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Sex offender registry acts: Deterrence or moral panic?

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Sex Offender Registry Acts: Deterrence or Moral Panic?

by

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Thesis

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Abstract

Sex offender registries were created as a means for law enforcement to track rapists and pedophiles to help quickly resolve sex cases. It evolved into a much larger system with many consequences. This evolution has been hastened by a moral panic based on bad facts and fueled by strong public opinion in favor of long prison sentences and even longer registration periods. Modern laws have little to do with monitoring and more to do with retribution. Proponents claim these penalties are a means to deter sex offenses, but very little research supports this contention. Instead, the registries and the media have generated a moral panic against sex offenders, resulting in far reaching consequences based on few facts. The label hinders employment and housing while placing offenders at a higher risk of vigilantism and mental health problems. This is very different from the original lists of convicted criminals.

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Chapter 1: Introduction

Sex offender registries (SOR) were enacted to protect communities from rapists, child molesters, and repeat sex offenders by increasing the public awareness and preventing recidivism (Lees, 2006). The motivation for registration and notification is to aid law enforcement in supervising and apprehending sex offenders who may recidivate and to help local households protect themselves through monitoring and avoiding offenders in their neighborhoods (Prescott & Rockoff, 2008). Proponents believe the heightened awareness will deter offenders and limit the opportunity for crimes, but many question if this is what they actually do.

Statistical analysis shows that registries have little to no effect on deterring crimes, but a label is applied (Adkins, 2010; Burchfield, Sample, & Lytle, 2014; Tewksbury, 2012). This always happens when a person is convicted of a crime. “Criminal, convict” and “ex-con” are all part of our everyday vernacular, but sex offenders have more labels. The fact that their crime was sexual in nature creates an additional stigma that registries make it impossible to lose. Sex offenders become “perverts” and “pedophiles” regardless of the circumstances surrounding the crime. The media will sensationalize a case not typical for the crime, and people will accept it as the norm. This creates a moral panic against sex offenders.

The literature on this panic has shown that modern society has chosen to ostracize sex offenders as “moral lepers” (Jenkins, 2004). There is a stereotype that is perpetuated by the media that sex offenders are incurable sexual predators targeting women and children and they cannot help but reoffend (Fox, 2013). The data does not support this contention, but an overwhelming majority of the studies conducted inquiring about the attitudes toward sex offenders result in this stereotype being the basis of their need for harsh penalties and offender registries. This support leads legislators to enact progressively tougher laws targeting sex offenders, solely based on misguided public opinion and outdated data.

Though offender registries have always had hidden purposes, they were unobtrusive before the moral panic. The first documented registry was in San Francisco during the 1940s. The police department registered all criminal offenders whether they were convicted or not to provide a means of tracking suspected and known criminals. However, once in place, it was utilized in an entirely different manner. This early registry turned into a way to tag people as homosexuals and deviants and was frequently used to harass and assault. There have been registries for a long time, but most often, they were informal and privately held by police agencies. It was not until the 1990s, this changed to a routine system for police agencies.

After several highly publicized cases (Adam Walsh, Jacob Wetterling, and Meghan Kanka to name a few), sex offender registries became more of a public concern. Minnesota used their informal registry to search for a missing child. It was not immediately successful, but the seed was planted for future use. Law enforcement agencies felt the need to share information and the public felt they had a right to know the information. This was the birth of the modern sex offender registries. Since then, under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and a later amendment known as Meghan's Law, every state has been required to create a list of offenders and make it available to the public.

This federal mandate has created problems and controversy. The federal law requires states to have a registry act, but it does not say how it is to be implemented. It only says there is to be a public list of offenders. This creates a lot of room for interpretation, which each state takes full advantage of not only by the means of implementation but by the restrictions placed on offenders. Some states determine who is to be registered based on their perceived threat to society and the likelihood they will commit the crime again. This can be a very subjective test. Others eliminate the subjectivity by simply creating a list of crimes requiring registration. Since

there are different statutes in each state and each state defines what a sex offense is, there is still ambiguity making statistical analysis complicated.

It has been 25 years since Minnesota took the lead by creating a list of sex offenders and just over 20 years since it became a national requirement. Since then, many are questioning their effectiveness. As of February 2017, the United States had 680,056 registered sex offenders (National Center for Missing and Exploited Children, 2017). Just because there are many registered offenders does not make it effective. If the measure for success is recidivism rates, the answer is a resounding no, registries are not effective (Pryzbyski, 2015). You may be able to say they are effective since the rate of forcible rape arrests fell 59% between 1990 and 2010 and have been in a steady decline since (Snyder, 2012). This can be misleading since all crimes have been on a decline since the early 1990s (Blumstein, 2006; Greenberg, 2001). According to the *2014 Uniform Crime Report*, 39.3% of the sex crimes were cleared, and overall, 47.4% of the violent crimes were cleared. This, combined with only 30% of sex crimes being reported, makes it difficult to determine what, if anything, registries have done to effect sex crimes (Finkelhor, 2009). Ignoring these statistics and relying on an assumption of “frightening and high” recidivism rates, politicians continue to enact laws to deter sex offenses because public opinion in favor of registries remains high.

Deterrence is a classical criminological theory that relies on a few assumptions about human nature. It believes that people are naturally hedonistic and will always weigh the gain from an act against any punishment that may be received if they are caught. It is assumed the punishment must be swift, certain, and sufficiently severe for it to have any effect on behavior (Matza, 1969). Research has been done on criminal behavior concluding that most criminals do not consider their punishment when committing crimes. In fact, they are more likely to commit a

crime if they feel they will not get caught making certainty the most influential factor in criminal behavior, not the severity of the punishment (Akers, 2013). Most crimes are crimes of opportunity and done spontaneously without regard for the outcome other than the immediate gain. Only the serial offender looks at the punishment, but again, it is not the severity but certainty that influences their decision to commit a crime. This holds true for sex crimes as well since most crimes are committed by first time offenders and most offenders do not believe they are going to get caught (Beauregard & Leclerc, 2007).

Alternatively, labeling theory involves applying labels and society reacting to the label. Society determines what acceptable behavior is and, in this case, legislates against what is not acceptable. When a person's behavior deviates from what is acceptable to society, a label is given (Schur, 1971). Deviants can realize they have the label and attempt to make amends to become accepted back into society or accept the label as part of themselves and continue with the behavior deemed unacceptable. They may remain in that society as an outcast or attempt to find a subgroup willing to accept their behavior. Society can then allow the person to be punished for their conduct and be allowed to reintegrate back in to a group or they can become outcasts (Braithwaite, 1994). Labeling is a series of actions and reactions and the consequences that follow.

The labels result in mistreatment in the name of safety. Offenders are restricted, by law, from working certain jobs or living in certain areas. This creates high unemployment rates and homelessness (Tewksbury, 2005; Tewksbury, 2007). The informal punishments are also having an effect. The lists are being used to harass offenders and other acts of vigilantism force them out of neighborhoods and even eradicate them from society. The added pressures are leading to

mental health issues and even suicide (Jeglic, Mercado, & Levenson, 2012; Jeglic, Spada, & Mercado, 2013).

This leads to a theoretical question: Does the deterrence theory of crime apply to registered sex offenders or are registries a label leading to a moral panic against sex offenders? The literature shows little or no effect on recidivism and crime rates, yet the laws are continually expanding the scope of required information and restrictions (Sample, 2008; Harris, Lebonow-Rostovsky & Levinson, 2010). The stigma is present since public opinion has remained high in support of long registrations with little concern for privacy, all based on myths about sex offenders. The consequences are undeniable, and the costs are great. Does the act of registering sex offenders protect society?

Chapter 2: Registries as a Moral Panic

It may no longer be called labeling, but the concepts introduced by Durkheim (1897) questioning the sources of deviance and the Symbolic Interactions of Mead (1913) are still the underlying themes in some very modern applications. The term moral panic was first used in a book called *Understanding Media* in 1964 (McLuhan, 1994) and was applied to mainstream deviance in 1972 by Stanley Cohen in *Folk Devils and Moral Panics: The Creation of Mods and Rockers* (Cohen, 2002). In 1994, Erich Goode and Nachman Ben-Yehuda looked at social construction of deviance as creating moral panics with crime (Goode & Ben-Yehuda, 2010). Moral panics are “a feeling of fear spread among many people that some evil threatens the well-being of society. It is done through the process of arousing social concern over an issue—usually the work of moral entrepreneurs and the mass media” (Goode & Ben-Yehuda, 2010, p. 4). In most cases, the harm is greatly overstated, misdirected, and irrational, yet it is reaffirmed by policy makers and the creation of new law.

As an example of the powerful creating deviance, a moral panic was created in the 1980s and into the 1990s when drugs were demonized by politicians and spread as the vilest thing facing humanity as the source of all crime. This idea was repeatedly spread through the media. Laws were enacted, sentences were lengthened, and a “War on Drugs” was born. It was claimed to be a necessity since drug use forced people to commit crimes to get drugs. Drug dealers committed crimes to maintain their business. Once the drugs were gone, the crime would miraculously disappear, but so far, it has not been the case. This is another example of the media taking something and making it larger than life, then fanning the flames through continuous reporting to create fear in the public and capitalizing on the results.

With the shift in the media from providing news to gaining profits, there has been a shift in what is reported. The highly competitive market requires a shift in traditional journalism with

a more sensationalized definition of newsworthiness (Beale, 2006). Gruesome details and particularly vulnerable victims, like children, tend to get more attention. Rape and murder get ratings and tend to be more of a focus. This expanded attention has created unnecessary anxiety shaped by the media. Fox's (2013) study claims the media has made all sex offenders "folk devils" (scapegoats) for any sex crime. She references Stanley Cohen stating that these moral panics result in changes in legislation and stigmatization of the offender (Fox, 2013, p. 161). This holds true with sex offenders as well. The registries have gotten increasingly restrictive since their inception. This publicity has contributed to the negative perception of offenders. When asking the public, most will refer to sex offenders as "pedophiles" or "sexual predators" regardless of the circumstances of the case due to misinformation and stereotypes.

The moral panic construct was again used in the 1990s and applied to sex offenders. Kathryn Fox (2013) contends we have again created a moral panic with sex offenders. Since the advent of sex offender registries, there has been a major spike in the public concern over sex crimes and the offenders. She asserts this, in part, is due to modern media. The War on Drugs began when cable news was still young. Now, not only do we have more news networks with 24-hour news cycles, but we also have social media (e.g., Facebook, Twitter) to disseminate information.

Additionally, Burchfield and her colleagues (2014) looked at how the media sensationalized some high profile sexual assault cases, perpetuating a moral panic. Recent evidence has shown that registry laws make it difficult for offenders to reintegrate into society while having little or no effect on recidivism. Despite this there are many myths that remain including that victimization is usually against children, recidivism rates are high, the sex

offender population is homogenous in terms of offending patterns, and rehabilitation is impossible (Malinen, Willis, & Johnston, 2014).

The Burchfield et al. (2014) research looked at how the media plays a role. Through Google Trend data, they could demonstrate that people searched for the term “sex offender” more often after each legislation was passed and they also peaked at the time of high profile cases. This is evidence that the media is feeding into the moral panic. Typically, according to Yehuda’s (2010) definition, a moral panic is short lived. In the case of sex offenders, it has been perpetuated for over 20 years by the media. This panic serves as justification for the changes in the laws and the perpetuation of the myths surrounding sex offenders. This contributes to the stigma of being a sex offender.

This again was researched to determine the attitudes of the community toward sex offenders (Malinen, et al., 2014). The perpetuation of the myths results in negative responses from the community due to inaccurate portrayals of the offenders. Malinen and colleagues (2014) point out the myth that most sex offenders are likely to reoffend, which is a statistical fallacy. This results in an attitude from the community that they do not want released offenders living near them. In turn, landlords are reluctant to rent to the offenders and employers often will not hire released offenders (Lees, 2006). Negative community attitudes towards released sex offenders might unintentionally increase the very risk society wants eradicated through blocking effective re-entry and promoting ill-informed legislation. Those who are not allowed to return to their communities without negative treatment are more likely to reoffend (Adkins, 2010).

An unfortunate conclusion reached by Malinen and colleagues (2014) was the difficulty in changing the minds of the public. Using self-report measures on attitudes, the researchers

measured the attitude toward sex offenders based on fictional articles about a sex offense. In the study, two articles were used, one a sensationalized media portrayal and the other a fact-based informative article about the case. They then administered several measures of attitude including the Community Attitudes Towards Sex Offenders (CATSO) scale to the two groups. The results concluded that those presented with the more sensationalized article had stronger negative view of the offender and were less likely to change their opinions. This shows that unless media outlets can be less sensationalized, the beliefs of the public will remain unnecessarily negative toward these offenders. The media creates the label and perpetuates the myths associated with it to sensationalize the crime.

This group of studies has come to the same conclusion: People are afraid of sex offenders. This attitude was prevalent in studies even back in 2009 (Kernsmith, Craun, & Foster, 2009). There is a stigma attached and held against sex offenders. Kernsmith and colleagues (2009) compared the level of fear based on the type of crime. Not surprising, those involving children elicited the most fear. This, in turn, garnered the most support for harsher penalties and longer registration. The problem with this is that all sex offenders receive the same stigma. This is due, in part, to the fact that the public does not know or care to find out, what the person was convicted of (Quinn, Forsyth, & Mullen-Quinn, 2004).

The data from this project made a clear hierarchy of fear based on the offense. Those involving child victims (e.g., pedophilia and incest) rated the strongest in fear measures. Somewhat surprising is spousal rape and statutory rape resulted in the least fear. All categories earned a greater than 50% fear rate and more than 75% approved the harsh penalties and required registration. This demonstrates that sex offenders, by the very title, get a stereotype and preconceived perception simply by the nature of their offense.

This concept was examined in the Quinn (2004) article. Their study found that “the rhetoric of media, politicians, and victim’s groups have merged the imagery of pedophilia with that of violent sexual predation” (Quinn, et al., 2004, p. 3) and this stereotype ignores the facts of individual sex offenders and the crimes they commit. The stereotype goes against the data that sex offenders do not have high recidivism rates and do not target young victims. Instead, the laws create a false sense of security because they fail to acknowledge the fact that most sex offenders know their victims and are unknown to the criminal justice system (Feige, 2017).

Quinn and colleagues (2004) go on to attempt to explain why we, as a society, ignore these facts and perpetuate the stereotypes. Their explanation is quite logical. Sexual safety is at the core of our sociological and psychological self. Sex is considered the most intimate relationship one can have with another; therefore, taking this is the ultimate violation. Thus, the protection from sexual violation is paramount to our physical and psychological well-being. Therefore, they argue that, we have an all-inclusive label of sexual predator for all sex offenders. They go on to show that, because we fear sex crimes against children the most, all become pedophiles. This is as a self-protection mechanism from what we deem to be the vilest of crimes (Quinn, et al., 2004).

