

MORE IS NOT BETTER: ADDRESSING THE OVERUSE OF SEX OFFENDER SURVEILLANCE

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OVERVIEW: TODAY'S PRESENTATION

- Two scholarly aims: telling more accurate stories and basing public policy on evidence.
- Historical Context: Why we don't differentiate
- Many sex offender laws built on false assumptions; counter these, AND emphasize:
 - Laws waste money (do not work as expected)
 - Laws undermine public safety (actually create worse conditions)
- In conclusion:
 - Reform strategies: **the need to collaborate, de-personalize and focus on what we know.**

BACKGROUND & PERSPECTIVE: PUBLICATIONS

- Sex Fiends, Perverts and Pedophiles: Understanding Sex Crimes in America (*NYU Press, Spring 2011*)
- Net-widening in Delaware: The Overuse of Registration and Residential Treatment for Youth who Commit Sex Offenses (*Widener Law Review*)
- The Third Wave: Sex Offender Law since the 1990s (*International Handbook of Penology*)
- Cite-checker's Guide to Sexual Dangerousness (*Berkeley Journal of Criminal Law*)
- (under review). Policy Essay: "The Policy Implications of Residence Restrictions on Sex Offender Housing in Upstate, NY." *Criminology and Public Policy*
- (under review) We Know 'Em When We See 'Em: deviant sexual interest assessments in practice

BACKGROUND & PERSPECTIVE: CONSULTATION AND ADVOCACY

- University Sexual Harassment Grievance Board
- U.S. Attorney's office
- Sex Abuse Treatment Alliance
- State of Delaware:
 - Public Defender's Office
 - Superior Court
 - Working Group on Prostitution
- Justice Center of Louisiana

CURRENT RESEARCH & ADVOCACY

- Interviews with people who have sexually offended: documenting experiences with the post-conviction policies
- Directing graduate research: Interviews with people in relationships with those who have sexually offended (See Laura Rapp, here today)
- Advocating revisions to Delaware's Adam Walsh Act
- Ethnography of the overlaps of mental health and criminal justice: from court to corrections
- Experiences of People in Solitary Confinement: focus on overuse for sex offenders

HISTORICAL CONTEXT: CRUCIAL FOR ADVOCATES

- In the bad old days, the law and its agents sent the message that sexual violence and sexual offending were “not so bad.”
- Some sexual offending was mere nuisance, some was treatable, and a fraction “deserved” punishment equivalent to other serious criminal offending.

MIXED MESSAGES

“People who are so incensed today and who are urging drastic measures like castration for sex criminals, are the same ones who in a couple of years will be importuning us to quash a case against some pillar of the community-- some churchman or kindly old grandfather.”
LAPD Officer, 1949

SNAPSHOT OF LA COUNTY: 1949

- 3000 arrested for child molestation
 - most often charged as misdemeanor – six months probation
 - 281 enter prison

SEEKING RECOGNITION FOR VICTIMS

“All acts of sex forced on unwilling victims deserved to be treated in concept as equally grave offenses in the eyes of the law, for the avenue of penetration is less significant than the intent to degrade”
(Susan Brownmiller, *Against Our Will* 1975, 378).

SYMBOLISM VS. IMPACT

- We’re now in a social and political moment that “takes sex crime seriously.”
- In practice, this means lumping a range of conduct into the same category.
- This often means requiring offenders “do their time” – personal responsibility with no “sickness excuse.”
- This has important symbolic effects: *we take sex crime seriously, we acknowledge the harms it can cause.*
- While these laws may send one message through their passage, in their application, that message gets diluted, diverted, and turned around.

Evidence-based Law and Policy

- The most empirically-supported reform we can make to current sex offender law is to return to differentiation, but not the same kind as the dismissive “bad old days.”
- Now, need differentiation based on science and on the experience-based, guided discretion of experts in law enforcement, corrections, and treatment.

THE PAST DOES NOT PREDICT THE FUTURE: Misunderstanding Recidivism and Risk Prediction

Public Policy as Governing Through Sex Crime

“Too often sex offenders continue to harm children even after previous conviction”
U.S. Attorney General Alberto Gonzales, regarding the Adam Walsh Act.
DOJ Press Release May 17, 2007

SEX OFFENDERS IN GENERAL HAVE LOW RATES OF RECIDIVISM.

GOLD STANDARD RECIDIVISM RESEARCH: META-ANALYSIS

- Hanson and Bussiere's 1998 meta-analysis of numerous recidivism studies found that even after following offenders for an average of four to five years, "[o]n average, the sex offense recidivism rate was 13.4% (n = 23,393; 18.9% for 1,839 rapists and 12.7% for 9,603 child molesters)." R.K. Hanson & M.T. Bussiere, 66 J. CONSULTING & CLINICAL PSYCH. 348, 351 (1998). (see their 2002 update with similar results)

Sex offenders also have low rates of recidivism when compared to other offenders.

GOLD STANDARD RECIDIVISM RESEARCH: LARGE SAMPLE, PROSPECTIVE, LONG FOLLOW-UP

- The Bureau of Justice Statistics published recidivism data on two-thirds of all the inmates released from prison in 1994 based on a three-year follow up and found that 46.9% were reconvicted in state or federal court for a new crime (felony or misdemeanor) PATRICK LANGAN & DAVID LEVIN, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 1994 (2002), available at www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf.

