC-02195-BR (E.D.N.C. Sept. 7, 2007). The court ruled that the federal government must meet a higher burden of proof than the states when arguing that civil commitment is an appropriate course of action

¹⁵ *United States v. Robert D. Powers*, case no. 6:07-cr-221-Orl-31KRS, U.S. District Court, Middle District of Florida, Orlando Division, April 18, 2008.

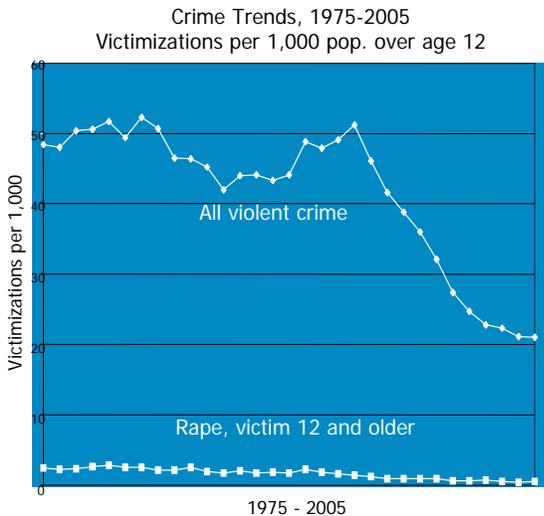
¹⁶ Shannan M. Catalano, Ph.D., “Criminal Victimization, 2005,” *Bureau of Justice Statistics Bulletin, NCJ 214644*, U.S. Bureau of Justice Statistics, U.S. Department of Justice: September 2006.

¹⁷ E. Goode and N. Ben-Yehuda, “Moral Panics: Culture, Politics and Social Construction,” *Annual Review of Sociology*, 20: 1994, 149-171.

offense laws, are relatively rare. These observers argue that changes in the media—in particular, the rise of 24/7 cable news stations and Internet news sites—have increased public awareness of sex crimes, with the result that many people now believe that crimes against children are on the rise. According to this viewpoint, policymakers have simply responded to the public’s

which a parole board (or other entity) exercises discretion in determining a person’s release from incarceration.¹⁹

Figure 1

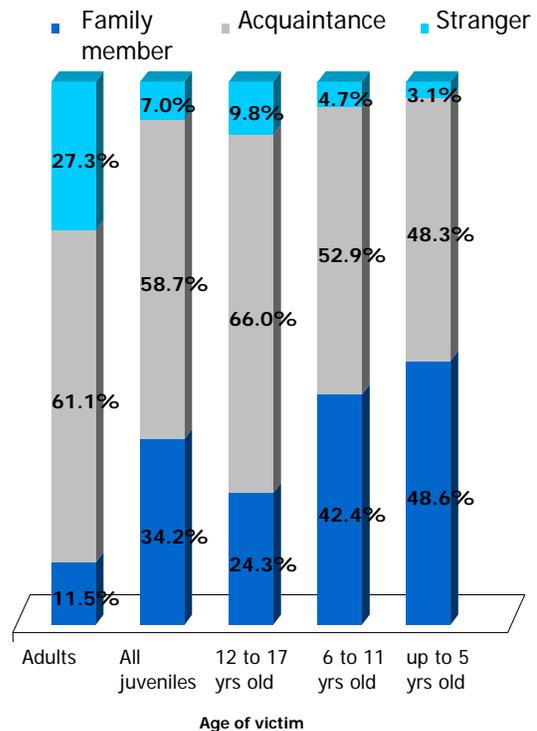


demand for countermeasures. As one legislator recently told a group of researchers, “I can’t go anywhere without someone asking me about some [sex offense] they heard on the news, ‘What are you doing about that?’”¹⁸ Some also point out that the first wave of sex offender laws in the United States—the one that occurred between 1937 and 1955—also coincided with a major advance in communications, the advent of television as a presence in the national media.

According to another point of view, there in fact may be more high-risk sex offenders on the streets today than in the past, despite the overall decrease in crime rates. Proponents of this view argue that determinate sentencing laws—laws that specifically define the amount of time that a person will serve for a given crime—have created a situation in which some high-risk sex offenders are released earlier than they would have been under prior indeterminate sentencing systems in

Figure 2

Sexual Assault by Age and Type of Offender*



* Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics, *Bureau of Justice Statistics (NCJ 182990)*, 2000

Some have speculated that the new determinate sentences are on average shorter than the flexible sentences that preceded them, as the flexible sentences had made it possible for parole boards to keep high-risk offenders in prison for longer periods. The most recent wave of sex offender legislation was, in this view, a response to the increasing numbers of sex offenders being released from prison.

COSTS ASSOCIATED WITH RECENT SEX OFFENDER POLICIES

The recent wave of sex offender policies has not been cheap. The average annual operating cost per state

¹⁸ Lisa L. Sample and Colleen Kadleck, “Sex Offender Laws: Legislators’ Accounts of the Need for Policy,” *Criminal Justice Policy Review*, 19: 2008, 40-62.

¹⁹ W. Lawrence Fitch and Richard J. Ortega, “Law and the Confinement of Psychopaths,” *Behavioral Sciences and the Law* 18: 665-678.

inmate (any offense) in 2001 was \$22,650; in 2005, 23 states and the federal system were operating at or above capacity.²⁰ And even alternatives to incarceration like electronic monitoring carry significant equipment and supervision costs (around \$10 - \$14 per offender per day for equipment alone, according to one recent state report²¹). In addition, some states have had to hire additional staff to track down offenders who are not in compliance with registration requirements.

In combination with other financial pressures, these costs have placed some state budgets under serious strain. In Nevada, for example, the state prison director recently told the press that the state needs emergency funding to meet legislative mandates for sex offender registration.²² And in California, higher incarceration rates, increased supervision, and the growth of civil confinement as a result of Jessica's Law are costing the state hundreds of millions of dollars. As a result, many policymakers are being forced to re-evaluate some recent sex offender laws.

SEX OFFENDERS AND RECIDIVISM

Many sex offender policies are predicated on the assumption that re-offense rates for sexual offenses are higher than those for other felonies. The text of California's version of Jessica's Law, for example, states that "sex offenders have very high recidivism rates...dramatically higher...than any other type of violent felon."²³

However, there is a significant body of research that appears to contradict this proposition. One recent study found that sex offenders had a five-year recidivism rate of 24.5 percent for all offenses and a 2.8 percent recidivism for sexual offenses; in contrast, other felony offenders had a five-year recidivism rate of

approximately 48 percent for all offenses.²⁴ Another study found that people arrested for sexual offenses had a five-year offense-specific re-arrest rate (the rate at which they were re-arrested for the same crime within five years) of 6.5 percent. Only people arrested for homicide had a lower five-year offense-specific re-arrest rate (5.7 percent); the rates for robbery, burglary, and public order offenses were 17.9 percent, 23.1 percent, and 21.4 percent, respectively.²⁵ A 1994 study by the U.S. Department of Justice found that 24 percent of sex offenders were convicted of another crime (including but not restricted to sex offenses) within three years; in contrast 46.9 percent of all offenders were convicted of another crime within this period.²⁶

Some observers have expressed caution about drawing conclusions from such findings. In particular, some have suggested that the underreporting of sex offenses complicates efforts to form an accurate picture of the scope of sexual re-offending.²⁷ In addition, there has been little research on recidivism rates for people convicted of non-violent (but registerable) sexual offenses such as possessing child pornography or soliciting an underage prostitute.

Recidivism rates also appear to differ between different categories of sexual offenders. One study found that people arrested for rape had the highest offense-specific re-arrest rate (5.8 percent) of any category of sexual offender.²⁸ Researchers have been investigating the characteristics of the "prototypical sexual recidivist." The authors of one recent meta-analysis characterized such people as "not upset or lonely." Rather, they wrote,

²⁴ "Sentencing in Washington State: Recidivism Rates," *Washington State Institute for Public Policy*, Document No. 05-08-1203.

²⁵ Lisa L. Sample and Timothy M. Bray, "Are Sex Offenders Dangerous?" *Criminology and Public Policy*, 3, no. 1: 59-82.

²⁶ Patrick A. Langan et al., "Recidivism of Sex Offenders Released from Prison in 1994." Bureau of Justice Statistics: 2003; U.S. Department of Justice, Bureau of Justice Statistics, "Recidivism of Prisoners Released in 1994: Reports on the Rearrest, Reconviction, and Reincarceration of Former Inmates Who Were Tracked for Three Years After Their Release from Prisons in 15 States in 1994," NCJ 193427: 2002.

²⁷ Bob Edward Vásquez, Sean Maddan and Jeffery T. Walker, "The Influence of Sex Offender Registration and Notification Laws in the United States," *Crime and Delinquency* 54, no. 2 (2008): 175-192.

²⁸ Lisa L. Sample and Timothy M. Bray, "Are Sex Offenders Different?" *Criminal Justice Policy Review* 17, (2006): 83-102.

²⁰ James J. Stephan, "State Prison Expenditures, 2001," *Bureau of Justice Statistics Bulletin*, 2004: NCJ 202949; Paige Harrison and Allen Beck, "Prisoners in 2005," *Bureau of Justice Statistics Bulletin*, 2006: NCJ 215092.

²¹ "Electronic Monitoring of Sex Offenders: 2006 Report to the Legislature," *Minnesota Department of Corrections*, February 2006.

²² Brendan Riley, "Nevada Prison System Needs Funds to Track Sex Offenders," *The Nevada Appeal*, April 8, 2007.

²³ "Official Voter Information Guide, California General Election, Tuesday November 7, 2006."

the prototypical sexual recidivist “leads an unstable, antisocial lifestyle and ruminates on sexually deviant themes.”²⁹ There are a number of risk assessment tools that can help identify such high-risk offenders—a topic that is discussed in greater depth in the companion to this report, *Treatment and Reentry Practices for Sex Offenders: An Overview of States*.³⁰

STRONG PUBLIC SUPPORT FOR STRICT SEX OFFENDER POLICIES

Whatever is behind the most recent wave of sex offender laws, it is clear that there is strong public support for strict policies. California’s version of Jessica’s Law, which was created by citizen initiative, passed in 2005 with 70 percent of the vote. A 2006-2007 telephone survey of American adults found that 94 percent of respondents felt that tough punishment for sex offenses—especially those that involved children—should be a “top national priority for state and federal policymakers.” Most survey respondents also supported making the names and addresses of sex offenders publicly available; placing restrictions on where sex offenders can live; and incarcerating those convicted of sexual assault, rape, indecent exposure to a child, or accessing or distributing child pornography.³¹

The one area of public opinion on sex offender policies that could be more fully examined is recidivism. What does the public consider to be an acceptable recidivism rate for sex offenses involving children? And does this rate differ from the acceptable recidivism rate for sex offenses against adults? Without a clear understanding of the level of risk that Americans are willing to accept,

policymakers will be forced to craft policies without a clear definition of success.