After all of this, a recent investigation has found that the entire system of sex offender registration and laws vilifying offenders was based on false data (Feige, 2017). This domino effect began in 1982 with a paper written by Nicholas Groth and Robert Freeman-Longo discussing the recidivism rates of sex offenders in a specific treatment program (Groth & Freeman-Longo, 1982). It had 92 participants and was a self-report study with the primary focus on the necessity of treatment for sex offenders, thus justifying the programs. It was not peer reviewed and the recidivism was discussed more as an afterthought regarding the reason for the

specific treatments used in the program. Their results showed that roughly 80% of the men in their program not only reported sex crimes that they were not arrested for but also, they admitted they would probably commit the crimes again without the treatment program (Groth & Freeman-Longo, 1982).

Freeman-Longo (1986) then cited the study in a *Psychology Today* article entitled “Changing a Lifetime of Sexual Crime,” where he discussed causes of juvenile sex offenses and the implications on future sex crimes. Here he simply recited the recidivism rates as between 35% and 80%. The purpose of the article was to show a correlation between child sexual abuse and later sex crimes, but the recidivism rates surfaced as fact when it was based on one small study (Freeman-Longo, 1986).

The dominos continued to fall in 1987, when the US Department of Justice asked Barbara Schwartz, a psychologist, to write a manual on how to treat sex offenders (Schwartz, 1988). There was little to no data about sex offenders at the time, but she still had a project to complete so she relied on the only source available: Freeman-Longo’s (1986) *Psychology Today* article. With limited data, she created a 246-page manual to be used as a treatment guide for the US Department of Corrections. The intention of this manual may not be bad, but was later used for other purposes.

Around the same time, the media publicized cases like Adam Walsh, Megan Kanka, and Jacob Wetterling. This was coupled with television shows like *America’s Most Wanted* and other “true crime” programs on primetime television, sensationalizing horrific criminal acts. The push for registry of sex offenders began to gain momentum and proponents needed justification. It came by quoting Schwartz’s (1986) manual and Freeman-Longo’s (1984) report. The limited data turned into an 80% recidivism rate for all sex offenders. This was determined to be

“frightening and high” by lawmakers and proponents of the registries (Harris, 2010). This is often quoted in the preamble to state sex offender registry statutes and even by Justice Kennedy in the first case to challenge sex offender registries in front of the US Supreme Court (*McKune v. Lile, 2002*). So, it appears that the sex offender registries and the failed challenges have all been based on a small study done in 1982 and ignoring the more recent data discussed earlier.

The Supreme Court is often quoted as saying recidivism for sex offenders is “frightening and high” at almost 80% (*McKune v. Lile, 2002*). This is completely contrary to the statistical findings (See Table 1). The statistics have shown that sex offenders have a much lower recidivism rate. Sex offenders typically commit another sex crime (noted as “Sex Crimes” in the table) at a rate of less than 10%. Furthermore, they recidivate by committing any new crime (“All Crimes” in the table) at roughly 30% when all other convicted offenders reoffend by committing any offense at about twice that rate (“Overall Recidivism” in the table). This does not appear to be “frightening and high” when compared to other criminals, it is much lower.

Table 1:
Sex Offender Recidivism Rates

State	Sex offender Sex Crime Recidivism	Sex Offender Recidivism of All Crimes	Overall Recidivism Non-sex offenders
Arizona ¹	2.4%	32.3%	58.0%
Iowa ²	3.0%	24.5%	34.3%
South Carolina ³	4.1%	N/A	N/A
Florida ⁴	5.2%	32.0%	65.0%
Nebraska ⁵	5.7%	N/A	N/A
Alaska ⁶	7.1%	55.4%	71.0%

1. Rodriguez, N., & Stevenson, P. (2007). Recidivism of Sex Offenders Released from the Arizona Department of Corrections.
2. Adkins, G. (2010). *The Iowa sex offender registry and recidivism*. Washington DC: National Crime and Justice Reference Service.
3. Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2010). Effects of South Carolina’s sex offender registration and notification policy on adult recidivism. *Criminal Justice Policy Review*, 21(4), 435-458.
4. Levenson, J.S., & Shields, R.T., (2012). Sex offender risk and recidivism in Florida
5. Spohn, R. (2013). Nebraska sex offender registry study
6. Myrstol, B. A., Rivera, M., & Parker, K. (2016). Alaska Sex Offender Recidivism and Case Processing Study.

In comparison, the Bureau of Justice issued a report in 2014 presenting the recidivism rates of non-sex offenders released from prison in 1995; the year sex offender registry laws first began (Durose, 2014). Overall, 67.8% of the prisoners released in 2005 were arrested within three years of release. Additionally, 76.6% were re-arrested within five years of their release. In contrast, the sex offender data represented in Table 1 is a seven-year analysis, and the worse state was Alaska with a 55.4% recidivism for any crime with only 7.1% convicted of sex crimes (Myrstol, 2016). In a specific 2010 example, recidivism rates of convicted sex offenders were studied before and after the implementation of sex offender registry in Iowa (Adkins, 2010). The study found no statistical difference between the rates before and after the implementation of the registry. These rates are further complicated because we can only look at offense rate and recidivism registered offenders (Rockoff, 2011). Since the FBI reports first time offenders commit the 95% of the sex offenses, recidivism has no statistical effect on a first offense (Jennings & Tewksbury, 2010).

Due to the dynamics of sex offenses, there is widespread recognition that the officially recorded recidivism rates of sexual offenders are a diluted measure of reoffending. Even so, they seem to be a frequent starting point for determining if any crime program is working, including sex offender registries (Pryzbylski, 2015). According the Bureau of Justice Statistics, 71.6% of all offenders (violent and non-violent) released from prison will be arrested on another crime within three years and 23.6% will be reconvicted (Durose, 2014). Violent crimes have a 17.1% rate of reoffending the same crime they were originally convicted of while sex offenders only have only a 5.3% rate of committing another sex offense (Pryzbylski, 2015).

Chapter 3: History of Sex Crimes and Registration

The Beginning of Sex as a Crime

To better understand the basis for the moral panic, the history of sex offenses and registries must be explored. Since biblical times, sexual behavior has been scrutinized and looked upon as “evil” and “sinful” and perpetrators were cast as villains. For many, sex is only for the purposes of procreation (Clark, 1996). This meant that anything other than vaginal intercourse for the purposes of procreation was frowned upon and often punished. Even today, pure biblical scholars believe sex is for procreation and is not meant to be fun. The acts may not have been illegal but masturbation, and oral and anal sex were all sins, condemning the perpetrator to an eternity in hell.

This became the foundation of the legal restrictions on sexual behavior. Joys of the flesh and the virtue of a woman have remained an integral part of what society considers sex crimes (Quinn, et al., 2004). Sexually appropriate behavior is a cultural phenomenon and therefore changes over time. Creating many motivations for sexual crimes. Historically, women, especially young women, have been considered naïve and in many cases less intelligent than their male counterparts therefore requiring protection (Clark, 1996). The laws were enacted to protect the particularly vulnerable members of society: women and children (Quinn, et al, 2004). Others have included prevention of illegitimate children and passing on of sexually transmitted disease as reasons to control sexual behavior (Brundage, 2009).

Economics was also a factor. A pure woman would get her father a better dower right. This would allow her to become part of a rich family and the father will be rewarded. Sex offenses were considered private matters and a monetary concern. Sexual assaults were rare until the 19th century (Pickett, 2013). Since women were property, her guardian was the only person to pursue any action on her behalf. This placed him in a difficult situation, if his daughter

is assaulted, he is considered incapable of protecting his family, but if it was consensual, he has lost control of his family. Either way he is at fault, making the pursuit of sexual claims rare (Eskridge, 2008). Once convicted, however, sexual deviants were considered moral lepers and ostracized from society (Schultz, 2014).

Moral conservatism led the way throughout the 19th and into the 20th centuries. Sex was still bad, so sex crimes were even worse because it deviated from what was considered normal sexual behavior. There was also a shift from rural to urban living. The urban values were more liberal while the rural was more secretive. This meant that cities were more permissive regarding sexual behavior, yet more sexual deviance was occurring in the country, but it was kept private (Jenkins, 2004). Deviance was defined in smaller groups like a family or church, in the country while deviance was based on society in the more urban areas.

The late 19th century saw a shift in the focus from private, monetary concerns to a more public criminal matter with the justification for laws shifting to the public (Jenkins, 2004). There became a more scientific approach to sex crimes. This did not diminish the base reasoning, but it had more statistical support. “Sex fiends” and “sexual psychopath” became the stereotype and a more medical or psychological approach was born (Leon, 2011). There was still a sexual deviance component, but it was backed up by the new science of psychology. This resulted in a shift to treatment more so than punishment. This scientific approach made people believe that sex offenders were incurable, and it was impossible for them to refrain from sexual activity (Daly, 2008). The belief that sex offenders are incurable remains today as a misconceived basis for many of our current sex offenses and the registries.

It was made even worse by an increase in media attention. For the first time in history, information could be shared around the country and around the world quicker than before.

National stories that were the exception not the norm of sex crimes were broadcast to sell newspapers. Current laws were strengthened, and more laws were created to ban sexual deviance for the protection of women and children from these random acts of sex (Leon, 2011).

By the 1930s, J. Edgar Hoover and J. Paul DeRiver had proliferated the “bogeyman” as a sex fiend attacking women and children at random. They were the innovators of offender registries. As the director of the FBI, Hoover propagated the “Stranger Danger” myth and began listing deviants (Jenkins, 2004). DeRiver created the Sex Offender Bureau, specifically targeting sex offenders under conservative standards of right and wrong. This bureau created casebooks of sex offenses and taught law enforcement how to recognize sexual deviants before they committed the crimes.

This led to the first official criminal registry. In California in 1947, the police began registering gangsters in an attempt to keep organized crime out of Los Angeles. This registry evolved as a means of labeling those deemed undesirable. In the 1950s the registry targeted sex offenses, specifically those associated with homosexuality (Eskridge, 2008). A few states followed but by the early 1990s, only 12 states had sex offender registries (Lees, 2006).

Resurgence

In the 1980s, likely due to more news outlets and better national news coverage, there appeared to be a sharp increase in the number of crimes against children. The crimes statistics seem to show a steady if not slight decrease from 1975 to 1990; however, there were many cases being broadcast nationwide involving kidnapping, sexual assault, and murder of young children (Jenkins, 2004). Men are expected to protect their families. Parents are expected to protect their children. This has led to our modern inclination to overprotect our children.

The first highly publicized case was Adam Walsh. In July of 1981, he was abducted from a mall parking lot in Florida (Almanzar, 2008). His father, John Walsh, took to the media to find his son. John used every media outlet to broadcast information about the kidnapping. This was one of the first nationwide kidnapping cases and everyone knew who Adam was. Unfortunately, two weeks after the kidnapping, young Adam's severed head was found alongside Florida's Turnpike in rural St. Lucie County, Florida. A serial killer named Ottis Toole was believed to have killed Adam, but due to various trial issues, he was never convicted of this crime. After the death of his son, John Walsh became a high-profile advocate for crime victims and turned to the media through his television show, *America's Most Wanted*, to capture suspected criminals. This was a major step in using the media to solve crimes (Almanzar, 2008).

In 1989, an 11-year-old boy named Jacob Wetterling was kidnapped at gunpoint from his neighborhood in Minnesota allegedly by a serial sex offender. During the investigation, police agencies began creating a list of suspects based on the crimes committed with their focus on crimes involving children and sex offenders. This information was stored and shared among all agencies involved in the investigation and was retrieved later for similar crimes. This was the first of the new offender registries (Louwagia & Brooks, 2016).

In July of 1994, 7-year-old Megan Kanka was lured to a neighbor's house in Hamilton, New Jersey, where she was raped and murdered. Her convicted assailant was Jesse K. Timmendequas, a known pedophile with a record of sexual assaults against young girls (Glaberson, 1996). This became the trigger to combine the public nature resulting from the Walsh case and the lists developed after the Wetterling case. It was believed that if people knew a person was convicted of a sex offense, they would simply avoid them, thereby decreasing the opportunity for the crime. Also, if a crime was committed, they could look to the list of

offenders in the area to find possible suspects and solve the case quicker. Soon after this, most states had developed sex offender registries and made them available to the public.

As with most legislation, it took these highly publicized events to make it mandatory. Congress passed the Federal Violent Crimes Control and Law Enforcement Act (1994). This was a sweeping attempt to control violent crimes in the United States. Included in this act was the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (1994). This act required states to form registries of offenders convicted of sexually violent offenses or offenses against children. They were also required to form rigorous registration requirements for sex offenders including annual address verification of sex offenders and quarterly verification of violent predators for life. Megan's Law is part of this act, making the information gathered available and open to the public. This is the beginning of the national sex offender registry and notification act (SORNA). Through the threat of not receiving federal funds, all states had some sort of sex offender registry by 1995 (Violent Crime Control and Law Enforcement Act, 1994). All of this was based on the assumption that sex offenders offend and reoffend at a "frightening and high" rate (Feige, 2017).

The modern laws are based on further myths regarding sex offenses and offenders and they are used for political purposes (Quinn, et al., 2004). It makes it difficult to argue facts out of fear of being soft on the "sexual predator" and condoning the behavior. This myth of sexual predator is unfounded in any study (Leon, 2011; Tewksbury, 2012). Few crimes are committed by the man hiding in the bushes. Usually, it is the relative or other acquaintance that assaults their victims (RAINN, 2017). Yet all sex offenders, whether they are nonviolent and without a victim or severely violent with several victims, they are lumped into the category of "sexual

predator,” and through no evidentiary conclusion, all are assumed to be pedophiles (Tewksbury, 2012).

The assumption of violence and stereotype of the victim is another long-held myth (Malinen, et al., 2014). The statistical reality is most charges do not involve sexual penetration (Galeste, Fradella, & Vogel, 2012). Usually, it does not involve direct contact with a victim. Most convictions result from possession of illicit materials and exposure (Galeste, et al., 2012). Those involving direct contact are convicted of molestation, not forcible rape (Deslauriers-Varin & Beauregard, 2014).

