

The need for modification of registration and notification laws as applied to juvenile sex offenders

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**THE NEED FOR MODIFICATION OF REGISTRATION AND NOTIFICATION LAWS
AS APPLIED TO JUVENILE SEX OFFENDERS**

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Abstract

This study investigates the application of both state and federal registration and notification laws to juvenile sex offenders. This study will give an overview of the unintended negative consequences that have resulted in the application of this legislation to juvenile sex offenders suggesting appropriate steps that need to be taken to modify these laws. Reforming the juvenile justice system is necessary to maintain its goals of rehabilitation and allow juvenile sex offenders access to effective comprehensive sex offender treatment programs. Comprehensive treatment programs will decrease the likelihood that these offenders will reoffend sexually as well reduce the chances they will be involved in the adult system.

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Christine Rued

Under the Supervision of Michael Klemp-North

SECTION I: INTRODUCTION

Registration and notification laws.

Statement of the Problem.

Over the past two decades there has been a growing concern within the criminal justice system and the public, regarding the behavior of convicted sex offenders. In response to this concern, every state has mandated a registry of all convicted and adjudicated sex offenders as well as a notification procedure designed to notify the public of certain offenders' residency location. The registration and notification legislation is designed to protect the community by providing information to the public and law enforcement agencies about certain sex offenders. Included in these mandatory registration and notification laws are juveniles who have been adjudicated of sex offenses (Megan's Law, Adam Walsh Child Protection and Safety Act). A consequence of this legislation was the inclusion of juvenile sex offenders in both registration and notification data banks. Several unintended negative consequences have resulted in the application of this legislation to juveniles. Application of these laws to juveniles significantly conflicts with the rehabilitative principles of the juvenile justice system: whereas adult sex offender polices are more retributive in nature. These statutes create additional road blocks and hinder a juvenile's ability to receive the treatment they need. Labeling adolescents as

“juvenile sex offenders” during a time they are developing their identity has harmful effects (Righthand & Welch, 2004). Youth who commit sex offense are children and adolescents that require management by the juvenile court system whose primary focus is rehabilitative rather than the retributive.

Juveniles account for up to one-fifth of rapes and one half of all cases of child molestation committed annually (OJJDP, 2005). Adolescents who commit sex offense pose unique set of challenges to the juvenile justice system. Consequently there is significant conflict between the principles of the juvenile justice system and the current registration and notification requirements set forth by both state and federal laws. The passing of legislation such as the Adam Walsh Child Protection and Safety Act in 2006, tied the hands of the judicial branch forbidding an independent analysis of any sex offender including the juvenile offender thereby making the laws apply as a ‘one size fits all’. As the awareness of juvenile sex offenders began to expand, disagreements about their “adult-like” clinical and legal management became evident. The primary concern became the negative impact labeling could have on peer relationships and the juvenile’s sense of identity (Letourneau & Miner, 2005; Zimring, 2004; Wakefield, 2006). Registration and notification laws hinder a juvenile’s ability to obtain much needed treatment. Registration and notification laws have been shown to have little effect on the recidivism rates of juvenile sex offenders (Calley, 2008). In addition, it was found that early intervention with comprehensive treatment programs is the most successful way to address recidivism (Chaffin, 2008; Calley, 2008).

The juvenile justice system was initially designed to rehabilitate young offenders. Over the last several decades, the juvenile justice system has moved towards a punitive system often

treating juveniles like adults. The response to juvenile sex offenders is no exception. While treatment remains an underlying principle, its central role has often been eroded by this paradigm shift. Across the country, legislators have reacted to the growing concerns of the public about the perceived danger posed by individuals convicted of sexual offenses. This reaction prompted the enactment of stronger and harsher legislation nationwide. Legislation originally designed for adult sex offenders, such as registration and community notification, have captured juvenile sex offenders in its net. Application of these laws to juveniles ignores the goals of the juvenile court system and is causing devastating effects on juveniles (Markman, 2008). Sex offender registries have markedly negative effects on a juvenile offender's ability to transition successfully to adulthood (Markman, 2008). Notification laws have subjected juvenile sex offenders to become undeservedly stigmatized leading to isolation and rejection from peers, family, and other community members (Markman, 2008). The end result is the loss of some of the very support systems that could be helpful to the youth in their efforts to rehabilitate (Calley, 2008).