PUBLIC MISPERCEPTIONS ABOUT SEXUAL OFFENDING

There is some evidence that the general public, in spite of its strong support for tough sexual offense laws, is not well-informed about the nature and extent of sexual offending. One recent study, which compared survey responses with published data, found that the public significantly overstates both the rate at which convicted sex offenders re-offend and the proportion of sexual assaults that are committed by strangers (see figure 3, below). These findings led researchers to conclude that public misperceptions “present a clear challenge to policymakers seeking to create empirically based policies that meet the public’s expectations.”³²

Figure 3

Survey Question	Published Data	Public Average
What percentage of sexual assaults of adults do you believe were committed by strangers?	27%	49%
What percentage of sex offenders do you believe come to the attention of the authorities?	36%	46%
What percentage of adult sexual offenders do you believe were sexually abused as children?	28%	67%
What percentage of convicted sex offenders do you believe will commit another sexual offense?	14%	74%
What percentage of rapists do you believe re-offend in a sexual manner?	20%	74%
What percentage of child molesters do you believe re-offend in a sexual manner?	13%	76%

²⁹ R. Karl Hanson and Kelly E. Morton-Bourgon, “The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies,” *Journal of Consulting and Clinical Psychology* 73: No. 6, 2005: 1154-1163.

³⁰ Reagan Daly, *Treatment and Reentry Practices for Sex Offenders* (New York: Vera Institute of Justice, 2008).

³¹ Daniel P. Mears, Christina Mancini, Marc Gertz, and Jake Bratton, “Sex Crimes, Children and Pornography: Public Views and Public Policy,” *Crime and Delinquency* Feb. 2008: online only.

³² Timothy Fortney, Jill Levenson, Yolanda Brannan, and Juanita N. Baker, “Myths and Facts about Sexual Offenders: Implications for Treatment and Policy,” *Sexual Offender Treatment* 2, No. 1: 2007. Answers were obtained from people waiting in line at the Florida Department of Motor Vehicles. It should be noted that the most commonly given public answer (mode) for percent of offenders that recidivate was 90 percent.

Sentencing

SUMMARY

The increase in sentence severity over the past 20 years isn't unique; rather, it's part of a broader public policy shift that has occurred in the United States. For sex offenses, the shift has resulted in more people being incarcerated for longer periods of time for a wider range of crimes. Some victim advocates feel that long mandatory sentences increase plea bargaining and reduce crime reporting; court innovations and costs may drive future sentencing trends.

OVERVIEW

Over the last decade and a half, the use of mandatory minimum sentences for sex offenders has grown considerably. While efforts to create “three strikes” rules and impose tougher sentences were widespread throughout the 1980s and 1990s, the package of policies that is known as “Jessica’s Law,” the first version of which was passed in Florida in 2005, has recently reinvigorated the push for longer mandatory minimum sentences. Florida’s law more than doubled the mandatory minimum sentence for sex offenses against children; 33 states have now passed some version of the law. It appears that high-profile cases, rather than an increase in crime, have been responsible for the most recent push for tougher sex offender sentences: government figures show the rate of sexual assaults against adolescents between the ages of 12 and 17 plunged 79 percent from 1993 through 2003, and the number of substantiated sex-abuse cases involving children of all ages fell 39 percent in the same period.³³

TRENDS AND IMPACTS

The impact of longer sentences, three strikes rules, and lifetime supervision has not yet been rigorously evaluated. It is clear that the 400 percent increase in convictions for sex offenses that took place between

1993 and 2000 was accompanied by a drop in sex crime rates during the same period.³⁴ The claim that these two developments are related is fairly widespread. However, this statistic has not been confirmed with empirical data, and it remains unclear what (if any) causal relationship exists between tougher sentences and the drop in sexual offense rates. In fact, some recent research suggests that the incarceration of sexual offenders has little or no impact on sexual and violent recidivism following release.³⁵ This in turn suggests that any positive impact of tougher sentences is probably due to those sentences’ incapacitating function and possibly due to their deterrent effect.

Opposition to tougher sentencing policies has come from some unexpected quarters. In Connecticut, for example, Connecticut Sexual Assault Crisis Services Inc., a statewide coalition of community-based rape crisis programs, published an opinion piece in April 2008 opposing three strikes legislation on the ground that it may lead to reduced victim reporting. Executive Director Nance Kushins wrote that “many victims wanted the person they trusted or loved to get help, not for the offender to spend a mandated lengthy or life sentence behind bars.”³⁶ The National Alliance to End Sexual Violence has expressed concern about mandatory minimum sentences. According to a recent position paper, mandatory minimum sentences may lead prosecutors to not file charges, to file charges for a lesser crime, or to reduce the charges as part of a plea bargain. They may also discourage those who have been assaulted by someone they know from reporting the crime.³⁷

³⁴ “Sex Offenders: Will Tough New Laws Do More Harm Than Good?” *CQ Researcher* 16, no. 31: 2006, 721-744.

³⁵ Kevin L. Nunes, Philip Firestone, Audrey F. Wexler, Tamara L. Jensen, and John M. Bradford, “Incarceration and Recidivism Among Sexual Offenders,” *Law and Human Behavior* 31, no. 3: 2007, 305-318.

³⁶ Nancy Kushins, “Why Three-Strikes Could Harm Sex Assault Victims,” *Hartford Courant*, April 25, 2008.

³⁷ “Community Management of Convicted Sex Offenders: Registration, Electronic Monitoring, Civil Commitment, Mandatory Minimums, and Residency Restrictions,” Position Paper by the National Alliance to End Sexual Violence, <http://www.naesv.org/Policypapers/communitymanagementofconvictedoffenders.html>.

³³ Wendy Koch, “Despite High Profile Cases, Sex Offense Crimes Decline,” *USA Today*, Aug. 24, 2005.

A study of Utah’s mandatory prison sentences appears to corroborate such claims: Of 905 cases that began the judicial process with a mandatory prison charge for a sex offense, 791 continued forward with at least one charge that was not dismissed. Of these 791 cases, over one-third had sentences that were reduced or dismissed, often through a plea bargain agreement.³⁸ Utah rescinded several mandatory minimum sentences for sex crimes against children in 1996, thus bucking the national trend. A recent report by the state’s sentencing commission concluded that doing so has since made it possible for the state to handle sex offenders on a case-by-case basis, thus incarcerating high-risk offenders without holding low-risk offenders longer than public safety demands.

People who have been convicted of a violent sex offense are not the only ones who have felt the impact of sentencing changes. Many states also require people who are convicted of misdemeanor sex crimes to register as sex offenders. While registration (and the community notification and residency restrictions that usually go with it) are not considered punitive, as future sections discuss, they can have a significant impact on a person’s life. Although this may be appropriate for serious offenders, lawmakers may want to consider the policy implications around legislating short sentences with prolonged registration requirements. Policymakers interested in equity will want to avoid sending such mixed messages.

Sex offender sentencing appears to be tempering with respect to so-called “Romeo and Juliet” offenses, however. Following the highly publicized case of a young man who was incarcerated following consensual oral sex with a teenage girl, several states, including Connecticut, Florida, Indiana, and Texas, have begun to reduce sentences for statutory sex crimes. Usually, these new laws do not consider the act to be an offense so long

as the difference in age between the two parties falls within a defined range (usually three to four years).

Another recent sentencing development that runs counter to the trend toward tougher sentencing is the launch of sex offender courts modeled after other problem-solving courts (such as drug and mental health courts). In 2006, the New York State Unified Court System became the first jurisdiction in the nation to pilot sex offender courts. In these courts, defendants are placed under an extensive monitoring regime that involves multiple meetings with the judge. The judge is assisted by a specially trained team of prosecutors, defense attorneys, victim agencies, probation officers, treatment providers, and court personnel. This team undergoes a comprehensive training program and participates in regular interagency meetings to ensure that cases are resolved in a timely manner, victims and the public are safe, and that offenders are held accountable post-conviction.³⁹ These courts are currently being expanded and evaluated.

CONCLUSION

While the impact of longer sentences and “three strikes” legislation on public safety remains a subject of debate, there is no question that the fiscal impact will be significant. Prison populations and costs are rising at a time when many states are struggling to balance their budgets. California’s version of Jessica’s Law, which was enacted as a citizen initiative, received 70 percent of the vote, despite ballot language stating that the initiative could cost the state several hundred million dollars—even without taking prison construction costs and the cost to local governments into account. It remains to be seen whether the public and policymakers will pull back their support for tougher sentences if the correctional costs associated with mandatory minimums continue to rise.

On the other hand, it is possible that the deterrent effect of mandatory minimums—particularly in conjunction with the other stringent sex offender laws

³⁸ “Case Processing Analysis: Utah’s Mandatory Prison Sex Offenses,” *Utah Sentencing Commission*. The report notes that the data system does not explicitly identify instances of plea negotiations but looks for evidence of such in terms of charge reduction and dropping.

³⁹ <http://www.courtinnovation.org/upstateinnovation.spring06.html>.

outlined elsewhere in this report—will result in fewer new arrests and, consequently, lower incarceration costs. In addition, civil commitments following prison sentences (discussed in detail below) are further incapacitating high-risk offenders. In order to keep their civil commitment programs constitutional, states may be forced to beef up their prison treatment programs to demonstrate a “good faith effort” at rehabilitation. Such treatment programs would likely reduce the number of sex offenders who re-offend after being released.

Given the high costs of civil commitment (four times that of prison) and the possibility of continuing legal challenges to the practice, legislators will likely look for other ways to incapacitate high-risk offenders. Longer mandatory sentences or very long indeterminate sentences that give parole boards significant latitude with high-risk offenders are two obvious alternatives. More prison-based treatment, which could alleviate the need for longer sentences, is another. New York’s problem-solving sex offense courts are worth watching, too: if they have positive outcomes similar to those of the drug, family, and mental health courts on which they are modeled, it could lead to a significant shift in the way sex crimes are treated in the future.

Sex Offender Registries

SUMMARY

All 50 states now have electronic sex offender registries that connect with the Dru Sjodin National Sex Offender Registry. While registries have a small positive impact on recidivism by offenders who know their victims, they appear to have virtually no impact on crimes against strangers. New federal guidelines broaden the range of offenses for which an offender must register, increase the amount of personal data collected on offenders, and create a system of tiers based on offense, rather than dynamic risks. Some states include people convicted of non-violent crimes in their registries. Rates of registration noncompliance are rising as registrants face

increasing residency restrictions and shorter periods in which they must report changes. State costs for tracking these missing offenders will continue to rise.