The Deslauriers-Varin (2014) study goes even further to discuss the widespread myths about offenders’ receptiveness to treatment. Most people believe that sex offenders cannot be changed and are destined to reoffend. Statistics do not support this. Recidivism is less than with other offenders; most sex crimes are not repeat offenders and those in counseling are far less likely to reoffend (see Table 1). Though most court decisions and legislatures quote one article from 1983, stating “recidivism rates for sex offenders is ‘frightening and high’ at around eighty percent,” studies have shown most states are below ten percent (Feige, 2017). The registries and harsher punishments only create a false sense of security (Quinn, et al., 2004). Regardless of facts, the myths shape public opinion.

Challenges

The enactment of sex offender registry laws has not gone unchallenged. In 2002, a Kansas law was challenged giving harsher penalties to sex offenders. In upholding a lower court finding that the statute was constitutional, Justice Kennedy stated that sex offenders pose “frightening and high risk of recidivism,” which, “of untreated offenders has been estimated to be as high as 80%” (*McKune v. Lile*, 2002). This has been the foundation for all subsequent

court cases. Overall, the Supreme Court of the United States has ruled that having a sex offender registry is constitutional. However, there have been many constitutional challenges to other aspects of the registry. Cases have been decided in both state and federal courts as well as the Supreme Court of the U.S., with results both in favor of the registry provisions and striking down portions that are unconstitutional (OSOSMART, 2015).

A logical starting point is to challenge the power to enact the legislation. The Supreme Court has recently granted standing to challenge under the tenth amendment's federal power. Under this amendment, the federal government cannot compel states to adopt federal laws. They can use spending power to induce adoption of a statute. If states did not create a system of registering offender by July 2009, they would lose 10% of their Byrnes Grant money that has typically been used to help fund law enforcement (Justice Policy Institute, 2008). If history holds true, this will be found constitutional. The federal government is not forcing states to make a law; it is simply giving them an incentive to make a law. This has held true for years with things like speed limits and other legislation.

This was followed closely by challenges of power under Article VI, Section 2 Supremacy Clause, and Article 1 Section 1, 8, 9 Separation of Powers. The Supremacy clause gives the Supreme Court the right to strike down statutes that are contrary to the US Constitution. This is the foundation for most legal challenges. If the Supreme Court determines them unconstitutional, they are unenforceable. Separation of Powers is a legal construct established in 1803 in the famous case of *Marbury v. Madison*. The Supreme Court of the U.S., in essence, gave themselves the right of judicial review of all legislation and its application. This case determined that there are three distinct branches of government and they have very distinct roles. The legislature makes laws and the executive branch is there to enforce them. The SOR

challenges call into question these roles. It asserts that by enacting the registries, legislatures are punishing and enforcing laws. They also claim the lower courts and police agencies are using the SOR to legislate through enforcement. So far, this challenge has been unsuccessful.

Another major challenge to reach the Supreme Court of the U.S. was under Article I, Section 9 prohibiting ex post facto legislation (OSOSMART, 2015). This states that no law can be enacted punishing someone for a crime that was legal at the time the act was committed. Initially, it was ruled that the act of registering offenders could be applied retroactively to those with prior convictions because it is not considered punitive (*Smith v. Doe*, 2003). More recent, lower court rulings have challenged other aspects of the laws outside of registering using the same grounds. In October of 2017, the Supreme Court refused to hear a case from Michigan regarding retroactive application of the changes made to their statute in 2006 and 2011. The lower court ruled that the original statutes retroactive provisions were constitutional, but any changes could not be applied to those convicted prior to those changes. By not granting certiorari, the court agrees with the lower court ruling and the changes cannot be applied to those convicted before the new law was enacted (Gibbons, 2017).

Other states have lower court challenges under the same article with mixed results (OSOSMART, 2015). Some offenders have challenged changes to the laws. After initial registration laws were enacted in the 1990s, many states took this opportunity to add restrictions to offenders. In addition to registering, offenders are required to give up their computers, register their vehicles and are told they cannot live in certain areas (Levenson & Hem, 2007). This is all added to the law after the initial enactment. Some states have struck these provisions down as takings or considered this a punishment with ex post facto enforcement while others have allowed them to remain. The additions have not made it to the Supreme Court of the U.S.

to get a definitive answer to their constitutionality, but if the Michigan case is any indication, many of these cases will be struck down.

Recently, the Fifth Amendment has been a point of challenge in lower courts. Maryland has revamped its registry act and removed over one thousand offenders because their state Supreme Court ruled some offenders were being punished twice for the same offense if they are forced to abide by new restriction, especially extensions of their time on the list, after being sentenced (*Doe v. State*, 2014). The courts have determined this a violation of the double jeopardy clause of the amendment. Takings under the amendment have been less successful since the court has ruled that the government is not “taking” your possession by forcing an offender to give up their computer, job, or home as a condition of their punishment.

The most varied yet most successful claims are violations of the offender’s due process rights. Under the Fifth and Fourteenth Amendments, the “state cannot infringe on any citizen’s rights to life, liberty and property” (U.S. Const. amend. V; U.S. Const. amend XIV.). Substantive due process means there are certain fundamental rights that are free from government interference. Once it is determined that the government can make laws there are still procedural safeguards to determine how the government regulates. These safeguards are known as Procedural Due Process rights. Most of the early cases failed because the courts determined that the registry is not a punishment; therefore, if due process was afforded during trial and during the sentencing phase, no additional due process is needed.

Lately, the Supreme Court has been applying the due process more liberally. Registry expansion was being successfully challenged in a Texas case where the defendant had a liberty interest in being free from registration requirements where he had not been convicted of a sex offense (*Meza v. Livingston*, 2010). This case and several other decisions have been struck

down, stating there must be sexual nexus and the crime to be placed on the sex offender registry (*United States v. Jiminez*, 2008). Alien smuggling for possible sexual purposes and conspiracy to commit sexual abuse are registerable. Annoying a child, bestiality, and some indecent exposure cases are not registerable, according to the nexus requirement established by the Supreme Court.

The Supreme Court says there does not have to be a hearing to apply the registration requirement and it can be extended without violation of due process rights (*State v. Arthur*, 2008; *Woe v. Spitzer*, 2008). The Court went on to state that a jury does not have to impose the registry requirements therefore no violation of the right to a trial by jury; however, some states are requiring this as a safeguard protecting offenders' rights. When the court implies the person is currently dangerous and is unsafe to society as they did in Utah (*People v. Briggs*, 2008), the state must allow the offenders a hearing to defend themselves. These implication and defamation cases are becoming increasingly successful in lower courts forcing states to implement hearings and other procedural safeguards.

The far-reaching aspects of the sex offender registry have also been successfully challenged on an individual basis. There have been First Amendment challenges on portions prohibiting the use social networking websites, instant messaging services, and chat programs and requirement to provide internet identifiers (*Doe v. Prosecutor*, Marion County, 2013). A similar case made it to the Supreme Court of the United States where they struck down North Carolina's law prohibiting sex offenders from owning or using a commercial social media (*Packingham v. North Carolina*, 2017). This is going to have a rippling affect throughout the sates since every state has some restrictions on computer use in their statute. This was a

challenge to a statutory requirement, but it has not been addressed as a condition of parole or probation (*Harris v. State*, 2008).

Generally, one state must honor the laws and how they apply them under the Full Faith and Credit requirement of the Constitution. This was held to be true if an offender moves to Maine and must register even though the conviction occurred in Massachusetts (*Doe v Sex Offender Registry Board*, 2013). In general, identical, or substantially similar crimes that are registerable in one state will be registerable in another. The issue arises if one state does not have the same crime or it is not registered in one state but is in another. There is no pattern to the lower court decisions on this matter. Michigan has addressed this by simply stating that if an offender is required to register in any other state; they will register if they frequently enter Michigan (*Michigan Sex Offender Registration Act*, 2015).

Another assault on registries has been through the Eighth Amendment as cruel and unusual punishment. Cruel and unusual has been interpreted to mean physical punishments or those that produce undue shame. The shame aspect has been a focus for sex offender detractors since the labels and other public scrutiny is humiliating and influences all aspects of their lives. So far, this has not been addressed in higher courts but there has been success in other ways. States cannot use sex offender violations in computing three strikes if mandatory life is the result (*Gonzalez v. Duncan*, 2008). It is also cruel and unusual to force a minor to register if they are convicted of statutory rape but diverted (*Re C.P.* , 2012). The issue of shame and humiliation has not made it to the Supreme Court, but lower courts have had mixed results.

Since the Sixth Amendment sets forth most of our rights for trial, it is surprising that there are not more challenges using this amendment. So far, there have only been two main attacks both had some level of success. This is where notice comes from, and if, at some point

during the process, someone tells the accused they are facing registry, notice is complete (OSOSMART, 2015). Constructive notice has been accepted in some jurisdictions and not others. There have been cases where convictions were overturned when the attorney did not notify the accused they were facing registry. The other challenge here is the trial by jury but since registry is not a trial and not a punishment, a jury is not required but most states to adopt written notice procedures to avoid violation of the Sixth Amendment (*Magyar v State*, 2009).

There have been some general challenges to the registries, but these have been unsuccessful. For example, it is constitutional to report sex offenders to credit agencies, thereby limiting their credit and purchasing power. Even if a person is homeless due to regulations set forth in the SOR statute, that is not an excuse for not registering. Finally, it is not an equal protection violation to target sex offenders because they are not a protected class like race and gender (OSOSMART, 2015).

In the criminal justice system, juveniles are protected more so than adults. When they are convicted of sex crimes, however, they are often subject to the same restrictions as adults (OSOSMART, 2015). The federal requirement is that all forced sex crimes and those crimes where the victim is under a certain age must be on a public list. Most states treat juvenile sex offenders the same as adults. It is an equal protection claim if they are treated more harshly (*State v. ICS*, 2014). For other offenses, juveniles are released no later than their 21st birthday and often at 18, but sex offenses are typically treated as adult offenses thereby relinquishing that right. It has been determined, as with other juvenile offenses, mandatory life (imprisonment or registration) is considered cruel and unusual punishment when applied to juveniles (*NL v. State*, 2013).

So far, the case decisions are somewhat unpredictable. The lower courts tend to side with the states and their right to make laws appropriate for their citizens. Sex offender registry statutes are constitutional and probably will remain so, but changes are being made. The details will have to be decided by higher courts to determine constitutionality, taking the power away from the states.

Chapter 4: Registries Today

Forms

The Federal Sex Offender Registration and Notification Act (SORNA) grants each state considerable latitude when it comes to implementation of their registries. The minimum requirement is to have a registry of offenders convicted of a sex-related offense as well as those convicted of non-parental kidnapping of a minor. That registry must include the name and current address of the offender and it must be updated annually (Violent Crime Control and Law Enforcement Act, 1994). An amendment in 1996, known as Meghan's Law, required certain data collected be made available to the public. Beyond that, it is up to each state to determine the method and extent of implementation. Though the information is compiled in a national database, it is up to each state to enforce, creating considerable variation in how it is used. This ranges from who is considered an offender, how they are to be punished, and what additional information must be collected for both public and private viewing.

SORNA requires some of the information is public. Initially, this was a list available at your local police agency. It then progressed to local, state, and now, a federal website with searchable indices and maps showing offender locations. Ten states also require the offender to actively notify their neighbors and other nearby officials. Louisiana has a three-step notification process, with responsibility placed on the offender where (a) the offender places a two-day notification in the local newspaper, which must include the name, offense committed, and address; (b) the offender provides this same information to the local school superintendent; and (c) the offender sends postcards of notification (with the same information used in steps one and two) to all neighbors within a three-block radius, or one square mile if in a rural area (Louisiana Sex Offender Registry, 2014). This is typical of a registry and notification state. Fortunately, the other 40 states only require registration on the public list, even though public opinion

strongly supports active notification. Even without active notification, there are many restrictions placed on the offenders' lives.

Who receives restrictions varies from state to state. Some states, Iowa for one, have a risk-based application (Iowa Sex Offender Registry, 2005). It allows the sentencing judge or a committee to order registry based on the risk of the defendant to society and potential for reoffending. The decision is made while holding true to the intent of the law of protecting the public, especially children, from violent sexual predators. They consider static factors, such as age, number of prior sex offenses, victim gender, relationship to the victim, and indicators of psychopathy and deviant sexual arousal. They also look at dynamic factors, like an offender's compliance with supervision and treatment. By examining both types of factors, a more complete picture of the offender's risk can emerge, compared with static or dynamic factors used alone.

Sentence-based registration is used in Massachusetts where the judge is required to order registry in cases of child molestation and rape involving children; however, they are given the discretion based on the sentence for other sex crimes (Massachusetts Sex Offender Registry, 2004). States like Wyoming and Vermont only require registration for felonies or repeated misdemeanor convictions (Wyoming Sex Offender Registry, 2000; Vermont Sex Offender Registry, 2007).

Offense based registration is by far the most common. Forty states and the District of Columbia use this method to establish a list of crimes where registry is mandatory. There is considerable variation as to what offenses are included and there is little to no judicial discretion since the terms of registry are set by statute. In Michigan, for example, there are roughly 25 separate statutes and an additional 50 subsets that require a judge to order registration (Michigan

Sex Offender Registration Act, 2015). Some of which are not directly related to the sexual exploitation of children or repeated sex offenses. Prostitution and breaking and entering under certain circumstances requires a mandatory registration. According to the Supreme Court, if there is a sexual nexus with the crime, it can require registration.

No one is immune from registry. Juveniles account for less than 10% of the registered offenders but can be labeled for life. Washington registers juveniles and keeps indefinite record, requiring both adult and juvenile Class A offenders to register for life. Delaware and Rhode Island destroy juvenile registration records when the offender reaches age 25. Texas, where the registration requirement extends only through the duration of parole in all cases, destroys juvenile records at age 21. California (CSAR Statute, 2012), Michigan (Michigan Sex Offender Registration Act, 2015), New Jersey (New Jersey Sex Offender Registry, 2016), and South Carolina (South Carolina Sex offender Registry, 2014) can potentially apply lifetime registration requirements to juvenile offenders. Due to age of consent laws, virtually all sexual activity by minors can be considered illegal. Therefore, 15 states do not register juveniles and several others allow for petition for specific exceptions.

One exception, known as the “Romeo and Juliet” rule, has been adopted in only 13 states to prevent some juvenile registrations. This applies to cases of consensual teenage sex that would have otherwise fallen under the statutory rape laws (Lowen, 2017). The age limitations vary by state but, in general, both consenting parties are between 13 and 20 with less than a 4-year age difference. This is all dependent upon age of consent in the state and the age difference allowed by statute. For example, in Michigan, the age of consent is 16. Therefore, if the victim is 15, and the defendant is 16 or older, it is Third Degree Criminal Sexual Conduct (previously known as Statutory Rape). Under the exception, if the victim is as young as 13 and the offender

are no more than 17 (four years) they will not be added to the sex offender registry but will still have the criminal conviction (Michigan Sex Offender Registration Act, 2015).