In an effort to avoid these consequences, prosecutors often manipulate the charges ultimately ending in less serious charges that no longer allow for sex offender treatment. Calley (2008) analyzed a year of juvenile sex offender data from Michigan including the initial charges, the dispositional charges and the treatment and or services related to the dispositional charges. Calley (2008) found that while 82% of those studied were initially charged with Criminal Sexual Conduct I and II, two of the most severe forms of sexual conduct, 97% of those were pled down to lesser charges of Gross Indecency. The apparent motivation for pleading Gross Indecency was avoidance of the registration requirement. As a consequence, the juvenile offender was no longer

eligible for sex offender treatment. The results of this are devastating in light of the body of empirical research that indicates early intervention and treatment of youthful sex offenders have significant effects on recidivism.

Juvenile delinquents as a whole tend to have higher rates of general criminal recidivism; including juvenile sex offenders who tend to have higher non-sexual recidivism rates than rates of sexual recidivism (Caldwell, 2007). There is little evidence to support the efficacy of registration and notification legislation on recidivism in youthful offenders. Research has not supported the effectiveness of sex offender registration and notification at reducing recidivism rates with adults much less with juvenile sex offenders (e.g. Chaffin, 2008; Caldwell, 2008; Zimring, 2004).

Purpose of this Research

This paper will serve as an educational and informational tool for professionals who interact with juvenile sex offenders within the criminal justice system and legislators who propose laws that effect juvenile offenders. The research will serve as a resource for policymakers on various levels providing them with key information about juvenile sex offenders. This information will allow them to make better informed decisions and proposals of legislation that can ensure public safety while adhering to the juvenile justice system's long standing rehabilitative goal. A careful design of statutory and administrative provisions that relate to juvenile offenders will minimize the conflict between the principles of the juvenile justice system and the sex offense laws. The research will educate readers on the effects the current legislation has on juvenile sex offenders. In addition it will describe the types of legislation that have proven to be more effective in reducing recidivism rates while honoring the rehabilitative goals of the juvenile justice system.

Methods of Approach

The main method of approach will be a thorough review and analysis of the secondary data consisting of such information as related empirical, statistical and theoretical findings. The findings will be utilized to determine the legal consequences and detrimental effects several federal laws have on juvenile offenders. Information and data on juvenile recidivism rates as well as research on findings relevant to offender registration and public notification will be obtained from US Department of Justice Bureau of Statistics and other resources that provide statistical data on a state level.

Information on the laws affecting sex offenders, recidivism rates, and treatment options at disposition will be gathered from scholarly journals, legal publications, criminal justice text books, and multiple internet sources such as the US Department of Justice Bureau of Statistics, the National Center on Sexual Behavior of Youth, and the Association for the Treatment of Sexual Abusers. Review of states that have already modified registration and notification laws will be done and an analysis of the effectiveness of these modifications will be done in an attempt to suggest a universal modification of statewide laws.

Based on the analysis of the various collected data, resulting conclusions and recommendations will be developed to address the problems with the application of current sex offender legislation to juvenile offenders. Recommendations will be made to keep the focus on the rehabilitative philosophy of the juvenile justice system allowing juvenile offenders access to treatment programs that are directed toward their specific needs.

Results of the Study

It is essential that juvenile courts are allowed to adhere to their goals of rehabilitation and allow juvenile sex offenders access to effective comprehensive treatment programs. Current registration and notification laws as applied to juveniles often hinder access to treatment programs and create negative effects on a juvenile offender's ability to transition successfully to adulthood (Wakefield, 2006).

Increased media attention on sex offenders is one of the push factors used by the public to demand stricter requirements on sex offenders. Legislation was generated as a result failing to differentiate between adult offenders and juvenile offenders. Further the laws have lulled the public into a false sense of security in the knowledge of the whereabouts and location of sex offenders. Society must realize that applying these laws to juveniles obstructs the ability of juveniles to receive effective treatment as well as a future ability to live normal adult lives. Modification of these laws is likely to be more effective in reducing the recidivism rates than continuing to treat them as adults.