OVERVIEW

As noted in the discussion of the history of sex offender laws, a number of states had local sex offender registries prior to 1994, when the federal government set forth guidelines for state sex offender registries in the Jacob Wetterling Act. Today, sex offender registries are used in all 50 states.⁴⁰ In addition, all 50 states make some portion of registry data available to the public, omitting data that might be used fraudulently (such as social security numbers) or that might identify victims.

STATE TRENDS

All state registries are now electronic and feature information that makes it possible to identify the offender and his or her place of residence. Regulations specifying how often this information must be updated and what kinds of information must be submitted vary from state to state and according to the seriousness of a person’s offense. In general, recidivists and aggravated offenders are subject to stricter registration requirements. Many states mandate registration for a variety of non-violent offenses as well.

As is true of other aspects of sex offender policy, the registration of sex offenders has been challenged in the courts. Many contested cases have involved people who were required to register as sex offenders despite not having been convicted of a specifically sexual offense. For example, one New York man who had pled guilty to second degree kidnapping for his role in a gang-related crime involving a 16-year-old was told that he would have to register as a sex offender years after completing his sentence. The man’s attorney

⁴⁰ Because of their status as sovereign nations and the lack of a financial incentive such as justice assistance grants, few Indian tribes have implemented sex offender registries on their reservations. However, SORNA states that either tribes must implement a tribal registry or the state or states in which they are located will be given jurisdiction to do so. A number of tribes applied for and received grants to create or update their registries in spring 2008.

successfully contested his registration. However, in a separate case (also in New York), a judge ruled that it is for legislators, not the judiciary, to determine whether kidnapping should be a registerable offense.⁴¹

In general, sex offender registries are not considered punitive; if they were, it would be impossible to impose additional registration requirements on people who had already been sentenced or who had already served a prison term, as the additional registration requirements would then qualify as *ex post facto* new punishments. There are a few notable exceptions, though: in one case, the Missouri Court of Appeals ruled that the state was wrong to require people whose convictions pre-dated the state's registration law to register as sex offenders. A Kansas court issued a similar ruling in 1996.⁴²

While much of the recent growth in the use of sex offender registries has followed federal guidelines, a few states have acted on their own by imposing additional registration requirements. For example, some states require offenders to provide all electronic identities and addresses. Also, several states are looking into special registration requirements for sex offenders living in mobile homes.

FEDERAL GUIDELINES

The 1994 Jacob Wetterling Act requires states to register any offender who has been convicted of a sexually violent offense, as well as any person who has been convicted of certain crimes involving a child victim. (See sidebar for definitions of terms.) There is a minimum registration requirement of 10 years for all registrants. Recidivists and sexually violent predators are lifetime registrants. All states currently comply with these requirements.

The Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration

and Notification Act (SORNA), will increase the registration requirements for many states that wish to remain in compliance with federal guidelines (and therefore remain eligible for full federal funding of Justice Assistance Grants). These new guidelines are listed in the appendix of this report. Among the most notable changes in registration requirements are the following:

- Reduces from ten to three the number of days in which authorities must be notified of a change of address or other status and requiring that this be done in person;
- Requires offenders to submit information on all forms of communication they might use (especially forms of electronic communication);
- Requires offenders to submit additional personal information, such as a full criminal history and additional biometric identifiers;
- Creates different tiers of offenders based on the nature of the offense and defines registration requirements for each tier;
- Requires the registration of juveniles whose offense is comparable or more serious than the federal offense of aggravated sexual abuse.

It is expected that these requirements will impose an additional burden on law enforcement. In addition, it is likely that employment obligations and transportation

⁴¹ Ofer Raban, "Be They Fish or Not Fish: The Fishy Registration of Nonsexual Offenders," *William & Mary Bill of Rights Journal* 16: 2007. Raban also discusses the data upon which the decision was made to include kidnapping as a registerable sex offense, and concludes that proponents of registration overstated the percentage of kidnappings that involved a sex offense.

⁴² *State v. Myers*, 260 Kan. 669 (1996).

issues will make it difficult for some offenders to satisfy stricter and more frequent in-person reporting requirements.⁴³

ANALYSIS OF IMPACTS

Evidence suggests that the registration of sex offenders is not correlated with a significant increase in public safety. Most recent studies have combined sex offender registration laws with community notification laws, making it difficult to ascertain the impact of each set of laws individually. However, one recent paper has attempted to address this issue by examining those states that, for a period of time, had registration requirements but did not make registry information public.⁴⁴ Looking at crime data from the National Incident-Based Reporting System, researchers found that registration laws alone *did* reduce recidivism. However, this reduction was confined primarily to offenders who lived near their victims and knew them as family or friends—perhaps, the researchers hypothesized, because law enforcement is better at monitoring these types of offenders.⁴⁵ There was no evidence of a decrease in crimes against strangers as a result of registration—a striking result, given that most recent registration laws were enacted in response to crimes committed by strangers.

Another study compared the number of reported rapes before and after the implementation of sex offender registration and notification laws in 10 states.⁴⁶ The authors found that in six of these states, there was no statistically significant change; in three states, there was a decrease in the number of reported rapes; and in

⁴³ These problems are likely to be exacerbated by residency restrictions, which have pushed many registered offenders into rural areas and urban areas isolated from public transportation. See the section on residency restrictions for further discussion.

⁴⁴ JJ Prescott and Jonah E. Rockoff, “Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?” National Bureau of Economic Research Working Paper No. 13803 (<http://www.nber.org/papers/w13803>): 2008.

⁴⁵ The authors considered the possibility that lower reporting rates (as opposed to fewer offenses) might be responsible for this decrease: victims (and the parents of child victims) might not want the offender to have to register for a variety of reasons. However, they felt that this alone could not account for the decrease in recidivism.

⁴⁶ “The Influence of Sex Offender Registration and Notification Laws in the United States.”

Frequently Used Terms , U.S. Code Title 42, Chapter 136, Subchapter VI, § 14071: Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program	
Sexually violent offense	A criminal offense that includes sexual abuse (forcing an individual to engage in a sexual act either by threat or because the individual is unable to consent due to mental or physical incapacity), or aggravated sexual abuse (forcing an individual to engage in a sexual act by use of force or threat thereof).
Sexually violent predator	A person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.
Predator	An individual who seeks out victim who is a stranger, or who establishes or promotes a relationship with another person for the primary purpose of victimization.
Criminal offense against a minor	Any of the following offenses when it involves a minor: <ul style="list-style-type: none"> • Kidnapping or false imprisonment, except by a parent • Criminal sexual conduct • Solicitation to engage in sexual conduct or practice prostitution • Use in a sexual performance • Any conduct that by its nature is a sexual offense • production or distribution of child pornography
Required to register	All those convicted of a sexually violent offense or criminal offense against a minor are required to register. Sexually violent predators must register for life.

one state, the number of rapes increased. They concluded that registration had no net effect on rapes. However, they also noted the possibility that any deterrent effect of registration may have been offset by increased attention to offenders by law enforcement (resulting in more arrests). If true, this would mean that the registration requirement is serving a dual public safety function which is not reflected by the statistics.

In a 2006 study, the Washington Institute for Public Policy compared the recidivism rates among registered sex offenders who followed the registration requirements and those who failed to do so. They found that sex offenders with a failure-to-register conviction had sex offense recidivism rates that were 50 percent higher than those of people who had complied with registration requirements (4.3 percent recidivism for those who did not register versus 2.8 percent for those

who did). In addition, the recidivism rate for all felony offenses increased from 22.9 percent for those in compliance with registration requirements to 38.5 percent for those that were not.⁴⁷ The relationship between these findings and the efficacy of registration remains unclear, as does the role of additional factors (such as differences in offender characteristics).

There has been relatively little research into the question of whether juvenile sex offenders are likely to become adult sex offenders—despite the fact that SORNA calls for the mandatory registration of some juvenile offenders. Much of the evidence that *does* exist suggests that the connection between juvenile and adult sex offending is tenuous. One recent study examined recidivism rates for incarcerated juvenile sex offenders, and found that only five percent of incarcerated juvenile sex offenders were re-arrested for another sexual offense within 10 years. However, the study also found that incarcerated juvenile sex offenders were re-arrested for non-sexual offenses at fairly high rates (between 31 and 47 percent, depending on the severity of the original offense).⁴⁸ Another study examined people born in Racine, Wisconsin, in the 1940s and 1950s. Researchers found that among juveniles with a felony sex offense (the type of offense that what would likely lead to mandatory registration under SORNA), 15.4 percent of boys and 11.1 percent of girls went on to have an adult record of contact with the police for sexual misconduct. As it turned out, though, having *any* juvenile record of contact with the police—and in particular, a record of multiple contacts with the police—was a much better predictor of adult sex offending. Conversely, only four percent of males with an adult record of contact with the police for sexual misconduct had a record of juvenile sex offenses. The authors concluded that these findings

“failed to provide support for the assumption that juvenile sex offending was a harbinger of adult sex offending . . . in Racine it would be just as efficient to create a ‘potential sex offender registry’ composed solely of young men with juvenile contacts for auto theft.”⁴⁹

CONCLUSION

Sex offender registries appear to be most effective as monitoring tools for law enforcement (as distinct from their use as tools for notifying the general public about the presence of sex offenders in the community—a topic that is discussed in the next section.) In addition, while most registered sex offenders are first-time offenders—and most will not re-offend—there is some evidence that sex offender registries slightly reduce the number of sexual re-offenses against victims who are known to the offender.

The Washington Institute for Public Policy’s finding that sex offenders with a failure-to-register conviction have higher recidivism rates suggests that policymakers and law enforcement alike should be concerned about relatively high rates of non-compliance with registration requirements. (A report by Parents for Megan’s Law, a nonprofit victims’ rights group, found that on average, 24 percent of registered sex offenders fail to comply with registration requirements, with the result that authorities do not have accurate addresses for these people.⁵⁰) Many states have indicated that they don’t have the resources to track down offenders. The state of Florida, for example, which has a comparatively high rate of compliance with registration requirements, has 11 full-time employees charged solely with tracking down non-compliant registrants.⁵¹

⁴⁷ Robert Barnoski, “Sex Offender Sentencing in Washington State: Failure to Register as A Sex Offender, Revised,” *Washington State Institute for Public Policy* Document No. 06-01-1203A.

⁴⁸ Dennis Waite, Adrienne Keller, Elizabeth L. McGarvey, Edward Wieckowski, Relana Pinkerton and Gerald L. Brown, “Juvenile Sex Offender Re-Arrest Rates for Sexual, Violent Nonsexual and Property Crimes: A 10-Year Follow-Up,” *Sexual Abuse: A Journal of Research and Treatment* 17, no. 3: 2005, 313-331.

⁴⁹ Franklin E. Zimring, Alex R. Piquero and Wesley G. Jennings, “Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?” *Criminology and Public Policy* 6: no. 3: 507-534.