These exceptions have been controversial for some time. The vocal opposition says these exceptions just advocates for teenage sex. Some highly publicized cases of teacher-student encounters have also brought this into the public eye creating more controversy about the age of consent and registering. Proponents say it is not rape and the “offender” should not be treated as a sexual predator. Most of these cases involve high school dating relationships where no force or coercion is involved, and many have resulted in marriage (Lowen, 2017). Some states are considering altering the age of consent preventing the underlying conviction, thereby eliminating the possibility of registration. In most cases, like Michigan, a person convicted prior to the 2011 amendment may petition for removal from the registry (Michigan Sex Offender Registration Act, 2015). The judge may remove the order of registration if they feel the offender is not a threat to offend again. In other states, it is by motion at sentencing while still others are placed on the registry and can petition for removal when they meet certain conditions (Indiana Sex Offender Registry Act, 2012; Matson, 1996).

Once it has been determined that registry is required, the offender is given notification at the time of sentencing of their registration requirement (Michigan Sex Offender Registration Act, 2015). The written acknowledgment fulfills the due process notice requirement. This is a written document outlining all registry requirements. They are required to sign and acknowledge notice of their obligations. If the person is placed on immediate probation, they typically have 24 hours to report to their local law enforcement agency to complete the initial registration. If they are released from incarceration, they are immediately re-notified of the registration

requirements and have up to 10 days to notify local law enforcement of their address and any other stipulations set forth by the state (Indiana Sex Offender Registry Act, 2012).

After the initial registration, offenders are notified of their next registration month. It is at intervals based on their birth month in most jurisdictions. For example, an offender with a birth month of March will only have to go to the police department within the month of March each year if they are sentenced as a Tier I offender. A Tier II offender will register in March, July, and November, and a Tier III offender will register in March, June, September, and December. If they are released between report months, they will report immediately and then assume the regular schedule (Michigan Sex Offender Registration Act, 2015). An amendment in 2005 to the federal statute established these tiers based on the severity of the crime. It is a step closer to standardization though not all states agree on which crimes should be minor (Tier I) or severe (Tier III) (Violent Crime Control and Law Enforcement Act, 1994).

The law requires an address, making it difficult for transient or homeless offenders to comply. Some states like Kansas require offenders to report to the local police agency every 3 days and Indiana once per week if you do not have a permanent address (Kansas Sex Offender Registry Act, 2010; Indiana Sex Offender Registry Act, 2012). If an offender moves, they have a set time to change their address with local law enforcement. If they do not, not only is it a parole violation, it is an additional felony that the prosecutor has the discretion of charging.

States do not want offenders to have the ability to move to avoid registering. The Supreme Court of the U.S. has ruled that under the full faith and credit of the Constitution, states must honor registry from other states. Many states, including Michigan, have taken a hard line on this by requiring all out of state registrants to register for life, regardless of the penalty in the issuing state (Michigan Sex Offender Registration Act, 2015). This deters movement of

offenders. Regardless, offenders must report wherever they are even if they are not in the issuing agency.

Getting off the registry is not always automatic, and it may not be an easy task. The easiest way is automatic removal at the end of the registration period. This is not the case in all states. Some are required to petition the court for removal. In New York, the offender must send a motion to a board of examiners to determine if the person should be allowed off the registry (New York Sex Offender Registry Act, 2012). The petition process involves filing fees and potential legal fees. In Alabama, offenders must pay a \$200 filing fee, which cannot be waived for lack of funds (SORA AL, 2012). The legal issues are sufficiently complex that some states, like New York, provide a right to counsel for a registry appeal. Fifteen states have no process at all for petitioning to be removed from the registry, under any circumstance.

Application

According to National Center for Missing and Exploited Children (2017), as of February 2017 there were between 680,056 and 859,500 registered sex offenders in United States. The numbers vary based on how you define a “registered sex offender.” Some states report all those required to be registered while others only report those that comply with the act. Regardless of the method, these raw numbers can be misleading since each state sets different criteria for inclusion on their registry. Purely on the number of offenders, California and Florida appear to be the toughest on sex offenders because they have the most registered offenders with 161 and 150 respectively (Matson, 1996). This is because Florida has the most laws requiring registry, and both California and Florida require long durations on the registry. The states that appear to be weakest are Minnesota and Nebraska because they have the fewest number of offenders. This is likely due to Nebraska being a risk-based state and Minnesota only has 20 statutes with

required registration. This does not consider the per capita statistics. If that value is used, Alaska and Delaware would take the title with over 4,000 offenders per one million people (Family Watchdog, 2017).

Therefore, statistics can be misleading simply by their presentation. Many sources present their numbers as rates of sex offenders per a certain number of people. Population density will have a major effect on how those numbers look. The more densely populated areas have more offenders per capita but may not have high numbers of offenders. The per capita does give a better understanding based on population density. States that are more populous will have a higher number.

Registration happens prior to sentencing by placing the offender on the registry and on the court record based on their last known address. If they are sentenced to probation, they must immediately report to the probation department and their local law enforcement agency to complete initial registration requirements. If they are incarcerated, they report to the facility for registration. According to federal statistics, roughly 31% of all registered offenders are incarcerated (Snyder, 2012). The purpose of registry is tracking. As soon as the person processes into a department of corrections facility, they are registered, and the public knows where they are. Anytime they are transferred, they are registered at their new facility. This will falsely increase the number of sex offenders in jurisdictions with correctional facilities.

This does not mean all sex offenders are registered. A sex offense in a risk state may not require registry because the offender is not deemed a risk. In addition, once an offender is released, the burden falls on them to report to local law enforcement to complete their registration. This is where non-compliance can skew the numbers. The numbers in the official statistics show those who should be registered not necessarily those that are. Since sex offender

registry violation is not a tracked statistic, it is hard to determine how many are charged each year. Nationwide, it is estimated that around 10% of sex offenders are not in compliance, but according to the Michigan Sex Offender Registry, 12% were listed as non-compliant (Washington, 2017; Michigan Sex Offender Registration Act, 2015).

Another explanation for the potentially high numbers is that some registries are retroactive, creating many registered offenders as soon as the statute is enacted; including those who had ever been convicted of a “listed sex offense.” It does not matter how long they have been out of the system. Fortunate for some offenders, the risk-based states did not apply the statute retroactively, requiring an evaluation of all their sex offenders. Once on, many states do not allow for removal from the registry. Until a standard is set, it will be hard to do a true comparison of states. The retroactive application portions of some statutes are slowly being overturned. In September of 2016, the Sixth Circuit Court decided that Michigan could only apply the changes made to the act in 2011 to those convicted after the law was enacted (*Doe v. Snyder*, 2017)

The numbers also do not tell us who is on the registry. The FBI says the “typical” registered sex offender is a 32-year-old white male of average intelligence on his first offense. Nationwide, 41% of the offenders are minority (Snyder, 2012). A very small portion, around 3 to 4%, are women (Tewksbury, 2004). Often, courts may feel women are less dangerous; therefore, they get lighter sentences and shorter durations on the registry (Embry & Lyons, 2012).

Nationally, there has been an interesting trend in the overall number of sex offenders (see Figure 1). From 1995 to 2005, there was a steady increase in the total number of sex offenders. This indicated the time when states were gradually creating registries. Between 2000 and 2005,

states did considerable reform to their SORA with taking this opportunity to tighten their laws and expanding those subject to registration. This is shown as a spike between 2006 and 2007. The following year showed the end of the term for many of the initial registrants. It was also a time of change in the Supreme Court. The rulings forced states to limit those on the registry, creating a major drop in the number of offenders. After this, the numbers stayed steady until further reforms caused a drop in 2012 and a rebound in 2013. This is the same time many states faced constitutional challenges. A few states account for major changes due to successful legal challenges. After 2013, when the last major challenge was heard, the numbers again became steady.

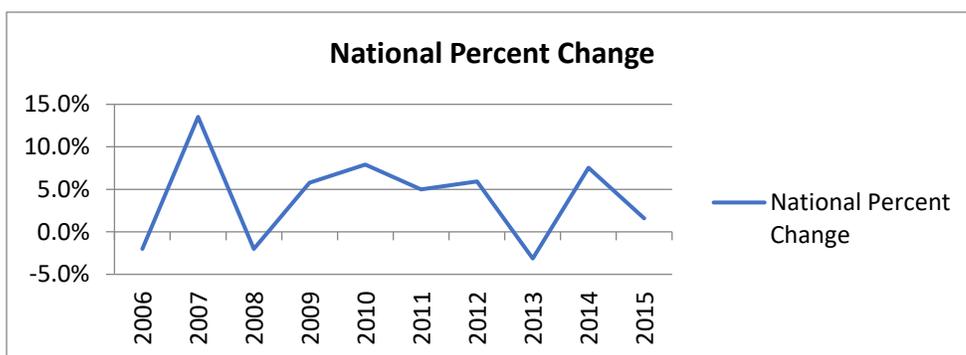


Figure 1: National percentage change in the number of registered sex offenders as compiled from US Department of Justice Office of Sex Offender Sentencing Monitoring Apprehending Registering and Tracking (SOSMART) statistics 2005-2015

Until a standard registry can be established, statistics will just be numbers. There are too many variations in application of sex offender registries and presentations of the data to make valid comparisons. For most crimes, the FBI crime reports set the standard, but only rape is defined under their rules. The numbers do serve as a conversation point for both sides of the sex offender argument, but deeper analysis of the data needs to be done before serious analysis of sex offender registries can be done with any validity.

Chapter 5: Deterrence

Deterrence Theory

“An eye for an eye and a tooth for a tooth” is from the Bible in Exodus and Leviticus as well as many other religious works. It has been the most common basis for punishing criminals so much so that it was codified in the Code Hammurabi as a foundation of criminal sanctions (Brundage, 2009). It remains at the core of most modern criminal justice systems as a means of deterrence not only for the individual but as an example for society. It is assumed that if a would-be deviant knows they will get punished equal to the harm caused, they will choose not to violate the law. This will then serve as an example to others who may also be contemplating the same behavior that they too will be treated the same way. Deterrence Theory relies on many assumptions with little evidence to show that it works.

Classical criminology under Jeremy Bentham and Cesare Beccaria looked to change the system from arbitrary and capricious, at the whims of the judge, to a more balanced system. This meant not only was it retribution for the victim but proportional enough to balance the wrong done to society. Punishment must be severe enough so that it outweighs the gain the criminal would have gotten and not so weak that it would not deter future crimes. It is assumed that everyone has equal gains from committing crimes and the proportionate punishment will outweigh those gains, thereby deterring criminal activity (Lemert, 1951).

Deterrence does not rely solely on this balance. Other factors play in to the rational choices. Classical conditioning also plays a part. The penalty must be closely associated with the act. Therefore, it is necessary for the punishment to be administered swiftly after the act. This is often difficult since many crimes are not discovered, charged, or convicted quickly. Further, the punishment may be prolonged and the connection with the behavior is lost. Classical criminology also requires the punishment to be certain for deterrence to be effective.

Every time a person commits a crime, they need to be arrested, charged, convicted, and sentenced. Swift, certain, and severe gives people the ability to rationally choose whether the gains from crime outweigh the punishment. This is said to deter both the individual from committing a crime or committing another crime (specific deterrence) and deter others from committing the crime (general deterrence) (Prescott & Rockoff, 2008).

These principles continue today with modern deterrence theories. This seems to be the easiest theory to base a policy on and easiest for the public to conceptualize. Modern societies, especially the United States, tend to criminalize more than others do. Once made illegal, if the rates of the undesirable behavior do not decrease, the penalties are simply increased until it stops. This is done under the deterrence premise, which is understood at least in basic concept by the average citizen. Effectiveness is sometimes hard to measure.

Such is the case for sex offender registries. The initial purpose was for tracking, but as the secondary penalties added up, they were used more as a deterrence. The statistics may not reflect a deterrent effect. It has been 25 years since the first registry statute in the United States. Have they accomplished their goal? Public opinion on registering offenders and making their information public is very high (Levenson, Brannon, Fortney, & Baker, 2007). Questions arise regarding the effectiveness on actual crime rates. There is no accurate measurement, but recidivism seems to be a frequent starting point. As previously stated, the supreme court is often quoted as saying recidivism for sex offenders is “frightening and high” at almost 80% (*McKune v. Lile*, 2002). This is completely contrary to the statistical findings that have shown that sex offenders have a much lower recidivism rate, not only for sex crimes but overall crimes once they are no longer incarcerated (see Table 1). The Bureau of Justice (2014) issued a report presenting the recidivism rates of all offenders released from prison in 1995, showing a 67.8%

recidivism rate at three years and 76.6% at five years (Durose, 2014). In contrast, sex offenders recidivate by committing another sex offense less than 10% and less than 50% seven years after release. (Jennings & Tewksbury, 2010).

Another measure of deterrence can be the number of sexual assaults. In 2008, Vasquez and his colleagues examined the total number of rapes in each state and comparing them before and after SORNA with mixed results (Vásquez, Maddan, & Walker; 2008). Some states showed a slight decrease while most did not show any significant change. One of the greatest challenges to developing an accurate estimate of the incidence and prevalence of sexual offending is the fact that not every victim will disclose the incident to law enforcement or to a researcher during a survey. For example, National Crime Victimization Survey (NCVS) data suggest that only about 1 in 4 rapes or sexual assaults have been reported to police over the past 15 years, with some year-to-year fluctuations (RAINN, 2017). The same survey specifies that 19% of women and 13% of men who were raped since their 18th birthday reported the rape to the police. The same analysis showed 66% of the rapes ages 18 to 29 are by a known assailant, making reporting unlikely. In addition, 90% of sex offenses were on children, where the victim is less than 12 years old. Children are less likely to report because they do not know a crime has been committed or they know the assailant and are afraid of the consequences of reporting (RAINN, 2017). These factors contribute to only 1 out of 4 rapes being reported (Wiseman, 2015). With these studies, no direct correlation has been made with sex offenses and the registries.

According to the Department of Justice, the number of forcible rape arrests rate fell 59% between 1990 and 2010, but the number of reported sexual assaults remained consistent over the same period (RAINN, 2017). This appears to show that tracking offenders is ineffective since the number of crimes are the same, but the number of arrests have dropped. It is hard to make a

causal connection. FBI crime statistics show the actual number of sexual offenses has remained steady since the 1990s. A more alarming number is that 2% of offenders have committed more than 10 sexual assaults (RAINN, 2017). Using the most recent data available on this specific area, The Bureau of Justice statistics report that two thirds of the sex crimes reported to police involved juveniles as the victim. This indicates that offenses are more likely to be reported if the victim is a child than an adult, especially when the offender is a stranger (Wiseman, 2015). The numbers do not give a clear indication of effectiveness of these acts, but it seems clear that there does not appear to be a specific deterrent since the two percent of offenders will commit offenses, with or without registries.