THE BEST PREDICTORS ARE NON-SEXUAL

Undermining Another Premise of Sex Offender-specific Surveillance

SEXUAL OFFENDING IS POOR PREDICTOR

- The same BJS study showed that the vast majority of new sex crimes were committed by the non-sex offenders.
- Multiple studies show that general criminal history is a much better predictor of a future sex crime than a single sex crime in the past.
- In general, adult sex offenders are about twice as likely to be convicted for nonsexual offenses as they are to be convicted for sexual offenses, both before and after being convicted for a sex offense" Nisbet et al 2004, 24

THEREFORE: SEX OFFENSE-SPECIFIC INTERVENTIONS ARE POOR USE OF RESOURCES

- For youth, MST and other therapeutic approaches to anti-sociality are more effective than sex offender treatment.
- Adults who seek treatment tend to benefit, but little supports mandatory sex offender treatment.

BAD: THE LAWS WASTE MONEY

Sex-specific interventions often unsupported by empirical research

CONSISTENT EMPIRICAL FINDINGS

- Broad group of sex offenders are a low risk group
- Static measures cannot show individual's progress
- Dynamic measures are a newer feature of risk assessment, worth law enforcement and legislative investment.

POOR USE OF RESOURCES

- As written, registration, community notification, residency and all the other post-conviction restrictions are targeting a low risk group.

- Using so many tools so unwisely constrains law enforcement's ability to surveil the high risk group.

UNINTENDED CONSEQUENCES

- Decades of empirical research shows effective re-entry requires employment and community and family support.
- SO restrictions undermine living and working arrangements, and disrupt families
- SO restrictions impose costs on so's (time and money) that divert resources from treatment and other forms of rehabilitation
- SO restrictions impose costs on law enforcement/corrections (time and money) that divert from surveillance, rehabilitation, deterrence and incapacitation
- Re-entry made nearly impossible
 - *Stressors may cause recidivism*
- Law enforcement focus and resources diluted from high risk individuals

WORSE: THE LAWS UNDERMINE PUBLIC SAFETY

They not only fail to work as intended, but they take law enforcement energy, public awareness, and taxpayer dollars away from what we know WOULD work.

RE-CRIMINALIZING VAGRANCY

- 10% of Delaware's felony sex cases are now failing to register; other states see even more.
- Delaware also sees an increase of sex offenders who report their residence as homeless, leaving them more likely to fail in re-entry.
- Predictions are that AWA compliance will further swamp the registries with non-sex sex offenses.

STRAINING LAW ENFORCEMENT RESOURCES

- Released sex offenders are pushed into more rural settings causing an unfair burden on citizens in those areas, and furthermore, there are insufficient police and probation resources to monitor these dispersed sex offenders.

DIVERTING PUBLIC AWARENESS

- Sex offender registration tends to have us focusing "out there," we should be more aware of our more immediate social environment that includes friends, acquaintances and family members who are the most likely to be the unknown offender.
State of Delaware report, 2008

PUTTING IT ALL TOGETHER

The Delaware Example

RECENT RESEARCH ON FAILED POLICIES

Net-widening in Delaware: The Overuse of Registration and Residential Treatment for Youth who Commit Sex Offenses--

- Delaware's registration law leads to over-inclusiveness:
 - youth better off in community treatment
 - end up shipped out of state,
 - costing taxpayers millions and
 - potentially creating more criminality.
- Current state and federal registration law is misguided: conviction-based tier placement is both over- and under-inclusive. It dilutes any positive effect registries may have, and creates multiple new problems.
- Current registries undermine public safety.

Recommendation: Revise Adam Walsh Act to allow truly risk-based tier placements and to clarify judicial discretion for youth registration.

YOUR STORIES & THEIR USES

- Here: you are heard, you are accepted.
- Community and family level: see SATA brochure
- Your legal situation: has to fit narrow legal questions, regardless of your “rights”
- The political situation locally and nationwide: tailor your story to the audience.
 - HOW?

WHERE CAN WE GO FROM HERE?

Buzzwords:

- **Cost-Savings**
- **Evidence-Based**
- **Collaboration**

SECRETARY OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

"[Partnering with academics] has been just absolutely vital. Otherwise you are just making policy decisions based on either politics or based on your gut sense of what works and I think that is how California got in this spot.... The simple fact is that our population has mushroomed and in large part that is because we have lacked research as to who we should be afraid of versus who we really are just mad at."

Matthew Cate, 02/23/2010

OTHER PARTNERS? OTHER STRATEGIES?

- Avoiding personalization
- Avoiding the “harm” debates
- Citing empirical research
- Citing implementation problems
- Advocate measures that individualize punishment
 - Return discretion to judges
 - Return discretion to community corrections
 - Use risk assessment tools based in science

CONTACT FOR FOLLOW-UP

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Recommended books:

- Failure to Protect, Eric Janus
- Knowledge and Power, Wayne Logan
- Sex Fiends, Perverts and Pedophiles (my book, 2011)