⁵⁰ <http://www.parentsformeganslaw.org>. Please note that the methodology for this report was unavailable.

⁵¹ Garrine P. Laney, “Sex Offender Registration and Community Notification Law: Recent Legislation and Issues,” *Congressional Research Service Report to Congress*, 2007: doc. Code RL32800.

Policymakers need to consider the possibility that increasing the frequency with which offenders are required to update their registration in person may result in increasing the number of offenders who fail to comply, given the many practical obstacles to registering in person. The same holds for imposing stiffer residency restrictions and increasing public access to registration information, both of which have been shown to negatively impact offenders' ability to maintain a life in the community.

To clarify these issues, it will be necessary to learn more about the differences between those who do and those who do not comply with registration requirements: Are those who don't register less likely to be in treatment? Are they more likely to be homeless or jobless? Are they more likely to have a serious mental illness or to abuse drugs or alcohol? Are they more likely to have committed a more serious offense? Only with more research will it become possible to determine whether the apparent trade-off between better data on those who comply with registration and fewer complying registrants is a positive one.

Also of concern are the additional expenses states are likely to incur by penalizing people who are non-compliant with tougher registration laws. In one recent case, a Texas man was sentenced by a jury to 55 years in prison for failing to notify authorities of a change in address within one week. (He missed the deadline by a few days.)⁵² Because SORNA calls for registrants to update address information within three days, it may force states to choose between not enforcing the law and re-incarcerating offenders who are otherwise law-abiding.

Finally, the recent push toward registration of juveniles needs to be carefully evaluated. Youth differ from adults in many respects, and very little is known

about the effects of registration and community notification on juvenile offenders.

It is possible that new technologies will render many of these questions moot: At bottom, registration exists to help keep track of an offender's whereabouts. Electronic monitoring (discussed in detail below) could eventually provide law enforcement with a way of knowing not just where an offender *should be*, but where he or she actually *is*—in real time. However, as we explain below, this technology does have some drawbacks; in addition, because electronic monitoring data is not currently available to the public, registration may still be necessary for purposes of community notification. However, it may turn out that electronic monitoring makes more sense—especially for high-risk offenders—than an intensive registration regimen with which offenders find it difficult to comply.

Community Notification

SUMMARY

Community notification makes people feel more secure; many indicate that, after being notified that a sex offender is moving into their neighborhood, they take actions to keep themselves and their families safe. However, evidence is mixed on notification's effectiveness in reducing sex offenses. One study showed it had a deterrent effect on would-be offenders, and another showed reduced recidivism in that state, albeit during a time of increased participation in community-based treatment and reduced recidivism for all sex offenders, including those not subject to community notification. Administering a community notification system can easily become a real burden for law enforcement and probation and parole officers. In addition, notification has a destabilizing effect on offenders; in some cases, it has even resulted in vigilantism against them. In at least one state, the public appears to have become somewhat more tolerant of offenders living in the community, which may mitigate some of the negative impacts of notification.

⁵² *James Burt Breeden v. The State of Texas*, no. 05-06-00862-CR, 2008 Texas App. LEXIS 2150. The offender had one prior conviction of failure to register, which enhanced his sentence. Also at issue was whether living in a car in the parking lot of the apartment building that was his registered address constituted a change of address; the court ruled that it did.

OVERVIEW

Community notification policies were developed in the belief that citizens would be better able to protect themselves if they could identify convicted sex offenders in their communities. Similarly, it was assumed that offenders would be more likely to be law-abiding if they knew they were being watched. The practice of community notification traces its origin to Mountlake Terrace, Washington, where, in 1989, a police chief decided to notify his community about the imminent release of a sex offender who, while in prison, had documented plans to sexually molest school children. This act was followed in 1990 by state legislation that formalized the practice of community notification.

At the federal level, the Jacob Wetterling Act authorized states to voluntarily implement community notification laws in 1994. In 1996, the Act was amended to create Megan’s Law, which penalizes states that do not implement community notification laws by withholding federal funding. As a result, all 50 states now practice community notification—though the threshold at which notification is required in any given case can vary considerably from state to state.

Generally, community notification laws have been upheld as constitutional; the courts have said that these laws simply make it convenient for community members to access information that is already publicly available. However, in April 2008, the Missouri court of appeals ruled not only that people who were convicted of sex offenses prior to 1995 (when that state’s registration law was enacted) were not required to register, but also that the state police were prohibited from publishing photographs and other identifying information concerning such people on the state sex offender website.⁵³

STATE TRENDS

Community notification models can vary considerably from state to state. All states now have public web sites

⁵³ *Jane Doe v. Thomas Phillips*, Missouri Court of Appeals Western District, Case Number: WD68066: April 1, 2008.

that feature some portion of the information contained in sex offender registries. In addition, some states (such as Louisiana) require offenders to go door to door to identify themselves and provide information about their background, while other states (such as North Carolina) have a passive notification system, wherein information is only provided when a community member requests it. Many states also calibrate their community-notification efforts according to the risk-level of individual offenders, indicated by a standardized risk assessment tool. An offender who has been assessed as high-risk, for example, might then become the focus of a robust community notification effort that includes contacting the local media and distributing notices to parents with children in local schools. See the appendix of this report for more detailed description of state statutes.

The nature and amount of information that is provided through community notification also varies from state to state. Rhode Island, for example, does not provide information on low-risk offenders on its web site, while Colorado only provides online information on recidivists and sexually violent predators. Some states only indicate the block or general vicinity in which a sex offender lives (as opposed to providing a precise address) in an effort to prevent harassment and vigilantism.

A number of states recently have taken steps that go considerably beyond federal requirements. In Maryland, new laws require officials to notify the superintendent of any school district to which a sex offender moves; the superintendent, in turn, is required to send notices to the principals of all schools within one mile of the sex offender’s home. In Illinois, people with children who marry or cohabit with a sex offender who is not the parent of the children are required to notify the child’s other parent; being married to or cohabiting with a sex offender can then be used as grounds for a modification of custody arrangements.⁵⁴

⁵⁴ This may not technically constitute community notification, but it is worth noting as a policy that is likely to have an impact on recidivism; this is because children are much more likely to be sexually abused by someone they know, such as a stepparent or family friend, than they are by a stranger in a schoolyard.

Finally, a number of states have introduced e-mail and telephone notification systems. In these states, people can ask to receive electronic notices or calls from the local sex offender registry whenever a sex offender moves into their neighborhood. Some alerts provide detailed information; others refer those who want to learn more to the state web site.

FEDERAL GUIDELINES

Megan’s Law, passed in 1996 as an amendment to the Jacob Wetterling Act, authorized each state to develop procedures to notify citizens when sex offenders are released into the community. The SORNA legislation of 2006 makes explicit how states should implement notification. It directs states to provide information on sex offenders to law enforcement agencies; any school attended by the offender; any school that employs the offender; any public housing agency where the sex offender resides; each law enforcement jurisdiction where the sex offender resides, goes to school, or works; and within the offender’s local jurisdiction, any agency responsible for conducting employment-related background checks, any social service entities that are responsible for protecting minors in the welfare system, any volunteer organizations where contact with minors or other vulnerable people is possible, and any organization, company, or person who has asked to be notified pursuant to procedures established by the jurisdiction. SORNA also directs states to provide the public with information on sex offenders through the Internet (specifically through the National Sex Offender public web site) or by contacting a law enforcement official in the jurisdiction where the sex offender is registered.

ANALYSIS OF IMPACTS

Although there have been numerous studies of the impact of community notification on recidivism, the evidence is inconclusive. One study, for example, tracked all adult male sex offenders released from prison in Wisconsin between September 1997 and July 1999

for a period of four-and-a-half years; after controlling for a number of variables, researchers concluded that extensive community notification had no direct effect on whether offenders were recommitted to prison.

A 2005 Washington State study that examined the impact of community notification and registration statutes *did* find a significant reduction in felony sex offense recidivism between the late 1980s (seven percent) and 1999 (two percent). However, for a number of reasons researchers were not able to establish a causal link between the reduction in recidivism rates and notification and registration laws. For one, both Washington State and the nation as a whole experienced an overall drop in crime rates in the period under study. Researchers also noted that high rates of incarceration during the study period had incapacitated many sex offenders and likely accounted for part of the observed reduction in recidivism rates. Finally, researchers found that the metrics used to determine the degree of community notification in any given case were not accurate predictors of recidivism.⁵⁵

Studies that have examined the impact of community notification in isolation from registration suggest that notification laws have a deterrent effect. In other words, while the prospect of being subject to community notification if convicted of a sex offense may not reduce recidivism among convicted offenders, it probably does discourage some would-be sex offenders. A recent retrospective study of Minnesota’s community notification program shows a significant decrease in sexual recidivism (but not general recidivism, which made up the bulk of re-offending) following the implementation of their version of Megan’s Law. It is difficult to draw conclusions that could be applicable nationwide, however. First, there was a large drop in recidivism both for those subject to registration and those who weren’t; it was unclear what aspects of their community notification program resulted in decreased recidivism; and there was an increase in the availability

⁵⁵ “Sex Offender Sentencing in Washington State: Has Community Notification Reduced Recidivism?” *Washington State Institute for Public Policy*, Doc. No. 05-12-1202: 2005.

of treatment during the same period of time which couldn't be controlled for. More research on this significant drop in recidivism will not only tease out what aspects of community notification are worth focusing on in the future, but also allow policymakers to examine the role treatment may be able to play in reducing sexual re-offenses.⁵⁶

It appears that there is a link between community notification and individual protective behavior on the part of the public. A recent study conducted in several states found that people who were *actively* notified that a sex offender had settled in their community (e.g., those who were notified by a telephone call, an email alert, or offenders who were required to introduce themselves door-to-door) were more likely to take steps to protect themselves and their family members. In states where notification was *passive* (where it was up to the individual to obtain information about sex offenders in his or her community, typically by visiting a web site), researchers did not observe any increase in protective behavior. Researchers were careful to point out that increases in individual protective behavior do not necessarily lead to lower rates of sexual victimization.⁵⁷ Taken together with the fact that most sexual offenses (and re-offenses) involve perpetrators and victims who know each other, this observation suggests that community notification that promotes individual protective behavior may only result in a small reduction in the overall rate of sexual victimization.