Since most sex offenders are assaulting for the first time and only offend once, it can be said monitoring the offender's acts as a general deterrent. Upon closer examination, most sex offenders have specific targets such as date rape, incest, and familial molestation (Snyder, 1997). When they no longer have a victim, the crime is no longer feasible regardless of the registry. It does not appear to affect those that victimize strangers (Rockoff, 2011). The monitoring may help in making arrests. With the national average of 98% compliance, it is often used as a list of "usual suspects" to question when any crime occurs. This however can be used as labeling since many offenders only commit one crime but are questioned on every crime, sexual or not. If they are compliant with their registration requirements, it makes them easy to find.

There is no clear indication that registries deter crime or make crimes easier to solve. The crime rates have steadily dropped since the late 1980s, even prior to sex offender registries. Studies show a small percentage of offenders are committing most of the crimes (DeLisi & Vaughn, 2008). Unless those few can be targeted, registries are simply a public database of offenders with many possible misuses.

Deterring Sex Offenders

If deterrence and rational choice are to be valid arguments explaining criminal behavior, there are many assumptions that must be accepted. First, it must be assumed that criminals are rational, meaning they weigh choices based on common norms balancing the benefits and the harm they will receive from a given action. It must also be assumed that humans are intrinsically hedonistic and will always choose those behaviors that will increase the pleasure for the actor (Beauregard, Leclerc, & Lussier, 2012). This is where most discussion occurs regarding sex offenders and deterrence.

In general, it has been determined that most offenses occur on impulse and are opportunistic (Beauregard, et al., 2012). This means very little thought goes into a crime. If the opportunity arises and the offender feels they can commit the crime, the crime will occur. This is no different with sex offenses. Rapes are done by first offenders who know their victim (Beauregard, et al., 2012). This is not a rational choice but an impulse action.

The exception is serial offenders who are very ritualistic in their actions. According to Eric Beauregard and his colleagues (2012), rational choice applies, but only in this very specific group of sex offenders. Those offenders committing two or more sexual related crimes on strangers thoroughly plan their crimes. They discuss how there is a hunting process involved where the offender picks certain victims and plans the crime well in advance (Beauregard, Rossmo, & Proulx, 2007). This is not the typical sex crime.

Beauregard and Leclerc (2007) did conduct further research on the thought process, but again, the focus was on the atypical offender. This study showed 35% of the serial sex offenders showed no premeditation, and this percentage is higher for non-serial offenders. It goes on to state that 29% of the offenders did not think about the risk of being caught either prior to or

during the act. This shows that even with serial offenders, there is little thought about the consequences of their actions. His previous study showed there is even less thought in non-serial offenders (Beauregard, et al., 2007).

This study incorporated more extrinsic influences that may also apply to both serial and non-serial offenders (Beauregard, et al., 2007). It revealed that 43% of the offenders looked at the environment (lights, location, witnesses, etc.) as a major factor in committing the crime. Over half stated that most important factor was the fact that the victim was alone in a place where the crime could be committed without detection. This makes it a crime of opportunity with little to no thought about consequences.

Also at the core of deterrence is that all punishment must be swift, certain, and severe. The penalties for sex crimes have always been severe. First degree, forcible rape, in most states, may see up to life in prison (Eskridge, 2008). Other sex crimes, like sodomy, sexual molestation, and indecent exposure, are also held to a different standard with severe penalties as well. Swift and certain are the most varied components. It is almost impossible to achieve a swift punishment for many reasons. The system involves time from the event to time of actual punishment can be considerably long. Statistics show most sexual crimes go unreported. This is also a reason many rapists do not believe they will be punished. Offender registries attempt to increase offender visibility and thereby increasing the likelihood of arrest. This has not been studied to determine if it truly deters sex offenses.

There are many that believe that sex offenders are antirational choice (Burchfield, Sample, & Lytle, 2014). Historically, as seen with the advent of sexual psychopath laws, sex offenders were deemed mentally ill by their nature (Burchfield, et al., 2014). This means they are incapable of making “rational” choices based on societal standards. This often creates a

controversy in the criminal justice community regarding punishment versus treatment. There is a vocal group that believes that sex offenders are mentally ill, but they cling to the unproven stereotype that sex offenders are incurable (Harper & Hogue, 2015). This means that no matter what the law is, the offender will not be deterred.

Little evidence has been presented to link sex offender registries and deterring crime, yet many hold on to the belief that registries prevent crime (Adkins, 2010; Durose, 2014). The studies done have shown a weak link at best between registries and crime, but the public feels safer. The public believes they work so change does not appear to be on the horizon.

Chapter 6: Labeling

Labeling Theory

The labeling theory of crime has been around since the 1930s but the foundations for it began just before the turn of the 20th century (Mead, 1913; Durkheim, 1951). The concept of labeling is based on actions and reactions. When sociology and criminology were in their infancies, they focused on the person committing the crimes. More specifically, why they deviated from what society has deemed as acceptable behavior. It laid the blame on a flaw in the person or some individual trait.

Labeling is more of a social interaction. The initial action is when society establishes what is deviant, based on moral perceptions. A person accepts that and complies or rejects it by deviating. If they continue to deviate, others in the community react to the deviation. The deviant may have to be punished before they will be allowed to return to the group.

Alternatively, the group may feel the deviation is so egregious, the deviant can never return to society. This basic premise began in the late 1800s with several works changing the focus from the person committing the crime to the crime itself (Durkheim, 1951; Mead 1913; Tannenbaum, 1938).

In 1895, a sociologist by the name of Emile Durkheim wrote a book entitled *The Normal and the Pathological* (Durkheim, 1993). In it, he talked about how society creates criminals by establishing what is a societal norm and what are acceptable and unacceptable deviances from these norms. This does not necessarily mean criminal behavior. He was the first to switch the focus to “what is normal.” He states that all societies have deviance because all societies set their norms as a method of control. Then any that do not comply with those norms is treated differently. He says deviance is “normal” since all societies have some behaviors they dislike. He concludes that crime and deviance will never be completely eradicated it simply shifts forms.

This set up labeling by shifting the focus away from the criminal and turning the focus to society itself. Societal norms establish what is deviant. He goes on to demonstrate that deviance is relative. If a given society is a monarchy, it is whatever offends the king. If there is a religious base, the church sets the norms. In most modern society, it is the ruling class. For this reason, with only a few exceptions, “normal” is not universally defined.

He followed this perspective two years later with his book *Suicide: A Study in Sociology* (Durkheim, 1951). He states that suicide is a measure of the health for a given society. As suicide increases, the health decreases. Those who commit suicide are excluded or feel they are excluded from that society. He concludes the more inclusion, the stronger the society, thereby decreasing the suicide rate.

This focused more on the reaction than the norms. He claimed that what deviance fundamentally refers to is actions or people that elicit social disapproval, condemnation, rejection, or exclusion. In other words, it is not the act but how people react to it that make something deviant. Deviance depends on societal reactions and the deviant’s interactions with society. At this point the concepts are not applied specific to criminal theory, it is all deviant behavior, but later theorists make the connections.

George Herbert Mead (1934) looked at these interactions in what he termed symbolic interactions and reflected them back on the mind of the deviant. This was an early psychological look at how individuals react and internalize how people interact with them. According to Mead, this creates the “self.” The interactions take many forms like shunning, inclusion, and conversing. Any behavior or communication, positive or negative, verbal or non-verbal, has an effect. Every interaction someone has, even the smallest, effects who they are and who they will become. This, in turn, shapes behavior.

Durkheim and Mead planted the seeds for labeling. They took more of a philosophical approach by looking at what is normal, how normal is determined, and how interactions result in future actions. Frank Tannenbaum and Edwin Lemert used these seeds to begin the roots of modern labeling.

Frank Tannenbaum (1938) coined the term “tagging” when studying juveniles committing crimes during the Great Depression. He found that a negative tag or label often contributed to further involvement in delinquent activities. This initial tagging may cause the individual to adopt it as part of their identity. The crux of Tannenbaum's argument is that the greater the attention placed on this label, the more likely the person is to identify themselves as the label. This was his “Dramatization of Evil” and the first true labeling theory. He believed by removing the label or at least drawing less attention to it, the deviant behavior would cease. This has a psychological connection in reinforcement theories and has been applied under many circumstances, not just crime and punishment.

Edwin Lemert (1951) focused on subsequent acts of deviance known as secondary deviance. This deviance is a product of the labeling process itself. Society creates a role based on the deviance where the deviance becomes part of the deviant’s identity. “When a person begins to employ his deviant behavior, or a role based on it as a means of defense, attack, or adjustment to the overt and covert problems created by the consequent societal reaction to him, his deviation is secondary.” This secondary deviancy then becomes part of one’s self as Mead had previously discussed (Lemert, 1951, pp. 75-76).

This foundation remained strong but did not gain popularity until the 1960s. The political climate was changing where people became more conscious of themselves and less trusting of the government. It became more popular and more applicable when the shift went

from societal structure to social process. Scholars looked away from the actors and more toward the acts and why the acts are deviant. Many considered laws as a form of governmental control over society and sought to rebel against the oppression.

In 1963, Howard Becker published *Outsiders* (Becker, 1963/2008). Here he looked at a behavior that was considered, at the time, to be quite deviant: marijuana usage. He writes:

Social groups create deviance by making rules whose infraction creates deviance, and by applying those rules to particular people and labeling them as outsiders.

From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender.' The deviant is one to whom that label has been successfully applied; deviant behavior is behavior that people so label. (Becker, 1963/2008, p. 9)

What this means is, when someone is given the label of a criminal they may reject or accept it. If they reject it, they attempt to return to the norms of society and conform to its rules. If they accept the label, they often continue to commit crime. Even those who initially reject the label can eventually accept it, as the label becomes more well-known particularly among their peers. This makes them acceptable among a subgroup. This stigma can become even more profound when the labels are about deviance, and it is thought that this stigmatization can lead to deviancy amplification, especially if the behavior is widely accepted within their subculture. Moral norms must be studied in action as they are created, invoked, or applied in everyday interaction. You can never tell what the norm is until people are negatively reacted to by others making this highly variable (Becker, 2008).

In 1965, Howard Memmi took another look at the psychology of labeling (Memmi, 1965). When one group dominates another, the oppression has deep effects on the mind of the

oppressed. The longer the oppression lasts, the deeper the affects. It becomes so deep that it is accepted as a part of who they are. The oppressed internalize the oppression and do not want to recover from it. This is what Memmi says happens when rules are applied and repeatedly broken. The rule breaker simply accepts their fate as an internalization of their self.

Prior scholars working in the 1960s looked at how a deviant act results in a reaction from other members of a society and the offender eventually accepts his role. Erving Goffman became the most significant contributor to the labeling theory by tying all of this together and adding a few ideas himself. In his book, *Asylums*, he talked about the need for deviance. He believed that the more things are deviant, the more the bureaucratic system can control the people (Goffman, 1968).

His most significant contributions came from his book *Stigma* (Goffman, 1963). As the title implies, it introduced the concept of stigma, which is the negative label and reactions associated with behavior. His focus was on the role that social acceptance plays in the study of deviance, not only in the lives of deviants but in the underlying threat of embarrassment and loss of face that everyone faces at every moment in everyday interaction. Everyone has a core aversion to humiliation, both deviants and those who choose to conform. We all seek to avoid stigma. When social rejection becomes more extreme and is seen in other roles and situations, it reflects the nature of deviance. “Normals” (non-deviants) can usually let go of the devaluation when an incident is over since it does not usually follow them into new situations as it may among deviants. Modern society has heightened demand for normalcy. Today's stigmas are the result not so much of ancient or religious prohibitions, but of a new demand for normalcy. He wrote, “The notion of the 'normal human being' may have its source in the medical approach to humanity, or in the tendency of large-scale bureaucratic organizations such as the nation state, to

treat all members in some respects as equal. Whatever its origins, it seems to provide the basic imagery through which laymen currently conceive themselves” (Goffman, 1963, p. 7)

Goffman (1963) also talks about the instinctive effects of stigma. He points out that when confronted by a “deviant,” “normals” are not sure how to act. There is an internal conflict with every interaction. One part of them feels the deviant is different and they instinctively want to treat them differently due to the perception of the deviance. The other reaction is the prior knowledge that there is nothing wrong. This sets up a conflict that typically results in avoidance and alienation. Goffman goes on to say that knowledge does not change the perception. Once you have been told a person is deviant, it is hard to accept anything else even if you knew them intimately before. This is seen today in many situations, especially sex offenders.

The last of his era was David Matza. He detailed the adoption of a deviant role by stating that when something is outlawed, one of two things can happen (Matza, 1969). First you will deter most people from committed the forbidden act. However, the rest will find a way to be deviant, creating new deviance.

The meaningful issue of identity is whether this activity or any of my activities can stand for me, or be regarded as proper indications of my being. I have done a theft, been signified a thief. Am I a thief? To answer affirmatively, we must be able to conceive a special relationship between being and doing--a unity capable of being indicated. That building of meaning has a notable quality. (p. 165)

Matza believes that the best way to approach deviance is to label the act not the actor. The act is bad while the person remains good. This concept may be good in theory but difficult to apply in real-life.

Labeling Sex Offenders

Societal shifts result in theoretical shifts. In an era of social upheaval and government mistrust, theories looking at why a crime is a crime and focusing on government control become very popular. The 1970s began another shift in ideology. In the United States, we saw the social deviance of the 1960s as a criminal explosion. The conservative ideas of the 1950s were turned upside down by this blatant disregard for authority. By the mid-1970s, there was a push to re-establish law and order, making pure labeling theories or any theory condemning social order, a thing of history. The focus turned to a get tough on crime mentality. More laws were enacted, penalties were made harsher, prison sentences were lengthened, and paroles were denied, all done to deter crime. The affects were not anticipated, but the public image of the government as tough on crimes and the public's perception of safety all justified these changes.

In 2011, Ken Plummer took a retroactive look at labeling and discussed its applications at the time (Plummer, 2011). In this brief article, he states, "labeling theory is most usefully conceived as a perspective whose core problems are the nature, emergences, applications, and consequences of labels" (Plummer, 2011, p. 3). He has moved away from the politics of naming and control and focused more on the results. This holds true for most 21st century applications of labeling theory. There is a strong focus on the stigma and the resulting societal response.