In addition to modification of the registration and notification laws, effective risk assessment tools need to be created and adopted. It will allow low-risk juveniles the opportunity to move forward with treatment options and rehabilitation. It will assist in identifying individuals who are at higher risk for reoffending and justify additional monitoring, treatment and rehabilitation to occur while protecting society. Balancing the goal of rehabilitation of juveniles within the juvenile court system with the goal of protecting society is vital and can be accomplished with a clear understanding of juvenile sex offenders and the need for early and comprehensive treatment.

SECTION II. LITERATURE REVIEW

The following section consists of a review of the literature pertaining to the history of sexual offender notification and registration laws as well as current state legislation on registration and notification laws effecting juveniles. A review of the differences between adult sex offenders and juvenile sex offenders will be conducted to provide insight into the inappropriateness and problems associated with applying current legislation to juvenile offenders. A review of the juvenile recidivism rates for both sex offenses and non- sex offense will highlight the ineffectiveness of these laws as applied to juvenile sex offenders. These laws neither operate as a deterrent nor provide the community with the safety it perceives. Rather, these laws create barriers for youth in obtaining multi-systemic; thereby preventing a possible further reduction in recidivism rates.

A. Sex Offender Registration and Notification Statutes; history and current

Sex offender registration laws, while introduced in 1940, gained new momentum in the late 1980's and early 1990's after several highly publicized, high profile sex crime cases. Several of these cases included the 1989 abduction of Jacob Wetterling near his home in Minnesota. At the time of his abduction, Minnesota did not have a comprehensive list of sex offenders to assist law enforcement with their investigation (International Association of Chiefs of Police (IACP), 2006). The Jacob Wetterling Foundation brought national attention to this issue and was instrumental in the passage of registration in Minnesota. In 1991 the passage of the Minnesota Sex Offender Registration Act was passed in honor of Jacob (Minn.Stat. §243.166). In 1994, the Wetterling Act became part of the 1994 Federal Omnibus Crime Bill requiring all states to establish a sex offender registry (42 U.S.C. § 14071).

In 1994, seven-year-old Megan Kanka was raped and murdered by a twice-convicted child molester who lived on her block in New Jersey. Megan's parents and other neighbors were unaware that this neighbor was a convicted sex offender. Megan's death spurred the concept of notifying the community when a sex offender moves into their neighborhood. In 1995 the community notification legislation was passed now known as "Megan's Law" (42 U.S.C. § 14071). Megan's Law became an amendment to the Wetterling Act which requires public notification of sex offender's release into the community. It additionally mandates providing public access to information concerning the location of particular sex offenders in their communities. In 1996 President Clinton signed the Megan's Law Amendment (Pam Lynchner Act, 110 Stat. 3093) that required all states conduct community notification of sex offenders. In 1998, Congress passed legislation creating the National Sex Offender Registration (NSOR) which is a tool that assists law enforcement in tracking sex offenders as they move between states. These Federal Acts required all 50 states to adopt sex offender registration and notification laws.

In 1981, Adam Walsh was abducted while shopping with his mother. His parents founded the National Center for Missing and Exploited children. As momentum in the fight against sex offenders continued, George W. Bush signed the Adam Walsh Child Protection and Safety Act into law in 2006 (42 U.S.C. §16911). This Act established a comprehensive national registration system of sex offenders which included juvenile offenders 14 years of age or older whose offense was comparable to or more severe than aggravated sexual abuse.

Most recent was the abduction and murder of Dru Sjodin in late 2003. Her abductor was a registered level 3 sex offender. The Dru Sjodin National Sex Offender Public Website (NSOPW), managed by the U.S. Department of Justice, is a joint effort between jurisdictions hosting public sex offender registries and the federal government. The jurisdictions include all 50 states, Puerto Rico, Guam, the District of Columbia, and participating tribes. None of this legislation however, requires states to register juvenile sex offenders (National Sexual Behaviors of Youth, 2008).