There have been several studies of public attitudes toward community notification. Researchers at the Washington State Institute for Public Policy found that 78 percent of Washington residents surveyed said they felt safer knowing about convicted sex offenders in their communities; about 80 percent considered the notification law to be important. However, 40 percent were concerned that “alerting the community to the

highest risk sex offenders will make citizens pay less attention to the risks posed by other sex offenders, such as those who may be known to and trusted by the victim.” Most respondents felt that notification requirements should apply to juvenile offenders as well as adult offenders.⁵⁸

Another survey asked members of the public what information about sex offenders they believed they should have access to. Over half said that a photo of the offender should be made available and that the public should know the offender's name; the age of any victims; the offender's HIV/AIDS status; the make and model of the offender's vehicle, along with its license plate number; the offender's home address; and the identity of anyone the offender lives with. Less than half believed the public should have access to the address of the offender's employer; the offender's home phone number; or the offender's fingerprints. Three percent did not believe that the public should have access to any of this information. Over three-fourths believed that all sex offenders should be subject to the same notification procedures.⁵⁹

Still other studies have examined attitudes toward community notification among law enforcement personnel. A Wisconsin study found that while most police officers believed that the registration process had made it easier to share information among different law enforcement agencies, most were skeptical of the benefits of community notification. Two-thirds expressed concern about the amount of work that was required by the community notification system; in fact, many felt it was an “unfunded mandate” that increased their workload.⁶⁰ The same researchers who surveyed law enforcement officers in Wisconsin also surveyed probation and parole officers in that state. They found

⁵⁶ Grant Duwe and William Donay, “The Impact of Megan's Law on Sex Offender Recidivism: The Minnesota Experience,” *Criminology* 7, No. 2: May 2008, 411-446.

⁵⁷ Victoria Simpson Beck and Lawrence F. Travis, III, “Sex Offender Notification: A Cross-State Comparison,” *Policy Practice and Research* no. 7, 2006: 293-307.

⁵⁸ “Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-up,” *Washington State Institute for Public Policy*, Doc. No. 08-03-1101: 2008.

⁵⁹ Jill Levenson et al., “Public Perceptions About Sex Offenders and Community Protection Policies,” *Analyses of Social Issues and Public Policy* 7, No. 1: 2007, 137-161.

⁶⁰ Richard G. Zevitz and Mary Ann Farkas, “The Impact of Sex Offender Community Notification on Probation/Parole in Wisconsin,” *International Journal of Offender Therapy and Comparative Criminology*, 44, no. 1: 2000, 8-21.

that many officers carried large caseloads of sex offenders and were responsible for a wide range of activities, including making press calls announcing the release of an offender, facilitating treatment groups, organizing community notification meetings, and reaching out to victims. Many officers reported spending significant amounts of time and effort trying to locate housing for offenders and help them meet their basic needs, which often was made more difficult due to community resistance as a result of notification. One officer told of a case in which a person who had agreed to provide housing for a sex offender received death threats.⁶¹

Numerous studies and news reports suggest that community notification makes it more difficult for sex offenders to re-integrate into society after being released from prison, which may contribute to increased recidivism rates and undercut the laws' deterrent effect.⁶² A survey of Kentucky sex offenders found that having their name listed on the public internet registry had an impact on a significant number of them: 42.7 percent lost a job; 45.3 percent lost or were denied a place to live; 47 percent were harassed in person; and 28.2 percent had received harassing or threatening phone calls.⁶³ Surveys in Florida, Indiana, Connecticut, and Kansas have produced similar results, and in 2008, the Association of Washington Cities asked the state to study whether there is a link between homelessness and sex offender registration and community notification. In a few extreme instances, there have been confirmed or suspected cases of vigilantism as a result of the public disclosure of the identities of sex offenders: In 2006, a Maine sex offender was killed by a man who found his

name on an Internet registry. Two sex offenders were murdered in Washington State in 2005 by a man who claimed to be an FBI agent warning them about a "hit list" of registered sex offenders that they were on; it is believed that the assailant targeted the two men after finding their names on a public registry.

A 2007 report by Human Rights Watch featured interviews with sex offenders who have found it difficult to maintain a basic standard of living as a result of community notification.⁶⁴ The report also highlighted some of the challenges involved in using community notification to provide the public with an accurate sense of the risks they face. To cite just one of these, the discrepancy between the present age of the offender and the age of the victim at the time of the offense grows over time. This may lead someone looking at an Internet registry to mistakenly conclude that a young adult who was convicted of consensual (but illegal) intercourse with a teenager years ago is a middle-aged pedophile.

Awareness of the negative effects of community notification appears to be growing among the general public. The Washington State Institute for Public Policy's survey of public attitudes found that 84 percent of survey respondents thought that community notification could make it difficult for sex offenders to establish a new life, find a job, or rent a house. Significantly, the survey also found that over the past 10 years, the proportion of respondents who believe that sex offenders should be given every opportunity for a new start as law-abiding citizens has increased by 15 percent—from 49 percent in 1997 to 64 percent in 2007. In addition, the proportion of respondents who said they became frightened after learning that a sex offender lived nearby dropped from more than two-thirds in 1997 to about one in four today.⁶⁵

CONCLUSION

Public support for community notification laws remains strong, and the laws appear to accomplish one of their

⁶¹ Zevitz, "Sex Offender Notification: Assessing the Impact in Wisconsin," *National Institute of Justice, Research in Brief*, NCJ 179992: 2000.

⁶² Prescott and Rockoff, "Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?"

⁶³ Richard Tewksbury, "Collateral Consequences of Sex Offender Registration," *Journal of Contemporary Criminal Justice*, 21, No. 1: 2005, 67-81. While the author refers to the consequences as a result of registration, they are listed in this section because it is the public access to the registry that caused the negative consequences; we consider this to be a form of passive public notification, as registration with law enforcement alone is unlikely to result in significant negative outcomes.

⁶⁴ "No Easy Answers: Sex Offender Laws in the U.S.," *Human Rights Watch* 19, no. 4: 2007.

⁶⁵ "Community Notification as Viewed by Washington's Citizens."

primary goals: to help members of the public take steps to protect themselves and their families from known sex offenders. They also appear to have some deterrent effect. However, it is unclear to what extent they reduce recidivism; in fact, in some cases they may actually increase recidivism by making it much more difficult for sexual offenders to re-integrate into society after being released from prison. Recent surveys show that there is a growing public awareness of this problem, so it is possible that changing attitudes will mitigate the negative effects of community notification.

Residency Restrictions

SUMMARY

Even absent any federal mandates or guidelines, there has been an explosion in state and municipal residency restrictions imposed on registered sex offenders in the past decade. Purportedly to keep offenders away from places frequented by children, many of these restrictions are so broad that sex offenders (many of whom did not commit an offense involving a child) are effectively banished from cities large and small. Studies have shown that these restrictions have no positive impact on recidivism, and they reduce public safety by destabilizing and stigmatizing offenders trying to reintegrate into the community, often driving them “underground” and out of contact with support systems and law enforcement.

OVERVIEW

Restrictions on where registered sex offenders can live, work, and travel aim to keep them away from potential child victims. Restrictions have been implemented on both the local and the state level and may apply to schools, child care facilities, playgrounds, athletic fields, bus stops, parks, public pools, video arcades, and other places where minors congregate. In general, state restrictions require offenders to maintain a specified distance—usually between 500 and 2,000 feet—from a restricted area. Most municipal ordinances prohibit

offenders from coming within 2,500 feet of a restricted area.

STATE TRENDS

The number of states with residency restrictions on sex offenders has grown exponentially in the past 10 years. Prior to 2000, only five states had such restrictions; now 30 do. Of the 30 states with residency restrictions, five prohibit offenders from coming within 2,000 feet of a restricted locale; two prohibit them from coming within 1,500 feet; and 12 prohibit them from coming within 1,000 feet. In the remaining 11 states, offenders are required to maintain a distance that is less than 1,000 feet, variable, or undefined, or there are special prohibitions on specific locations (such as college dormitories).⁶⁶ Of the 30 states that currently have residency restrictions, only nine specify that the sex offense that led to the restriction must have involved a child. Some state ordinances have effectively banished sex offenders from entire cities, where population density makes it almost impossible to avoid violating residency restrictions.

Some cities and counties have their own residency restrictions in addition to state restrictions. In some instances, the adoption of local restrictions has triggered a domino effect, as each city or county passes tougher restrictions than its neighbors to avoid becoming a local haven for sex offenders. In some cases, state authorities have been forced to step in to address the problems posed by such patchwork legislation. In Washington State, legislators worked with the Association of Washington Cities to hammer out compromise legislation (passed in 2006) that combines a statewide 880-foot exclusionary zone around restricted locales with a ban on local and state sex offender ordinances. Similarly, Kansas placed a ban on local residency restrictions between 2006 and 2008, thus providing state

⁶⁶ M. Meloy, M. Miller, S., and C. Kurtis, “Making Sense Out of Nonsense: The Deconstruction of State-Level Sex Offender Residence,” *American Journal of Criminal Justice*, expected publication date: 2008. Data on numbers of states having restrictions and actual restrictions may vary slightly from appendices due to ongoing updating of these documents to reflect the most recent changes in state laws.

officials with a chance to study the issue. In 2007, the Kansas Sex Offender Policy Board recommended against the institution of residency restrictions. In a report, the policy board noted that the Iowa County Attorneys Association had concluded that that state's residency restrictions were "contrary to well-established principles of treatment and rehabilitation of sex offenders," and that they were "compromising the safety of children by obstructing the use of the best known corrections practices." In addition, the Iowa County Attorneys Association noted that offenders were becoming homeless, ceasing to notify the authorities about address changes, and simply disappearing as a result of the restrictions.⁶⁷

Residency restrictions have been challenged repeatedly in the courts in recent years. This trend seems likely to continue—perhaps to the point that it will significantly limit the ability of states to impose residency restrictions. In some states (such as Iowa) residency restrictions have been upheld. However, in 2007 the Georgia Supreme Court ruled that the state's residency restrictions were unconstitutional.⁶⁸ The California Supreme Court is expected to rule on that state's residency restrictions in 2008.⁶⁹ It seems likely that residency restrictions will face increasing challenges if they come to be seen as depriving people of constitutional rights or effectively forcing sex offenders to move to other jurisdictions.⁷⁰

⁶⁷ *Kansas Sex Offender Policy Board*, January 8, 2007 Report. A report in the *Des Moines Register* on January 22, 2006, reported that since the state's residency law took effect, more sex offenders are eluding tracking by authorities. The paper reported that 298 sex offenders were unaccounted for in January 2006, compared to 142 on June 1, 2005.

⁶⁸ The court's opinion was based on a "takings" argument: in other words, it argued that a restricted offender who owns property should not be required to move if a school, daycare center, or other restricted locale is subsequently built nearby.

⁶⁹ Specifically, the court will consider whether California's residency restriction "violates the *ex post facto* clauses of the state and federal Constitutions, has been impermissibly retroactively applied, constitutes an unreasonable parole condition, impinges on the petitioner's substantive due process rights, and is unconstitutionally vague." *In re E.J. on Habeas Corpus*, S156933

⁷⁰ Corey R. Yung, "Banishment by a Thousand Laws: Residency Restrictions on Sex Offenders," *Washington University Law Review* 85: 2007, 101-160.