This was the focus in 1989, when John Braithwaite used the concepts first introduced in the 1960s, specifically those of David Matza, to develop his theory of reintegrative shaming (Braithwaite, 1989/1994). Matza (1969) said, in short, the act is bad not the person. Braithwaite (1989/1994) used this concept to propose a new approach to crime and punishment. He contends we have many ways of ostracizing someone from our society including formal court hearings and prison sentences to remove someone from a community. He says we never formally bring

them back. This leaves them with no other option than to be an outsider and commit more crimes.

He recommends we have informal reactions to the behavior not the person. Instead of judges and juries, we have a mediator and allow the offender and victim to discuss the wrong. They can then come to an agreement on sanctions and the person can be allowed back into society. By doing this, the offended person gets their payment while the offender is punished for the act but not labeled for the behavior and given an opportunity to again become a productive member of the community (Braithwaite, 1989/1994). There may be a global push for reintegration, but the United States Justice system is firmly entrenched in the adversarial approach, where it may never gain any strength.

Even though the laws are based on weak data, there are many people labeled as a result. Mingus and Burchfield (2012) looked at the effects by examining the social psychological consequences of being stigmatized as a sex offender. They applied the modified labeling theory to sex offenders, which suggests that whether an individual experiences direct discrimination based on an assigned label or not, his life opportunities can still be negatively impacted by stigma. These perceived effects could cause more actual harm than direct discrimination. The results of this study confirm that.

Sex offenders, as measured in this self-report study, found the stigma of being a sex offender affected every aspect of their life. They felt they were devalued and treated in negative ways. They had less educational opportunities, employment, and income. This resulted in psychological responses including secrecy, withdrawal, and depression. As was shown earlier, these perceived responses have been proven in other studies.

Sex offenders are given a stigma from the moment they are charged with a sex crime and this stigma may never leave. Most sex offenders are perceived to be pedophiles just because they are on the list. This results in negative treatment especially when it comes to reintegration in the community. With recent research (Adkins, 2010; Rodriguez, 2007; Shields, 2012; Spohn, 2013; Myrstol, 2016) showing they are less likely to offend than other criminals and investigations showing the original push was based on little or no data, we are unnecessarily stigmatizing a growing population to a point of no return.

Chapter 7: Public Opinion Literature Review

Countless studies, reports, and articles have been written about sex offender registries, their effectiveness, and their effects on offenders. There has been statistical analysis regarding recidivism and offense rate, but there is no consensus on effectiveness because there is no agreed upon measurement. Studies and reports on the public opinion of sex offender registries and sex crimes have been able to agree on several things. The public wants to keep the registries and expand them as much as possible (Jenkins, 2004). They also want to make the punishments for sex offenders as harsh as constitutionally possible (Fox, 2013). These harsh attitudes toward sex offenders will be the focus of the literature review.

Overall, the public attitudes toward sex offenders are rather harsh. Many studies have been conducted to evaluate the public's attitude toward sex offenders and most, to put it bluntly, would like to torture them before they are sentenced to death (Feige, 2017). Kernsmith and colleagues (2009) studied the attitude of the public using telephone interviews to randomly sample people in Michigan to assess their fear of sex offenders as well as their feelings toward specific crimes and offenders. Not surprising, people are generally afraid of sex offenders (Kernsmith, et al., 2009). There are preconceived notions held about sex offenders because people feel more vulnerable to sex offenses than they do any other criminal acts.

The hierarchy of sex offenses found in this study showed harsher treatment toward violent offenses and those against children (Kernsmith, et al., 2009). Incest and pedophilia were deemed the harshest with most of those surveyed feeling these offenders deserve life on the registry. Statutory rape ranked the lowest, but this is possibly due to the scenario presented showing consensual sex between two young people close in age. One surprising bit of data from this study was the overwhelming support for juvenile offenders being on the list. Of those polled, 86% stated that juveniles should be lifetime registrants if they commit the adult crime

(Kernsmith, et al., 2009). This may also be due to scenario since the juvenile was in a forcible rape situation. It appears that fear of bodily harm and harm to those most vulnerable are the driving force of the fear and whether the public feels they should register.

This vulnerability along with offender characteristics has been analyzed as well. Numerous studies have shown the overwhelming public support for sex offender registries, but further analysis is providing reasons. One study broke the motivations down into three broad categories for not only the registries but also the harsh attitudes toward sex offenders (Pickett, 2013).

First, the focus is on the victim and society's desire to protect those who are most vulnerable. Therefore, the harshest responses are toward pedophiles, though they make up only a small portion of the sex offenses. According to this study, the public believes all sex offenders are sexual predators targeting children and virtuous young women. The second motivation stems from this misconception. The predator stereotype is common, and there is an unfounded connection that these predators are mentally and morally deficient and they cannot be reformed (Pickett, 2013). The myth of stranger violence leads the public to have unwarranted fears since most sexual assaults are done by someone close to the victim (Pickett, 2013).

This threat is the basis for the third motivation model: high crime rates and recidivism. Again, another myth is that sex offenders have a high rate of recidivism though sex offenders actually have much lower recidivism rates than other crimes (see Table 1). Further, people believe that sex crimes are on the rise. Actually, FBI crime reports indicate a steady decrease in crime rates and sexual crimes are no exception (Snyder, 1997). People feel more vulnerable to sex crimes because it is the ultimate violation of one's self and if they feel the rate is increasing,

they tend to become more defensive. Snyder (1997) believes that this is due, at least in part, to the mass media's sensationalized portrayal of sex crimes.

This is where Sanna Malinen and her colleagues (2014) pick up the research. They looked at how the media presents the crime to the public and how that effects the public perception. They concluded that media sensationalizes sex crimes by focusing on exceptional cases, especially heinous crimes. This is then portrayed to the public as the norm when in fact they are quite rare (Malinen, et al., 2014).

The study was conducted to control how the information was disseminated. It was shown that when just the facts of the case are presented, there is less of a negative attitude about the crime. When the cases are sensationalized by using more opinions and focusing on the negative aspects of the crime, the respondents showed severe negative reactions. This is evidence that the media has a strong influence on how sex offenses and offenders are perceived.

Other factors affecting these perceptions that have also been studied. One study confirmed what has already been presented: public perception is based on misconception (Levenson, Brannon, Fortney, & Baker, 2007). In the study, 68% believed that sex offenses occur at a much higher rate than other crimes, and 77% believed the rate is on the rise. These inaccurate beliefs about sex offenders and sex crimes cause people to believe they need to be protected from offenders and the offender has some sort of incurable problem. For them, stronger laws with harsher penalties and long sentences on sex offender registries creates a false sense of security.

In the Levinson, et al. study (2007), people were first asked their level of exposure to sex offender registries. Less than 60% had any significant exposure to the registry, even after two very significant and highly publicized events occurred in the immediate area where the subjects

were gathered. They were then asked how much they should be notified of sex offenders in their area. An overwhelming number, 83%, believed that all sex offenders should actively notify their neighbors and divulge a considerable amount of information (Levenson, et al., 2007).

The study goes on to assess public opinion about punishment. On average, those in the study reported the minimum sentence for sex offenses should be 25 years with lifetime active reporting as a sex offender (Levenson, et al., 2007). For them, treatment was not an option. Less than 50% advocated treatment but 51% believed chemical castration should be an option. This is one of many studies showing that the perception of sex offenders is based on false beliefs and offenders should always be treated in a harsh manner, some disregarding constitutional protection.

The attitudes toward sex offenders have been studied so often, it has its own measurement tool. The Community Attitude Toward Sex Offender (CATSO) was developed in 2008 as a means of quantifying attitudes about sex offenders (Church, Wakeman, Miller, Clements, & Sun, 2008). It has been validated numerous times showing internal reliability in measuring public attitudes. It is often used as an independent or dependent variable to assess how people feel about sex offenders and their punishment.

A 2015 application of this scale further confirmed its internal validity (Harper & Hogue, 2015). The 18-item, self-report questionnaire looks at many aspects of the public perspective of sex offenders. The level of exposure to sex offenders and registries is considered as a starting variable. It then looks at more specific attitudes about sex offenders. This includes the common stereotypes surrounding sex offenders regarding risk, recidivism, and punishments.

Since the CATSO was implemented, the results have been quite consistent, and this study was no exception. The public sees sex offenders as a major risk to everyone. They feel the laws

are not harsh enough to keep them and their family safe. They advocate severe punishments, preferably incarceration, and permanent registration for all sex offenders. All of this is still based on the misconception that sex offenders are serial predators with high rates of recidivism and are not amenable to any forms of treatment.

These attitudes about sex offenders are well established and virtually all reach the same conclusion; however, this can be broken down even further. A study was conducted to look at how demographics affect the attitudes (Willis, Malinen, & Johnston, 2013). This study demonstrated that gender and education levels had the biggest effect. This is not to say any of the respondents condoned or even showed empathy toward the sex offenders. It simply stated that men were less likely to request the harsher treatment than women and those with more education, both academic and about sex offenders, tended to recommend less severe punishment (Willis, et al., 2013). Other factors were measured including occupation and ethnicity, but they did not show a significant change. Surprisingly, being a parent did not have a significant effect on the attitudes.

The literature is clear on attitudes toward sex offender. Since we have constitutional protections, even for sex offenders, the public wants long-term incarceration and monitoring for life. Without the Constitution, who knows how far the punishments would go. There is overwhelming support for sex offender registries and forcing offenders to actively divulge every aspect of their life. There is also support for electronic monitoring and isolation away from the rest of society (Renzema & Mayo-Wilson, 2005; Glaberson, 1996). This support is based on the false belief that sex offenses are rising and the offenders will inevitably commit the crimes again. The resulting laws are based on weak data and mostly emotional reactions. The result is a false sense of security over a phantom problem.

Chapter 8: Results of Labels

Treatment Prior to Trial

Although the US Constitution does not cite it explicitly, a presumption of innocence is widely held to follow from the Fifth, Sixth, and Fourteenth Amendments. It was not until the 1895 case of *Coffin v. United States* established the presumption of innocence of persons accused of crimes was set as a precedence (*Coffin v. United States*, 1895). This presumption only applies in a court of law, not in the court of public opinion. In the past, the victim has been under scrutiny, deterring the claims of any crimes related to sex. As time progressed, and laws protecting the victim changed, more of a balance has been created regarding who is under scrutiny. Once sides are taken, the label is virtually permanent. In the United States, those alleged to have committed sex crimes are held under a higher level and more intense scrutiny by all involved than any other criminal, violent or not (Pickett, 2013).

It begins with any sexual accusation. If a person makes an accusation of a sex crime, sides are immediately taken. The accuser may be labeled as a liar, a slut, or whore. They may also be looked at for ulterior motives like monetary gain or publicity. The accused is labeled as a beast and a pervert. The lines are drawn, and sides are taken. Entire communities have been torn apart beginning with these accusations.

Once the accusation has been set forth, the accused receives a stigma that is hard to lose. The public has a general anxiety about sex offenses and they often react differently. The fear results in public outcry and demand for justice. This public reaction often perpetuates the stigma even before a person can be arrested. This has been the reason for the laws, regardless of what statistics show regarding their effectiveness (Levenson & Hem, 2007).

The police often fall prey to this media attention. Police have considerable discretion when it comes to investigations and making arrests. A study by Gary LaFree (1981) looked at

the decision-making processes of police officers when dealing with sexual assault cases as compared to other crimes with interesting results. He looked at how the crimes were investigated and the treatment of both victim and accused. In many cases, sexual assaults were not treated as aggressively as other crimes. This is theorized to be due to the nature of the evidence where it can be subjective and hard to prove. However, if the case was a forcible, violent act, especially against a child, more aggressive steps were taken to find the perpetrator. Though this was done prior to sex offender registries, it simply illustrates how sex crimes are treated differently (LaFree, 1981).

Sentencing and Parole

In recent sex cases, the court of public opinion has vocalized opposition stating courts are lenient on sex offenders. Statistics seem to show otherwise. An estimated 69% of all persons convicted of a felony sex crime in state courts were sentenced to a period of confinement--- 41% to state prison and 28% to local jails. This is compared to non-sex crime incarceration rate of 47%. State prison sentences for sex offenders averaged 4 years and 11 months in 2006 (Rosenmerkel, Durose, & Farole, 2006). To place this in perspective, a violent crime of similar sentence maximum, armed robbery, only received an average of 3 years and 8 months (Craig, 2005).

This sentencing disparity begins with the sentencing reports. Most states have some form of pre-sentence evaluation required before a judge sentences the offender. The reports for sex offenders tend to recommend higher sentences. A study evaluated pre-sentence recommendations and, not surprising, they tended to be harsher on sex offenders. The intent of the crimes did allow for a mid-range recommendation as opposed to the recommendation of

maximum sentence for those showing premeditation and deliberation. Remorse had no effect on the sentencing recommendation (Hogue & Peebles, 1997).

Once in prison, sex offenders are outcasts and placed into a lower category than prison informants in the prison culture. At least with the informant, the staff will show some positive behavior toward them since they are providing information. Sex offenders are treated poorly by other inmates as well as the guards (Åkerström, 1986). They become the outcasts of the outcasts. They are often assaulted, even sexually, without any recourse from the staff. They are constantly in fear for their safety and have no one to turn to for help (Åkerström, 1986).

Popular culture has painted a grim picture of life behind bars for incarcerated sex offenders and the stats seem to back this up. Over 80% of the incarcerated sex offenders admit they are physically assaulted at some point during their stay. The official statistics only show 53%, but they may be artificially lower due to the embarrassment of the situation. In severe situations, other inmates sexually assault them as well (Jeglic, Mercado, & Levenson, 2012).

Sex offenders serve out more of their sentences than other offenders. By statute in most states, the maximum sentence is established, and the minimum is set down by the judge within a set of guidelines. This establishes the earliest date they can request parole. Sex offenders are treated like high profile murderers even if the case is less violent. Rarely are they given parole the first time, thereby spending more time incarcerated than other offenders. This may be due to victims' rights statutes where the victim must be informed of any parole hearing and they have a right to make a statement to the board. It makes it difficult to release a prisoner when the victim is pleading their side.

Tagging and Tracking

For reasons unknown, many people label all sex offenders as perverts and pedophiles. They are not interchangeable terms. Pedophilia is a psychological diagnosis of “pedophilic disorder” according to the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5) (American Psychiatric Association, 2013). The manual defines pedophilia as a “paraphilia involving intense and recurrent sexual urges towards and fantasies about prepubescent children that have either been acted upon or which cause the person with the attraction distress or interpersonal difficulty” (American Psychiatric Association, 2013). The prevalence of pedophilia in the general population is not known, but is estimated to be lower than 5% among adult men (Seto, 2009). Pervert, is a slang noun, referring to anyone whose sexual behavior is regarded as abnormal or unacceptable (Encyclopedia Britannica Company, 2016). Neither of these terms necessarily apply to all sex offenders.