As a result of this ongoing movement, every state has enacted legislation dealing with registration and notification of sex offenders. Many of these state statutes, however, fail to how or whether to apply these laws to juveniles. Some states remain silent on the issue while others imply an adult-only reach and still others clearly include juveniles under these laws. As of 2009, 39 states require adjudicated juveniles to register as sex offenders. Thirteen states have statutes or case law specifically requiring juveniles tried and convicted in criminal court to register. Hawaii and Georgia and specifically exclude adjudicated juveniles from the sex offender registration requirement. In 26 states, adjudicated juveniles face the possibility of lifetime sex offender registration for specified serious sex offenses. Only six states have separate registration laws for juvenile offenders. For example, North Carolina Sex offender laws state:

“A juvenile who is transferred to Superior Court pursuant to G.S. § 7A-608 and is convicted of a sexually violent offense or an offense against a minor must register in the same manner as an adult convicted of the same offense. If the juvenile was not transferred to Superior Court and tried as an adult, then he or she may still be subject to registration as a juvenile.”

Further it provides that “Juvenile registration information is not public information and is not available for public inspection. The registration information of a juvenile offender must be maintained separately by the sheriff and released only to law enforcement agencies. Under no circumstances shall the registration of a juvenile adjudicated delinquent be included in the county or statewide registries, or be made available to the public via the internet”

(North Carolina Statute §14-208.6A-208.7).

These public registration policies were predicated in part, on the belief that sexual offenders are at high risk for sexual recidivism and require extensive surveillance. Zimring (2004) reports that most youth do not continue perpetrating sexual abuse as adults and that more than 90% of arrests of youth for sex offense represent a one-time event that will never recur (Zimring, 2004). Additionally, it has been argued that registration acts as a deterrent for future sexual offending because under surveillance, sex offenders behave better than they would if their criminal history was not known (eg. Matson & Lieb, 2006 in Vasquez et al. 2008). However, most studies have failed to support any deterrent effects (e.g. Letourneau et al, 2009). Schram and Milloy (1995) also found that community notification seemed to have little effect on sex offender recidivism (Schram & Milloy in Vasquez et al., 2008). Others have found that registration may increase reoffending such as Winick (1998) who observed that a sex offender is often characterized as deviant and ostracized by the community (Winick, 1998 in Wakefield, 2006).

History of Juvenile Justice

Support for these laws is reflective in the cyclical nature of juvenile justice. The concept of juvenile delinquency first appeared in the United States in the early 1800's when there was a breakdown of traditional controls. This formed the basis for a new idea of juvenile justice (Weijers, 1999). Over the years, there have been two dimensions to juvenile justice. The first was that children should be saved and not punished. The problem was the inability to deal with

parents who neglected their children. The court established a juvenile court that gave them jurisdiction over all youths in trouble as well as neglected children (Weijers, 1999). The idea was that the child was a victim of wrong psychological treatment and educational neglect. The focus became the family and the home and the inadequacy of the educational and psychological environments. In the early 1950's the idea of protecting the community began to progress and the emphasis on prevention was pushed into the background (Weijers, 1999). The cycle of juvenile justice turned to toughening up implying that the juvenile delinquent is seen as a serious criminal who needs swift certain and severe punishments. The change implied a fundamental break with the traditional interest in the education and treatment context. This shift in focus towards holding these young offenders responsible for what they have done suggested clear recognition of the penal paradox thereby treating juveniles like adults (Weijers, 1999). Application of these laws to juveniles ignores the goals of the juvenile court system and is causing devastating effects on juveniles (Markman, 2008).

Differences between juvenile sex offenders and adult sex offenders.

Because of the change in focus, it is not a surprise that juveniles have been bootstrapped to laws that are based on adult offenders. For these reasons, it is essential to recognize and understand the differences between the adult offender and the juvenile offender.

Defining a juvenile sex offender varies from state to state but in general juvenile offenders are defined as persons of ages 6 through 17. An adult offender is defined as a person 18 years of age or older (NIBRS, 2009). Individual state statutes define the behavior that qualifies them as sex offenders as well as the registration and notification requirements and length of the registration.