FEDERAL GUIDELINES

At present, there are no federal guidelines regarding residency restrictions. The Adam Walsh Act directed the U.S. Attorney General to study the impact of residency and employment restrictions on sex offender recidivism rates. However, as no funds were appropriated for this purpose, the study has yet to be undertaken.

ANALYSIS OF IMPACTS

In spite of their popularity, there is no evidence that residency restrictions are effective in reducing recidivism by sex offenders. Rather, the evidence suggests that residency restrictions are in fact detrimental to public safety. A recent study of sex offenders in Minnesota examined the impact of residency restrictions on recidivism. Researchers found that, of the 3,166 sex offenders who were released from Minnesota correctional facilities between 1990 and 2002—a period when the state did not have residency restrictions—224 had been re-incarcerated for a new sex offense by January 1, 2006. After taking a closer look at these 224 cases, researchers found that none of the offenders had established contact with a child victim in an area that would be likely to fall within an exclusionary zone under a typical residency restriction law. And there were only three cases in which the offender established contact with a victim at what likely would have been a prohibited locale under a typical residency restriction law; one of these involved an adult victim, while the other two involved cases in which contact was established more than 10 miles from the offender's residence. The study also confirmed that most sexual offenders have a pre-established relationship with their victims: in about two-thirds of the 224 cases studied, the offender was either related to the victim or gained access to the victim through a common acquaintance such as a girlfriend, wife, coworker, or friend.⁷¹

⁷¹ Grant Duwe, William Donnay, and Richard Tewksbury, "Does Residential Proximity Matter? A Geographic Analysis of Sex Offense Recidivism," *Criminal Justice and Behavior* 35, No. 4, 2008: 484-504.

A number of studies have sought to determine whether sexual offenders seek out residences near potential victims in order to facilitate re-offending. One Colorado study found that molesters who *did* re-offend did not appear to live any closer to parks or schools than those who did *not* re-offend. An Arkansas study found that child molesters appeared to live closer to areas frequented by children than adult rapists; however, there was no evidence that this circumstance had any impact on recidivism.⁷² A survey of sex offenders revealed that many offenders considered restrictions to be ineffective: several pointed out that if they wanted to re-offend, they could often walk or drive to a distant neighborhood where they were less likely to be recognized. One offender also observed that residency restrictions do not prevent offenders from living near children.⁷³

Evidence also suggests that residency restrictions actually compromise public safety by making it more difficult for offenders to re-integrate into society. Residency restrictions often force offenders to live in areas where there are few opportunities for employment, few social services, poor access to transportation, and few housing options. One researcher has used mapping software to show that the 2,000-foot residency restrictions that were ushered in by California's version of Jessica's Law leave almost no place for a sex offender to live in the entire city of San Francisco.⁷⁴ Similarly, a mapping study in Orange County, Florida, concluded that 95 percent of residential dwellings are within 100 feet of a school, park, daycare center, or bus stop, and that 99.6 percent are within 2,500 feet of these locations.⁷⁵ As a result, it appears that more and more offenders are becoming homeless or going "underground" by not reporting their whereabouts. In

⁷² Jill Levenson, "Sex Offender Residence Restrictions," *Sex Offender Law Report*, in press.

⁷³ Jill S. Levenson and Leo P. Cotter, "The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step From Absurd?" *International Journal of Offender Therapy and Comparative Criminology* 49 (2): 2005, 168-178.

⁷⁴ Meghan Stromberg, "Locked Up, then Locked Out," *Planning, Journal of the American Planning Association*: January 2007, 19-25.

⁷⁵ P.A. Zandbergen and T.C. Hart, "Reducing Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction Laws Using GIS." *Justice Research and Policy*, 8 (2), 2006: 1-24.

the two years since it passed its version of Jessica's Law, California has seen a 44 percent increase in sex offenders reporting that they are transient.⁷⁶

CONCLUSION

There is little empirical evidence that residency restrictions, as currently implemented, protect public safety. Residency restrictions push sex offenders to the fringes of communities, making it less likely that they will be able to obtain housing, find a job, and receive social support. Restrictions may also make it difficult for otherwise law-abiding offenders to comply with registration requirements—especially those that involve frequent, in-person reporting.

As more is learned about this subject, it may turn out that residency restrictions *can* be effective when imposed on a case-by-case basis. It is also possible that effective electronic monitoring of people who pose a high risk of predatory behavior could reduce the perceived need for stringent residency restrictions. Finally, the finding that most children are abused by someone they know and trust rather than a stranger in the park suggests that better public education should play a role in keeping children safe.

Electronic Monitoring

SUMMARY

Recent advances in technology have inspired a growing number of states to pass legislation either requiring or authorizing electronic monitoring of sex offenders in the community. There are no federal guidelines for electronic monitoring. Electronic monitoring is expensive in terms of both equipment and staff time; however, it shows promise in being able to improve supervision, particularly of high-risk offenders. Research results to date have been mixed, with a few studies showing decreased recidivism (and some

⁷⁶ Michael Rothfield, "Jessica's Law May Increase Crime Risk," *Los Angeles Times*, February 22, 2008.

anecdotal accounts of improved supervision) but most showing no significant advantage. Some of the lack of improved results may be due to problems in implementing new technology; in addition, offenders (especially those who are compliant) are resistant to wearing the device, which is conspicuous and prone to malfunction. It is still an emerging technology and is a policy that deserves continued study.

OVERVIEW

Electronic monitoring (EM) is a technology that makes it possible to track a person's whereabouts by means of a portable electronic device, usually an ankle bracelet combined with a cell-phone-sized transmitter. It is used in a variety of law enforcement applications. There are two types of EM technology: passive (the unit simply records the person's movements and is downloaded at regular intervals) and active (the unit transmits the person's location in real time). Active systems can be modified to transmit an alarm whenever the monitored person violates certain conditions—if he or she leaves the state, for example, or leaves the tracking unit behind, or comes within a certain distance of a victim's residence or a school. Today, global positioning systems (GPS) are gradually replacing the older radio frequency systems (which were typically only able to confirm whether the monitored person was at home.) As an example, in California, GPS tracking equipment in 2007 was leased at a cost of \$8.75 per day for active units and \$5 per day for passive units. There are significant additional personnel costs for reviewing and analyzing data.⁷⁷

Electronic monitoring aims to prevent recidivism by creating a fishbowl effect, in which the monitored person realizes that he or she is (or has the potential to be) under constant surveillance. It can also help detect whether the monitored person is in compliance with the terms of parole or probation (such terms might include

⁷⁷ "An Assessment of Current Management Practices of Adult Sex Offenders in California," *California Sex Offender Management Board Report to the Legislature and Governor's Office*, January 2008. This report also includes excellent information on registration, community notification, and residency restrictions.

attending therapy sessions and keeping away from a victim's house) and provide law enforcement with a record of the person's movements and activities, should he or she become a suspect in a crime.

STATE TRENDS

The electronic monitoring of sex offenders has increased dramatically in the past decade. According to the Interstate Commission for Adult Offender Supervision, 35 states now use GPS monitoring technology.⁷⁸ In many states, electronic monitoring is statutorily required for sex offenders—particularly high-risk offenders. In other states, judges determine whether to use EM on a case-by-case basis. EM is commonly imposed as a condition of parole or probation as well; in this context it is used for both the short-term monitoring of low-risk people and as a lifetime parole condition for high-risk offenders.

In some states (such as New Jersey), high-risk sex offenders who had already been released from prison and were not subject to civil commitment have been retroactively required to participate in electronic monitoring. In other states, offenders have successfully challenged electronic monitoring that was imposed retroactively. In North Carolina, for example, 25 offenders to date have been allowed to remove their EM equipment. In one of the most recent cases, attorneys argued that being forced to wear EM devices represents a form of punishment, in that the devices are heavy, conspicuous (particularly if an audible alarm is set off by accident), and require the monitored person to be in his or her home for six hours every day to recharge the unit.⁷⁹ Washington State prohibits the retroactive application of EM.

⁷⁸ "GPS Supervision Update," *Interstate Commission for Adult Offender Supervision*, <http://www.interstatecompact.org/LinkClick.aspx?fileticket=IU6GvRmuPwM%3d&tabid=105&mid=431>. The California Assessment cited above places this figure slightly higher.

⁷⁹ "Monitors Taken Off Four Sex Offenders," *The News & Observer*, April 29, 2008.

FEDERAL GUIDELINES

There are no federal guidelines that govern the application of electronic monitoring devices to registered sex offenders. The Adam Walsh Act authorized (but did not appropriate funding for) a measure that would assist states, local governments, and Indian tribes in carrying out EM programs for sex offenders.

ANALYSIS OF IMPACTS

Researchers are currently studying the impact of EM—especially the new GPS systems—on sex offender recidivism rates. Thus far, the results are mixed. In one recent survey, officials in seven states said that GPS technology had improved the quality of supervision of sex offenders; however, most states indicated they were still evaluating this technology.⁸⁰ In a recent report to the New Jersey governor and legislature, the New Jersey State Parole Board indicated that during the initial pilot phase of the state’s GPS monitoring program, 19 monitored people had been charged with a new, non-sexual crime or a technical violation of parole conditions (including the refusal to wear or maintain the GPS equipment). Only one monitored offender had been charged with a new sexual offense (rape); data from the monitoring device will be used to aid in the investigation. These figures suggest a reduction in recidivism rates, although the scope of the reduction is not clear.

Another Georgia study of violent male offenders who were placed on EM after being released from prison also found a positive impact on sex offense recidivism rates. While being subject to EM appeared to have little effect on recidivism rates among the general population of offenders (both sex offenders and other violent offenders), sex offenders who were monitored were less likely to return to prison than those who were not monitored.⁸¹ And Florida offenders (including sex

offenders) who were electronically monitored showed a statistically significant reduction in absconding, technical violations, and re-offending. The Florida study was different from most earlier ones in that it concentrated on people who had committed more serious offenses and followed them over a longer period of time. The authors concluded that their finding “bodes well for EM’s anticipated use for sex offenders.”⁸²

In its first six months, California’s new GPS program showed virtually no difference in recidivism between a group of high-risk sex offenders on GPS monitoring and a group that was not; the GPS group, in fact, showed a slightly higher rate of absconding and assault crimes.⁸³ During the study period, however, there were significant challenges in implementing the program. These ranged from slow Internet connections and a lack of proper computer equipment for parole officers, to difficulty forming collaborative relationships between parole and law enforcement, to false readings from equipment. While there were reports of parole officers using GPS data to identify problematic behavior (frequenting youth events, for instance), officers also expressed concern that they might be held liable if, following a criminal incident, they were accused of incorrectly analyzing GPS data that indicated an offense was imminent.