The term sex offender applies to individuals convicted as established by the laws of the state where the offense occurs or where the offender resides. Each state defines this differently, so continuity among lists is virtually impossible. There are many crimes included but only a select few of the crimes involve pre-pubescent victims. Pervert is a subjective term. Many perfectly legal acts may be considered perverted to some. Yet once a person is placed on the registry, they become labeled for life incurring many consequences of this label (Tewksbury, 2012).

This includes veiled and blatant attempts in many states to shame sex offenders. Under Florida law 775.21, F.S., commonly known as the Jessica Lunsford Act, a stamp of “Sexual Predator” is placed on the lower right corner of an offender’s driver’s license or state identification card. This means not only does law enforcement know the person is a sex offender

but anytime identification is requested, the person will be forced to reveal their sex offender status. Wisconsin Bill 8-3, and similar legislation in Ohio and Alabama, is considering a special lime green license plate for sex offenders. If this becomes law, offender status will be obvious since license plates must be openly displayed. This also opens the door for misidentification since it is not always the offender using their vehicle.

In Texas, the shaming is not hidden in any way. Courts have ordered signs be placed in the yards of offenders to notify all who pass that a “pedophile lives here” (Reyes, 2015). Louisiana is also open and obvious, making certain offenders place stickers on their doors and bumper stickers on their cars (Louisiana Sex Offender Registration, 2014). Oregon is another obvious shaming state. Not only does it require active notification, which can include flyers and news articles, but they also require “stop” signs posted on the offender's residence (Oregon Sex Offender Registry, 2013). These signs, which resemble actual stop signs, read, “Stop, Sex Offender Residence,” and include the address and phone number of the Department of Corrections to “report any suspicious activity.”

There are several states that have also implemented controversial holiday restriction. Halloween seems to be a favorite due to a potential increase in the likelihood of contact with children. Under Missouri MRS 589.426, enacted in 2008, convicted sex offenders cannot have any “Halloween contact” and must remain in their home between 5:30pm and 10:30pm without just cause. They are also required to post a sign on their front lawn stating, “No candy or treats at this residence” and must leave all outside lighting off after dark. This applies to all sex offenders, not just those with child victims (Missouri Sex Offender Registry Act, 2014). The offender may not be in jail, but they are publicly shamed and placed on virtual house arrest at certain times of the year. This shows the label lasts well after the formal sanctions have ended

(Schultz, 2014). At least for one night each year, sex offenders are prisoners in their own homes (Tewksbury, 2007).

Lawmakers and courts assert the labels have a neutral purpose. The lists are there to assure that everyone knows where the sex offenders are located so they can avoid them if they so choose. Opponents say this is court ordered shaming and judicial ostracism.

The Federal Sex Offender Registry and Notification Act (SORNA) requirement is the person's name and address to be made available on a public database. States have used this as an open opportunity to collect as much information as possible from offenders and make it available to everyone. All states require DNA collection for felony convictions; however, Maryland, among others, also requires it for all sex offenses, felony, or misdemeanor (Maryland Sex Offender Registry Act, 2012). States like Texas and New Jersey require an annual photo to be placed on the public website. Michigan requires the make, model, and license plate number of the vehicle owned or operated by the offender. An offender must provide their place of employment and/or place of higher education in all but five states. This information becomes part of the public record as a means of tracking the offender (Michigan Sex Offender Registration Act, 2015).

There are also conditions of parole and probation that are not listed in the statute but are still enforceable. Most sex offenders are not allowed to have any contact with other people's children even if the offense did not involve a child. Washington does not allow offenders to be involved with the sex industry including going to topless bars, buying, or even going to a store that sells sex toys or pornography, or visiting a house of prostitution. Most jurisdictions have some restrictions on computer use as well. Computers are registered and all user names, screen names, or other identifies are listed if they are even allowed to have them. Many forbid or

strictly limit the use of any forms of social media like Facebook, Twitter, and Snapchat. Cases are slowly eroding this aspect of the law, but it will take time for statutes to reflect the changes. Even with the changes, it further shows that no other offender is as strictly controlled as a sex offender.

States also require offenders to pay a registration fee. Part of the fee goes to the registering agency and the remainder goes into a state fund. This compounds their problems since employment opportunities are also limited. Some jobs are specifically prohibited either by statute or as a condition of parole or probation. Offenders are not allowed to have any job related to children even if the offense did not involve a minor. Many jobs require background checks, eliminating sex offenders in the process (Cotter & Levenson, 2005).

Some states have implemented what is deemed a cost-effective means of constant offender monitoring in the form of GPS tethers (Payne & DeMichele, 2011). Tennessee is among several states that require monitoring for all offenders while some states reserve this for only those offenders deemed high risk. Offenders may wear the monitor for a period ranging from the duration of probation to life. GPS tethers allow the court to always know, where an offender is, within a few feet. Since other felons are not required to have monitoring of any kind after parole is completed, this is another example of sex offenders getting treatment not afforded to other, possibly more violent offenders (Renzema & Mayo-Wilson, 2005). There are states like Texas and Nebraska that are also considering implanting microchips in sex offenders for permanent tracking.

As a condition of parole, all those under supervision have curfews. An Office of Juvenile Justice and Delinquency (2014) study showed the number of violent crimes committed by adults increases hourly from 6 a.m. through the afternoon and evening hours, peaking at 10 p.m., and

then drops to a low point at 6 a.m. with 26% of all violent committed by adult offenders occurs between 8pm and 12pm. Yet sex offenders typically have a curfew of 10pm to 6am showing no correlation between crime and the restrictions. It is simply another added control measure placed on sex offenders. Restrictions generally end when the person is off parole or probation except with sex offenders. They may be required to have a curfew for their entire registration period, well after their parole or probation has ended. For some, this will be for the rest of their life.

If any of these conditions are not met, the consequences compound rapidly. If it is early in the process while they are still on parole or probation, it will be a violation. This means they will be sent back to court and re-sentenced on the original charge, which could result in anything from fines and extended probation to a return trip to prison, up to the maximum of the original charge. Then, a new charge for failure to comply with sex offender registry will also be added. This can be up to an additional eight years in some states. This status offense follows them for the duration of their required registry. For many, this means they must comply for life or risk another prison sentence. No other crime creates a status offense like sex offenders.

Restrictions

By far the most publicized and analyzed aspect of the registries has been the residency restrictions placed on registered sex offenders. There are statutes in every state restricting where a convicted sex offender can live or visit (Tewksbury, 2005). Typically, this is within 500 to 2,500 feet of any place where children may frequent, including but not limited to schools, playgrounds, day cares, parks, and recreation centers. States like Florida have expanded to include bus stops and homeless shelters.

Sex offenders are the only convicted criminals who are told where they can live. This restriction has caused the number of homeless sex offenders to more than double between 2007

and 2011 (Socia, Levenson, Ackerman, & Harris, 2015). According to a New York study, sex offender residency restrictions reduce the number of available housing in non-urban areas by 89% and 97% in urban areas (Galeste, Fradella, & Vogel, 2012). Not only does this affect new housing, but it also subjects offenders to eviction under federal housing requirements, further compounding the housing dilemma for released sex offenders.

It has become so severe that Miami had a large group of offenders living under the Julia Tuttle Causeway and along train tracks, prompting the state to create a colony (McCoy, 2014). Since large cities have high population densities, it makes it virtually impossible to meet the requirements. This has resulted in almost every major city to create colonies of sex offenders (Levenson & Hem, 2007).

Officials in Southampton, New Jersey, were forced to take matters into their own hands. When sex offenders leave prison, they are sent to “the trailers.” These are office trailers placed in a location by the county that complies with the laws of the state. There are no children near and the location meets all other residency requirements (Schwartz, 2013). There are forty men living in the run-down trailers without proper plumbing or other necessities of a normal home. The state says this makes them compliant without adding an additional burden to the homeless shelters. Critics say this is worse than prison. They are still confined, and the conditions are far worse than any prison in the state. This is another example of sex offenders being incarcerated after they have been released from prison.

The Campus Sex Crimes Act of 2000 further adds to the restrictions on sex offenders, this time in the post-secondary educational setting. At a minimum, public colleges must report all crimes to the FBI, especially sexual assaults. Sex offenders are required to report their status to school officials and inform their instructors. Some schools have implemented even stricter

policies requiring disclosure to all students. Some private schools will simply not allow the student to enroll or expel them if they find out about the charges to eliminate the hassles created by the act and create a facade of safety on campus (Campus Sex Crime Prevention Act, 2002).

Employment becomes extremely difficult because education is often a prerequisite for good paying jobs. Registry laws restrict the types of jobs offenders can hold especially where they may encounter children, even if their crime did not involve a child. Employers have the right to ask if a candidate has a criminal record and may not immediately remove a sex offender from consideration, but it is surely taken into consideration when comparing to other candidates. Many conduct background checks including checking the public registries creating major barriers to employment. As a final insult, employers can terminate employees with sex offenses on their record.

Registration has become more than just putting a name on a list. All states have taken this as an opportunity to create laws placing severe restrictions on every aspect of a convicted sex offender's life. From publicly disclosing every detail of their life to having no recourse when they are evicted or prevented from getting a job, there are far more restrictions placed on sex offenders than are placed on any other convicted criminal.

Vigilantism

Though many states have statutes forbidding the use of offender registries for retribution, it still occurs frequently. At the minor end, labeled sex offenders are shunned in their own neighborhoods. Many have been labeled with signs and bumper stickers placed on their homes and vehicles, beyond the court ordered markers. This is done by concerned neighbors to be certain all in the area know the person is a sex offender and where to find them. In extreme cases, there has been vandalism, assaults, and homicides (Ahuja, 2006).

Ten states address the confidentiality of the registry information. The data can only be used for informational purposes; any other use is a crime. Michigan specifies that violators are subject to a misdemeanor punishable by up to 90 days in jail and/or a fine of up to \$500. California states that the use of the registry information to commit a felony is punishable by a five-year prison term in addition to any other applicable punishment. Other states refer to confidentiality under separate statutes, which address “private data” or “criminal history.” So far, this does not appear to deter those who strongly believe they have a right to protect their neighborhoods.

Harassment and stalking have become hobbies for some that feel it is their right to protect themselves and their families from sex offenders by using the registry information as a means of seeking and ridding the neighborhoods of these offenders. Statutes against using registries for “malicious” purposes are often ignored because sex offenders often are not deemed sympathetic victims. There are numerous cases of vandalism and stalking against those found on the sex offender registries. The neighbors will intimidate and harass offenders until the offender feels compelled to leave, even though it is often difficult to find housing. Sadly, when charges are brought against the harasser, they feel no remorse, believing they have done nothing wrong (Beck, 2015). Many of the accused claim it is their civic duty to protect their families from what they assume these offenders may have done to others. There are hundreds of cases involving someone seeking different forms of revenge on behalf of victims. The website Sex Offender Vigilantism reports over 300 assaults on sex offenders. In 2014, a Flint, Michigan, man was assaulted for simply being on the registry and in 2002 a man in Pontiac, Michigan, was branded on his hands and genitals for allegations of sexual assault on his nephew (Emery, 2014; Brazier, 2002).

The most severe form of vigilantism is murder. Since 1997, there have been 432 homicides directly related to the sex offender registry (Sex Offender Research, 2015). There is a case in South Carolina where a husband and wife made a list based on the local registry and began killing them one at a time. They were caught after their second victim (Staff, 2013). Another extreme case of “societal cleansing” was Douglas Webber, a Nebraska man arrested for killing 27 listed sex offenders within an 8-mile radius of his home (Larsen, 2016). These people feel no remorse because they are doing society a favor by removing sex offenders from the community.

Sex offenders face daily fears of harm to themselves and shame placed upon their families. Not only are they victims of severe harassment with vandalism to their property, but they face physical harms no other convicted criminal faces. This is all in an ill-conceived attempt to protect oneself from a predator that does not exist.

Mental Health

In the early 1900s, there was a shift in criminal philosophy regarding sex offenders. With the new science of psychology influencing all aspects of life, the focus went from the sex crime to the sex offenders. The experts believed that sex offenders were mentally defective since “normal” men do not commit sex crimes. As a result, all sex offenders were deemed mentally ill and treatment was required. This labeled the offender as sexually deviant and sexual psychopaths assuming all were sexual predators. This continues, though somewhat subversively, to this day.

As a way of handling an increasing number of sex offenders, many states have instituted mandatory treatment programs, beginning while the offender is still incarcerated. Treatment typically involves cognitive behavioral therapy that must be completed before an offender can be

released from prison (Daly, 2008). The offender takes part in a reentry program to acclimate them to the outside without sexual deviance. They are then subject to community-based treatment for mental illness. This continues as the person is under continuous community supervision through the court system. As a further complication, most of these programs are ordered by the court but paid by the offender. In other words, sex offenders are treated as if they are mentally ill.

This is the same concept applied in an increasing number of states with Civil Commitments (Wood, 2013). The Supreme Court of the U.S. has repeatedly ruled that it is constitutional for courts to order commitment of individuals who lack the control of sexual impulses. As of 2015, over 20 states use this as an alternative to incarceration or as an extension of their sentence. This penalty is reserved for a limited number of offenders with only 10% meeting the clinical diagnosis required for implementation. It is not cost effective; however, it is still used to control sex offenders where other offenders are simply released.

Minnesota is the extreme example. The statute requires all sex offenders to be evaluated prior to release from jail or prison to determine if they are “sexually dangerous” or have “sexual psychopathic personalities.” If the court deems them so, they are required to be treated as a civil commitment and moved to a mental health facility. This facility, by all appearances, is another prison. A recent investigation prompting court inquiry found that none of the 700-people forced into the civil commitment in the last 20 years have been released (Davey, 2015). Now changes are being made, but it is not clear if the policies will allow more to be released.

Sex offenders seem to enter an impossible spiral once charged with the offense. Offenders are labeled from the moment of arrest and are treated differently from that point forward. They are looked at as fiends and shunned by people that they had previously called

friends and family. They may be terminated from their job without recourse at the first allegations of a sex crime. They are then subject to the embarrassment that continues to trial with harassment both privately and in the media. It appears that more so for sex offenders than others, they are tried in the media well before a jury can determine their guilt or innocence, making them guilty until proven innocent, regardless of the actual evidence. Even a not guilty verdict at trial does not necessarily remove the label.

Since many offenders are charged at a young age, this is a big burden to overcome. High school students are forced to change schools to avoid the stigma. Daily ridicule occurs if they are unable to leave. Many drop out of school making any continued education difficult (Salerno, et al., 2010).

The cycle continues due to a lack of education and employment leading to psychological problems, including alcoholism and depression. In a study of New Jersey Offenders, 75% of the offenders showed some signs of depression with 29% presenting with signs of severe mood disorder on multiple depression and hopelessness measures (Jeglic, Mercado, & Levenson, 2012). This is likely to contribute to the high rates of drug and alcohol abuse reported post release (Langevin & Lang, 1990).

Suicides are also higher than those of the general population and other offenders. A study revealed that 14% of the convicted offenders attempted suicide prior to incarceration after charges were alleged and an additional 11% attempted suicide while incarcerated (Jeglic, Spada, & Mercado, 2013). Officially, 528 registered sex offenders attempted suicide between 2000 and 2015 while 224 were successful. There were also 70 registered offenders that killed themselves after they were again charged with another sex crime but before they returned to court. This is the ultimate end to the spiral created by sex crime allegations.

Chapter 9: Conclusion and Discussion

Even though recent investigations have shown that sex offenders registries are based on weak and limited data, there is overwhelming public support for public sex offender registries. Formal and informal studies have shown that the public favors harsh, almost to the point of barbaric, punishments and monitoring every aspect of the offender's life. Those who study crime and punishment do not see any major benefits from having a registry, yet they remain and are ever expanding. There is a readily available list of suspects, but it has also created more problems like vagrancy, vigilantism, and in some cases, criminal behavior to return to jail and avoid the treatment on the outside.

Society has a long history of punishing sex offenses harshly. Sexual relations are the most intimate part of being human, so unwanted sex is the ultimate violation of our deepest sense of self-creating an instinctive fear. Some studies have shown that people fear rape more than death. Societal fear has created a fictional creature J. Edgar Hoover dubbed the "Bogeyman." This fictional entity is a sexual deviant always lurking in the dark randomly attacking women and children, making people fear their own shadow.

Fortunately for society, this person does not really exist. Statistics reveal that most sexual crimes occur spontaneously by someone known to the victim. Most offenders only commit the one crime and do not offend again. Yet when polled, most citizens still believe that "sexual psychopaths" and "sexual predators" are living among us, and they cannot help but offend again. This is the basis for accepting harsh punishment of sex crimes and long sex offender registrations. Restrictive laws create a false sense of security since the perpetrator is most likely someone they already know, not the person on the registry.

The media has played a major role in sex offender registries. It can be said that the media combined with moral entrepreneurs are the reason registries are so strong today. Fear mongering

is used to push the sexual predator myth by sensationalizing the most extreme cases to attract attention. Then the public is led to believe those examples are the norm not the exception resulting in an unwarranted panic. This type of panic in the 1980s led to the creation of the registries in the 1990s and continues today. The spousal rape and the date rape does not make headlines, but the serial rapist or the kidnapping, rape, and murder is on the front page of every newspaper from coast to coast.

Registries are supposed to be used to track offenders, but it seems it has become a form of retribution. Out of fear, sex offenders have become the target of the harshest penalties in and out of the legal system. There are some rapists receiving longer prison sentences than a second-degree murderer. Sex offenders are monitored much longer than other offenders either in the form of longer duration on parole or electronic tether with some even pushing for implanted microchips. No other criminal is required to register after they have completed their incarceration. This seems to be retribution for crimes society has deemed most heinous. In addition to placing their name and address on a list, they must divulge their vehicle and place of employment. They cannot live in certain areas and work in certain jobs, making sex offenders the most punished of all crimes, facing punishment for life in one form or another.

This may seem excessive, but the Supreme Court of the U.S. disagrees. Overall, sex offender registries are constitutional. Placing an offender's name and address on a list and making it available to the public is the only portion of sex offender registries that we can be certain, at least from a constitutional perspective, will remain. The other aspects of the registry have been challenged with both positive and negative responses. So far, states can limit residency without restrictions. This may change, as there are increasingly more homeless sex offenders. States are not allowed to make substantial changes to the law and expect offenders

already registered to comply, but those deemed minor are acceptable. This may limit future restrictions purely as an ease of administration. As the restrictions become more intrusive, challenges become inevitable.

Recent investigations have revealed that the decisions have been based on unproven data. Most opinions base their rulings on “frightening and high” recidivism rates for sex offenders when this is statistically not true. This comes from data in a small, non-peer reviewed study from 1982 that was reprinted in a trade magazine (Groth and Freeman-Longo, 1982; Freeman-Longo, 1986). The article and its unsubstantiated data was used to create an entire treatment manual for sex offenders, which is the foundation for sex offender registries. Since then, many studies have been done contradicting this claim, but it seems like they are ignored.

Despite the data, states can create and modify sex offender laws as they see fit. The media reports on unusual cases of rape and murder involving young children, sensationalizing this as common behavior that we must be protected from. This has created a 20-year moral panic against sex offenders. They are demonized to the point that people will take the law into their own hands. They falsely believe sex offenders will continue to commit sex crimes, putting everyone in danger. As soon as the fervor dies down, another case is covered by the media and forced on to the public. The public thinks this is true for all cases and seeks retribution by making the laws progressively more punitive. Legislators feel obligated and laws change creating what seems to be an endless cycle, all based on fiction and not statistical facts.

Analysis is difficult because there is no standard law. Only a few states require active notification though this seems to be the consensus for public support. Most require the offender to register with a police agency at regular intervals, and the list is made available online to the public at no charge. This is where the similarities end. Only three states (Iowa, Massachusetts,

and New York), with some looking at the change, look at the individual and their crimes to determine if an offender is a threat before placing them on the registry. The rest of the states make a list of crimes that they feel are sexual in nature. This list cannot be agreed upon. There are as few as 12 and as many as 85 specific crimes with a varying degree of registration. All states have residency and employment restrictions, but few agree on the details. This variation makes comparison a difficult task.

Despite the variation, studies have been conducted on sex offender registries to determine if they are effective. Effectiveness cannot be determined because there has not been any agreement as to how effectiveness should be measured. If recidivism rates are used, sex offenders have had a lower second sex offense rate even before registries were enacted. After registries, there was not a substantial change and there is no evidence linking this to registration (Adkins, 2010). Furthermore, overall crime rates have gone down steadily since just before registries were enacted. Rape (the only sex crime listed on the FBI crime list) has had a steady decline (RAINN, 2017). Again, there has been no link between the registry and the decrease in rapes. There is a sense of security within the communities, which can be considered a moral success, but there is no actual link to registering offenders.

Deterrence may be considered a success, but this cannot be measured. Deterrence is based on the principle that the punishment must be swift, certain, and appropriately severe. Many aspects of sex crimes make this impossible and therefore ineffective. For various reasons, most sex crimes are not reported. Familiarity between the offender and perpetrator have the highest rate of arrest, but these have the fewest number reported, mostly due to fear of retribution. The assaults by strangers are harder to investigate and make arrests. This gives rapists a sense of security that they will not be caught.

Studies have shown that few offenders weigh the consequences with the gains prior to committing any crime (Beauregard, et al., 2012). Some career criminals or serial offenders have patterns they follow, and they consciously balance their actions with the results. This only accounts for a very small portion of overall crime. Most are spontaneous, especially violent crimes. No matter what the penalty is, most do not consider this when planning a crime. Overall, deterrence does not work for most criminals, including sex offenders.

Registries may not deter, but there is an undeniable stigma on sex offenders. Labeling theory is based on the premise that society sets norms and those who deviate from this norm are treated differently. The reactions determine what the offender's future behavior. In theory, the person receives the label, accepts their punishment, and is allowed back into the community. More often, society forces the offender out without a means of formally returning to the community. Overly strong reactions tend to force the offender to accept the label as part of their self and may justify their further commission of crimes.

History has shown we treat sex offenses with harsher consequences than most other crimes. Many believe this is because most of the victims are the most vulnerable of society and it is attacking us where we feel most vulnerable. The stigma does not appear to be leaving. Under a retributive model of crime, offenders are to be proportionally punished for their crimes as a way of paying back society for the wrongs they have done. There have been studies making retribution a part of human nature (Darley & Pittman, 2003). When people are harmed, they are naturally vengeful. In the case of sex offenders, it appears the laws are acting upon the base fears of sex crimes and our instinctive vengeance to punish those people who have been caught doing what we feel is most harmful.

It appears, based on current registry statutes, that sex offender laws are enacted to create permanent punishment. As with the scarlet letter of the adulterer in the 18th and 19th centuries, society wants sex offenders to be labeled for life. There has been no talk, at least publicly, about tattoos for sex offenders, but with placing labels on their houses and driver's licenses and with lifetime registry, you have created a modern scarlet letter. Restrictions on residency and employment have ostracized them without reintegration. Courts have frowned upon ostracizing criminals since the 18th century, but laws limit where they can live and work, making it impossible to stay within the community. It may not be constitutional to remove someone from society, but some states want to go as far as microchip tracking of all sex offenders and chemically castrating to control sexual urges.

This problem is compounded by the moral panic created by the media and fueled by moral entrepreneurs. A moral panic is fear spread among society regarding some perceived evil. It can be said that the fear of sex offenders is a modern moral panic that has lasted over 20 years. Sex offender registries began at a time when 24-hour news and the Internet were just beginning. This was a perfect opportunity to vilify sex offenders. Feeding on an inherent fear of sexual assault, the media picks a unique story and plays it constantly, most likely to bolster viewership and ratings (Beale, 2006). It will choose a case that is particularly gruesome or affects young people to tap into the fear of the public. It will sensationalize it until no one will listen, then move on to the next one. This fear mongering has kept society in fear of sexual predators for almost thirty years.

The literature supports this contention. All measurements of public opinion show that sex crimes elicit a certain visceral fear. When polled people want very harsh treatment for sex offenses with long prison sentences and long registration periods. Unfortunately, these fears are

based on false stereotypes and weak data. Most people believe that sex offenders are predatory attackers targeting unsuspecting young girls and have no chance of reform. The statistics seem to show the exact opposite.

Even though the statistics do not support the beliefs, sex offender statutes are getting increasingly stricter with many collateral consequences. States force offenders to register their place of employment, if they can find a job. They must register their vehicle, if they can get a loan for one. They are prohibited from owning computers or being on the Internet. They cannot have any contact with children even if their victim was an adult. They are even banned from participating in certain events like Halloween and they have labels on their home, car, and identification to make sure everyone knows about it. There are residency restrictions so severe that there are large groups of sex offenders who are homeless simply due to the residency and employment restrictions placed on them as a sex offender. It appears that this crime has stretched constitutional limits more than any other crime out an unfounded fear.

Homelessness and public registry makes sex offenders easy targets. They are often targeted by law enforcement as suspects in other crimes because they are easy to find. They are also the recipients of societal retribution. Community members often take it upon themselves to punish sex offenders that they find in their neighborhood. This has been as simple as harassment and property damage but has gone as far as assault and murder. All in the name of justice.

The resulting pressure has resulted in mental health issues. It was once believed that only those with mental defects would commit a sex crime. Sexual psychopaths were everywhere, and they cannot be cured. The only thing to do is find them and lock them up. Now, there is evidence to show that being on the registry has affected the mental health of the offender. They

have higher rates of anxiety and depression and there are more suicide attempts by sex offenders than any other crimes.

This may be a good starting point for future research. There have been a few studies looking at post-arrest and post-conviction mental health. Little has been said about mental health records prior to conviction. Common medical practice has dismissed the concept of “sexual psychopath,” but little has been done to look at other mental conditions. It may be interesting to find out how many are diagnosed with a paraphilia, especially pedophilia. If this number starts to rise, maybe there will be likelihood of acceptance of treatment over punishment since our current model for offenders does not involve much treatment, except for the serial offenders. Public opinion is strongly against treatment, but this research may open the door for more treatment and rehabilitation instead of punishment.

The ambiguity provides a wide range of opportunities for additional research. There should be more analysis on the effectiveness of the registries. It may be a good start to decide on what a common working definition of effectiveness. This can then be applied to the crime statistics and other data generated each year regarding sex offenders and registries. This will be a difficult task due to the disparity in applications state to state. It may require a detailed analysis to find similarities in the statutes so common comparisons can be made.

We know that most of the laws are based on an unfounded fear of sex crimes and sex offenders. Another opportunity for research may focus in this area. The first should focus on the fear itself, including origins and validity. Secondly there can be a closer look at the link between the fear and the data. In other words, educate the public on the facts without subjective input to see if their opinion changes.

This leads to a final area of exploration. The community attitude toward sex offender (CATSO) has been proven to have internal validity, meaning it is measuring what it is intended to measure. This may not be what we are looking for. If everyone feels the same about sex offenders, there could be an issue with measurement. Once this is resolved, it may be used to measure other aspects. The opinion of the public may change based on specific crimes by altering the scenarios used. Some of the scenarios seem to be leading. The research should be expanded to get a better understanding of the specific issues. For example, the scenario of statutory rape may be adjusted for both close in age consent, incest, and forcible rape. This will expand the application of the scale and give us a better understanding of the feelings of the public. As it stands right now, the data will lead us to believe that, no matter what, the public wants all sex offenders to stay in prison for life. Most sex offenders are not strangers raping young girls. Other variables aside from this stereotype need to be explored, and the effects of public awareness regarding the registries, taking into account the stereotypes, need exploration.

The research shows the need for some standardization. It should begin and most emphasis should be placed on who is placed on the registry. Public opinion shows that registries are strongly supported for certain people. This is where a standard risk-analysis should be done, possibly on all offenders not just those accused of sex crimes. By considering the static and dynamic factors of each offender, prison sentences can be better tailored to the offender and recidivism risk can be the focus. A psychological analysis should be done on all offenders to paint a better picture of them as a person and an offender. Offenders can be registered, monitored, and even treated if necessary. This will lessen the burden on the department of corrections and parole as well as local agencies tasked with post-incarceration monitoring. This would replace this inconsistent net that is currently used and allow data to be collected and

analyzed for all those deemed to be at risk for reoffending the same or similar crimes. Other restrictions can be left to the states once it is applied to the same people from state to state.

Sex offender registries have become part of our system despite the data showing they are based on unfounded fears and bad data. For now, this placebo is effect is curbing the blood lust we seem to have against sex offenders. The only hope is modification based on facts and research to better inform the public. Otherwise, sex offenders will be cast out never to return to society when most are not the sex fiend they are portrayed as.

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