In Tennessee, researchers did not find any statistically significant differences between a control group and those on EM with regard to number of violations, new charges, or days before violation. While officers believed that EM was a useful tool in monitoring offenders, offenders themselves experienced morale issues while on EM. Those who had been in compliance prior to being placed on EM felt unjustly punished when they were then compelled to wear the

⁸⁰ Interstate Compact data. Table did not indicate in what way officials believed their supervision to be improved.

⁸¹ Mary A. Finn and Suzanne Muirhead-Steves, “The Effectiveness of Electronic Monitoring with Violent Male Parolees,” *Justice Quarterly* 19, No. 2: 2002, 293-312.

⁸² “Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring,” *Criminology and Public Policy* 5, No. 1: 2006, 61-92.

⁸³ Implementation and Early Outcomes for the San Diego High Risk Sex Offender GPS Pilot Program,” *UC Irvine Center for Evidence-Based Corrections*, Working Paper, Nov. 2007.

monitoring device; some may have acted out as a result.⁸⁴

CONCLUSION

While longer sentences and the increasing use of civil commitment are likely to delay the release of many sex offenders, most will eventually be released. EM holds the promise of protecting public safety while avoiding many of the negative effects of other policies—especially as the technology develops. It is also possible that advances in technology will make EM systems less intrusive for offenders, thus boosting morale and improving compliance.

On the other hand, it is also possible that EM will be used to “widen the net”—supervising offenders who could be successfully supervised in the community without this technology. This would likely raise costs without improving public safety. As California’s Sex Offender Management Board emphasized in a recent report, EM is most cost-effective when restricted to high-risk sex offenders, such as those with a history of violent offenses, male pedophilia, drug or alcohol use associated with sexual offending, arousal around children, high impulsivity, offense planning, fixation, or multiple victims. Recidivism for this relatively small but very high-risk group in California is currently over 50 percent.⁸⁵

As a recent high-profile incident in Washington State shows, however, that EM is not a panacea: In April 2008, a convicted rapist was released from prison and told to live under a bridge after state officials were unable to find housing for the man. The man subsequently removed his EM device and absconded. A former victim learned of the incident on the evening news and contacted the authorities, as neither state or local law nor department of corrections policies required that former victims be notified in cases when EM

equipment is removed.⁸⁶ And in a recent interview, the Director of Downstate Operations for New York State Division of Parole reported that due to the many areas (like subways and tunnels) unreachable by GPS and the interference from the multitude of electronic and radio devices, they have abandoned the use of GPS monitoring of sex offenders in New York City.⁸⁷ Given the fallibility of EM equipment and the possibility of noncompliance, EM technology is probably best viewed as an enhancement to—rather than a replacement for—traditional supervision, monitoring, and risk assessment methods.

Civil Commitment

SUMMARY

Faced with releasing offenders whom they felt could not be safely managed in the community, policymakers in many states have enacted laws to have violent sexual offenders at the end of their sentence “civilly committed” to an extended detention if they are declared to have a mental condition that makes re-offending likely. Such civil commitment, although effective in incapacitation, is expensive, as its constitutionality rests on the provision of treatment during confinement. Few civilly committed offenders have ever been deemed sufficiently treated to be returned to the community. Given the opposition of professional groups such as the American Psychiatric Association and persistent legal challenges, changes in civil commitment processes, treatment protocols, and sentencing will likely be necessary. Advances in treatment and monitoring may also improve the ability to manage high risk offenders in the community.

⁸⁴ “Monitoring Tennessee’s Sex Offenders Using Global Positioning Systems: A Project Evaluation.” *Tennessee Board of Parole and Probation and Middle Tennessee State University*, April 2007.

⁸⁵ “Assessment of Current Management Practices,” *Ibid.*

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http://www.king5.com/topstories/stories/NW_042508WAB_rape_victim_KC.9e417065.html

⁸⁷ Interview with Angela Jimenez, Manhattan office of New York State Division of Parole, August 27, 2008.

OVERVIEW

People who are mentally ill and an imminent danger to themselves or others have long been subject to involuntary commitment to a psychiatric facility, regardless of whether they are criminally involved. Civil commitment of sex offenders differs from this type of involuntary commitment in several ways. First, the person must already have committed a violent sexual offense. Second, he or she must be deemed to have a mental or psychological condition (which does not need to meet standard definitions of mental illness) that makes them unable to control their sex offending behavior.

The policy of civilly committing sex offenders is in its second incarnation in the United States. It was first used in the late 1930s, beginning with Illinois' "act to provide for the commitment and detention of criminal sexual psychopathic persons," which focused on people diagnosed by psychiatrists to be "criminally sexually psychopathic."⁸⁸ Following this diagnosis, an offender would be given a jury hearing. If found to be a criminal sexual psychopath with a propensity to commit sex offenses, he or she would be committed to the psychiatric division of the Illinois State Penitentiary "until such person shall have fully and permanently recovered from such psychopathy." By 1960, 26 states and the District of Columbia had some version of a "sexually dangerous person" statute that included provisions for civil commitments rather than punishment.⁸⁹ Most of these states had rescinded these laws by the 1980s, however. This was due to a number of factors, including a growing awareness that sexual offenders were not per se mentally ill and that offenders' right to a criminal trial were being side-stepped. There was also a general shift in attitude which saw incarceration as more appropriate.

⁸⁸ "Recent Statutes: Criminal Law-Sex Offenders-Civil Commitment for Psychiatric Treatment," *Columbia Law Review* 39, no. 3: 1939, 534-544.

⁸⁹ Raquel Blacher, "Historical Perspective of the 'Sex Psychopath' Statute: From Revolutionary Era to the Present Federal Crime Bill," *Mercer Law Review* 46: 1995, 889-920.

In 1990, Washington State launched the new era of civil commitment when it revamped its existing civil commitment statute as part of a sweeping overhaul of the state's sex offender laws. In the revision, as in all civil commitment statutes enacted since then, civil commitment was imposed following, rather than instead of, a criminal penalty. Offenders in Washington and elsewhere become eligible for civil commitment if they are deemed to be sexually violent criminals who have a psychological or behavioral condition that increases their risk of committing sexual violence upon release into the community. This is determined through a risk assessment process. Generally, there is a hearing as well, during which the offender may present evidence that he or she can live in the community without re-offending. Although states differ on whether committed offenders are confined to a psychiatric facility, a correctional facility, or some hybrid, in all cases committed people must receive some form of sex offender treatment.

LEGAL CHALLENGES

The constitutionality of civil commitment has been tested several times. In 1996, an offender in Kansas successfully appealed his civil commitment on due process grounds; the state did not show he suffered from a volitional impairment rendering him dangerous beyond his control. A year later, the U.S. Supreme Court reversed a separate decision of the Kansas Supreme Court. The Kansas Court declared the state was required to prove the person was both mentally ill and a danger to himself or others. It then determined that the Act's definition of "mental abnormality" did not satisfy what it perceived to be the "mental illness" requirement in the civil commitment context. Upon appeal, however, the U.S. Supreme Court disagreed, ruling that Kansas' definition of "mental abnormality" satisfied substantive due process requirements for civil commitment.⁹⁰

The U.S. Supreme Court also indicated that its decision hinged on whether the Kansas Act was punitive—as Justice Kennedy stated in his concurring

⁹⁰ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

opinion, “whether civil confinement were to become a mechanism for retribution or general deterrence.”⁹¹ If it were punitive, then the Act would constitute double jeopardy (tried/punished twice for same crime) or be unconstitutional on *ex post facto* (a retroactive new punishment) grounds. In his majority opinion, Justice Thomas used “legislative intent” to determine that the Act was not punitive, as the provision of treatment was included in the law. In his minority dissent, Justice Breyer indicated that he believed the court should look at both purpose and effect, noting that treatment was not begun until years after the crime was committed and that the state must consider less restrictive alternatives if the intent truly was not punitive.⁹² To date, the Supreme Court has continued to uphold the majority opinion.

Stated legislative intent aside, a recent research study explored whether civil commitment primarily serves to ensure that offenders receive the punishment they are perceived to deserve. Study participants were given different hypothetical scenarios involving a sex offender about to be released; most participants chose civil commitment when they perceived the offender didn’t receive a sufficiently long sentence, independent of the stated likelihood of re-offending.⁹³ This appears to be in line with actual efforts to institute civil commitment in Vermont in 2006. The bill was opposed by the Vermont Psychiatric Association (VPA), which said it was “a way to keep people locked up who had completed their jail terms” and a “misuse of a process long used to treat people with mental illness.”⁹⁴ According to the VPA, the bill was a reaction to a recent case in which the sentence of a person convicted of child molestation was felt by the general public and policymakers to be too short, rather than as a treatment

modality. Vermont lawmakers ultimately rejected the sex offender civil commitment legislation.

Another civil commitment case from Kansas reached the U.S. Supreme Court in 1996. In this case, the Supreme Court vacated a decision in which the state said it was sufficient to show the offender had an antisocial personality. The Court disagreed, stating that “there must be proof of serious difficulty in controlling behavior.”⁹⁵ This decision has led states to move toward more robust assessments and documentation in civil commitment cases.

STATE TRENDS

Before 1998, only eight states had civil commitment statutes specific to sex offenders; the number is now up to 20. The per person costs of civil commitment for sex offenders in 2006 ranged from a low of about \$42,000 in Florida to \$166,000 in California. The average cost per inmate in jails and prisons generally is roughly a fourth of the civil commitment costs.⁹⁶ California recently built a 1,500 bed facility at an estimated cost of \$400 million; this construction predates the implementation of Jessica’s Law, which expanded the list of offenses that could result in civil commitment. Since then, the number of people referred for civil commitment evaluations in California has risen from about 50 to 750 per month.⁹⁷

New York’s new civil commitment law, signed in March 2007, also applies to a very broad range of offenses. How many of those offenders will be recommended for commitment, and therefore how much it will cost the state, has yet to be seen. The new law also has several notable provisions. Treatment is mandated earlier in the process, during incarceration. People who committed a “sexually motivated felony,” a new crime, are also subject to civil commitment. Finally, the burden of proof in New York is “clear and convincing evidence” of a likelihood to re-offend; based on prior court decisions, this portion of the legislation

⁹¹ *Ibid*, at 373 (Kennedy, J., concurring).

⁹² Edward P. Ra, “The Civil Confinement of Sexual Predators: A Delicate Balance,” *St. John’s Journal of Legal Commentary* 22, No. 1, 2007:335-372.

⁹³ Kevin Carlsmith, John Monahan, and Alison Evans, “The Function of Punishment in the ‘Civil’ Commitment of Sexually Violent Predators,” *Behavioral Sciences and the Law* 25: 2007, 437-448.

⁹⁴ Rich Daly, “Lawmakers Reject Civil Commitment for Sex Offenders,” *Psychiatric News* 41: no. 6: 2006, p. 21. The Vermont Psychiatric Association’s stance was in line with their national affiliate; the American Psychiatric Association has called civil commitment a “misuse of psychiatry.”

⁹⁵ *State v. Crane*, 918 P.2d 1256, 1258 (Kan. 1996).

⁹⁶ “A Profile of Civil Commitment Around the Country,” *New York Times*, map and graph, March 3, 2007.

⁹⁷ Laura Mansnerus, “Locked up in Limbo,” *The Nation*: December 31, 2007.

may come under judicial scrutiny, particularly as the law applies both to those convicted and to those who were not convicted due to mental incompetence.⁹⁸

All civil commitment facilities offer treatment, although there have been few people who have been “cured”: only about 12 percent of those who have been held for evaluation or committed have been discharged or released. Between 1990 and 2006, only 250 civilly committed offenders were released; however, about half of those were discharged not due to progress on their treatment but because of legal or technical grounds.⁹⁹ In keeping with the non-punitive intent of civil commitment, many states are moving toward placing and treating offenders in the least restrictive manner appropriate. Texas, for example, uses only outpatient civil commitment.

FEDERAL GUIDELINES

There are no federal guidelines for states on civil commitment of sex offenders. Although the 2006 Adam Walsh Act authorized civil commitment for federal prisoners deemed to be “sexually dangerous people suffering from a serious mental illness, abnormality, or disorder which causes him to have serious difficulty in refraining from sexually violent conduct or child molestation if released,” a federal district judge subsequently held that Congress did not have the authority to confine people leaving federal prisons.¹⁰⁰ This decision was based on the view that civil commitment was not a necessary and proper extension of Congress’ power to prosecute federal crimes. In addition, the Supreme Court concluded that the statute violated due process: the law required proof of appropriateness for civil commitment to be based on “clear and convincing evidence,” but the court ruled that the standard of “beyond a reasonable doubt” applies to all federal prisoners.¹⁰¹

⁹⁸ Peter Dunne, “New York’s New Sex Offender Management and Treatment Act,” *New York Criminal Law Newsletter* 06, No. 1: 2008, 11-14.

⁹⁹ Monica Davey and Abby Goodnough, “Doubts Rise as States Hold Sex Offenders After Prison,” *New York Times*, 3/24/2007.

¹⁰⁰ “Locked up in Limbo.”

¹⁰¹ *U.S. v. Comstock*, Case 5:06-hc-02195-BR: 2007.

ANALYSIS OF IMPACTS

Civil commitment is intended to incapacitate offenders who are most likely to commit sexually violent crimes upon their release. As of the fall of 2006, approximately 2,700 people (cumulative) had been civilly committed across 18 states.¹⁰² Of these, about 400 have ever been discharged or granted conditional, supervised, or transitional release, and many states have discharged no or very few civilly committed offenders. Community placements for those who have been released are difficult to find: The Kansas offender whose case became Supreme Court precedent was first moved to a group home upon his release. After neighbors complained, he was relocated to a rural house near a horse pasture, then back to a facility on the campus of the state mental hospital. California houses some men leaving civil commitment in trailers outside prisons.¹⁰³

One question that arises is whether the “right” people are being civilly committed. A study of Florida’s system concludes that the answer there appears to be yes. This review of the process by which offenders are referred to Florida’s Sexually Violent Predator Program indicated that the state was appropriately recommending those most likely to recidivate, based on comparisons to several widely used risk assessments. Of 5,931 potential candidates for civil commitment, about 6.5 percent were referred to the next stage of evaluation.¹⁰⁴ A subsequent study that found the more dangerous offenders among this population were in fact recommended for commitment.¹⁰⁵

Washington State also sought to examine whether people recommended for civil commitment represented the highest risk for re-offending. Its 2003 study looked at new arrests for those who had been referred for civil commitment but for whom no petition had been filed (usually because the attorney general or prosecuting

¹⁰² *New York Times*, *ibid*. The figure given in *The Nation* at the end of 2007 was 4,000.

¹⁰³ “Doubts Rise,” *ibid*.

¹⁰⁴ Karen Lucken and William Bales, “Florida’s Sexually Violent Predator Program: An Examination of Risk and Civil Commitment Eligibility,” *Crime and Delinquency* 54, no. 1: 2008, 95-127.

¹⁰⁵ Jill Levenson, “Reliability of Sexually Violent Predator Civil Commitment Criteria,” *Law & Human Behavior*, 28(4): 2004, 357-369.

attorney felt that he or she would not be able to prove one or more of the statutory criteria for commitment). From 1990 through 2002, more than 8,000 cases were reviewed. Of these, more than 400 were referred to prosecutors and just under 200 petitions were ultimately filed. The study found that candidates for civil commitment did in fact have a higher rate of recidivism. More than half had a new felony case, and almost a fourth (24 percent) committed a felony sex offense. The same percentage failed to register.¹⁰⁶

CONCLUSION

Keeping people who are unable to control their criminal impulses from re-offending is vital to public safety. Civil commitment statutes are increasingly being used to reduce recidivism among sex offenders, both through incapacitation and treatment. Yet civil commitment has also been criticized. Some see it as an attempt to “impose punishment after the State makes an improvident plea bargain on the criminal side.”¹⁰⁷ Others have complained that it is inappropriately used to settle a score when prosecutors feel cheated out of a longer sentence or to avoid public or media outcry over the release of a sex offender who has completed a sentence.¹⁰⁸

Several published articles have suggested ways to improve outcomes and ensure that civil commitment statutes meet tests of constitutionality:

- Return to the first iteration of civil commitment, in which an offender goes through either civil commitment or criminal proceedings but not both. This would make civil commitments less likely to be used or seen as punishment, since the focus from the start of institutionalization

would be on timely, evidence-based treatment.¹⁰⁹

- Enact criminal sentences that reflect more accurately the need for longer incapacitation, and ensure that current sentencing ranges are being used effectively. Another possibility would be more flexible sentencing, which takes into account dynamic factors such as age of offenders, whether they have completed treatment, etc.¹¹⁰
- Ensure that there are effective individualized treatment plans for civilly committed offenders so they will have the best chance to be rehabilitated to a point where they can safely return to the community.¹¹¹
- Use least restrictive alternatives wherever possible.¹¹² This might include expanding outpatient commitment or using outpatient commitment as an intermediate step for patients returning to the community. States might also explore the possibility of using outpatient commitment as an alternative to prison in suitable cases.¹¹³
- Ensure that civilly committed people have a mechanism to petition for their release and have their status re-evaluated regularly.¹¹⁴

Even with advances in treatment and monitoring, there will likely be a population of offenders who should remain confined indefinitely. The chair of the American Psychological Association’s Task Force on Sexually Dangerous Offenders has recommended that “societal concern about the protection from dangerous sex offenders be met through customary sentencing alternatives within the criminal justice system” rather

¹⁰⁶ Cheryl Milloy, “Sexually Violent Predators in Washington State: Recidivism of Sex Offenders Recommended But Not Accepted for Civil Commitment Filing,” *Washington State Institute for Public Policy*,

¹⁰⁷ *Kansas v. Hendricks* (Kennedy, J. concurring),

¹⁰⁸ Peter C. Pfaffenroth, “The Need for Coherence: States’ Civil Commitment of Sex Offenders in the Wake of *Kansas v. Crane*,” *Stanford Law Review* 55: 2003, 2229-2266. The author cites the transcript of *Kansas v. Crane*.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ “Civil Commitment: A Delicate Balance,” *ibid.*

¹¹² *Ibid.*

¹¹³ “Outpatient Commitment’s Next Frontier: Sexual Predators,” *Psychology, Public Policy and Law* 9, No. 1/2: 2003, 159-182.

¹¹⁴ “Civil Commitment: A Delicate Balance,” *ibid.*

than though civil commitment.¹¹⁵ But what about when the sentence has already been decided and is subsequently deemed inadequate to protect public safety? Some people in this position themselves feel that they cannot be trusted to be in the community: “I’m very afraid of just being out there,” stated one offender in a California civil commitment facility in an interview.¹¹⁶

Better treatments, including chemical and pharmaceutical options to reduce urges to re-offend, may one day transform civil commitment from a dead end to a way station on the path to reentry. Until then, however, policymakers will likely continue struggling to manage the most dangerous offenders when they come to the end of their sentences.

In Pursuit of Safety: Are We Safer?

As rates of violent sex crimes have fallen over the past 20 years, so too have rates for all violent crime. This is good news for public safety but confounding when it comes to discerning the impact of sex offender legislation—especially as violent sex offenses appear to have been in decline prior to the implementation of most sex offender laws.

The success of sex offender laws is also difficult to determine because they are generally aimed at protecting children from convicted sexual predators—a category of offense that represents a small fraction of the total number of offenses committed.

As this report has shown, current sex offender policies appear to have only modest impacts on deterring would-be offenders or reducing recidivism of convicted offenders. Longer sentences keep offenders incapacitated but only delay recidivism (and are very expensive). Registration appears to slightly reduce re-offenses by acquaintance offenders. Community

notification seems to have a modest deterrent effect and possibly a positive effect on recidivism, but it also has a negative effect on reentry. Several studies have shown residency restrictions to have no impact on recidivism and to cause major problems for sex offenders trying to find viable places to live and work. Electronic monitoring holds promise for improving supervision, but it is too early to tell whether it will reduce recidivism. Finally, civil commitment, although successful at incapacitating dangerous offenders (again, at a very high cost), has shown little success in “curing” offenders.

Sex offender policies involve a complex mix of criminal justice, psychology, sociology, and politics. This makes it hard to determine to what extent current approaches are creating safer communities and developing the right mix of sanctions and supports for offenders, or whether they are part of a wave of “punitive populism” that is reaching high tide and destined to ebb.

It is hard to deny the cyclical nature of sex offender laws in America, at least in the 20th and 21st centuries. The current cycle may be different, as advances in both monitoring technology and behavioral science may increase the percent of offenders who can be successfully and safely re-integrated into the community. Such policies, though, are still downstream responses. The next challenge will be to go upstream and develop policies to discover precursors to offending behavior and create appropriate interventions. These, in the end, may be the most successful at reducing sex offense rates.

That the public continues to focus on a small minority of sex offenses—those committed by strangers—and overestimate the risk that most offenders pose is a genuine public policy concern. It is hoped that the growing body of research on sex offenses will help move this important field of criminal justice forward toward fair and effective public policies.

¹¹⁵ Karin L. Moran, “Civil Commitment for Sexually Violent Predators: A Growing Debate in New York State,” *The Bulletin of the New York Psychiatric Association*, Winter 2005-06.

¹¹⁶ Abby Goodnough and Monica Davey, “For Sex Offenders, a Dispute Over Therapy’s Benefits,” *New York Times*, March 6, 2007.