Future risk

While public policy surrounding these laws is largely based on assumptions of continuity between youthful and adult offenders, current research indicates that most youth do not continue perpetrating sexual abuse as adults (Association for the Treatment of Sex Offenders (ATSA), 2000). Research on juvenile sex offenders goes back 50 years but a significant set of research began in the 1980s when there was a surge in the youth sex offender treatment (Finkelhor, Ormrod and Chaffin, 2009). Early thinking about juvenile sex offenders was based on what was known about adult sex offenders, finding that a significant portion of these adult offenders began their offending during adolescence (Finkelhor, Ormrod and Chaffin, 2009). Current academic thoughts however, accentuate the diversity of juvenile sex offenders and acknowledge their encouraging prospects which are supported by the low sex offense recidivism rates and their common characteristics between juvenile sex offending and other juvenile delinquency (e.g. Letourneau & Minor, 2005). It has long been established that youth with sexual behavior problems commonly have other non-sexual problems and are many times more likely to have future non-sex related crimes (Chaffin, 2009).

Characteristics of juvenile sex offenders.

Studies highlight a diversity of behaviors, characteristics and future risk for sexual reoffending. Juveniles who have committed a sex offense are an assorted mix as they fluctuate according to victim and offense characteristics. They also differ on a wide range of other variables including types of offending behaviors, family environment, prior abuse, social skill, sexual knowledge and experiences, cognitive and academic functioning (Righthand & Welch 2004; Deranek & Gilman, 2003). However, there are few differences between juvenile sex

offenders and juveniles who commit other types of offenses (Righthand & Welch 2004). Many juvenile sex offenders have been subjected to maltreatment or have had an exposure to violence, have a history of childhood sexual abuse, as well as a long line of other family and social issues (Trivits & Reppucci, 2002). Additionally, there is a diversity of offense motivation that ranges from exploration and sexual curiosity to a more purposeful act by individuals. These acts are done by those that have had a pattern of violating the rights of others or have a history of serious mental health problems. Some of the behavior is compulsive but more often it is impulsive or is reflective of poor judgment (Chaffin, 2005; Trivits & Reppucci, 2002).

Developmental differences

Juveniles who perpetrate sex offenses against minors differ from adults who commit sex offenses against minors a variety of dimensions (USDOJ, 2004 in OJJDP, 2009). It was found that juveniles are more likely to offend in groups (24% for juveniles vs. 14% for adults) and to offend against acquaintances (63% for juveniles vs. 55% for adults). Their most serious offense is more likely to be sodomy (13% vs. 7%) and or fondling (49% vs. 42%) than rape (24% vs. 31%) (USDOJ, 2004 in OJJDP, 2009). Sexual offenses perpetrated by juveniles tend to in the home less often than adult offenders (69% vs. 80%); rather they more often occur in school. Juvenile sex offenders tend to offend more in the afternoon than in the evening or at night (43% vs. 37%). Juvenile sex offenders are more likely than adult sex offenders to target young children under the age of 12 as their victims (59% vs. 39%). Adults tend to concentrate their offense against victims age 13 and older (USDOJ, 2004 in OJJDP, 2009).

There are unique developmental conditions that set youthful sex offenders apart from their adult counter-parts. Ecker and Kaplan (1990) theorized that for some adolescents, the behavior is exploratory and will often not be repeated especially when there are consequences (as cited in Trivitts & Reppucci, 2002). Youth are in transitional and developmental stages in their lives. Their sexual offending behavior is not permanent making specialized juvenile treatment very promising (NCSBY, 2008). Sexual development can be difficult and can lead to abnormal sexual behavior that can be simply corrected or corrected through treatment (Trivitts & Reppucci, 2002). Deviant patterns of sexual behavior are less established in the juvenile sex offender than in adults (Trivitts & Reppucci, 2002). Many youth engage in sexual offending behavior as the result of a broad and pervasive pattern of conduct problems and not necessarily because of psychopathology (Vincent & Saleh, 2004). Some have significant impairment in interpersonal relations and some have isolated opportunistic sexual behavior problems. Inappropriate sexual behavior is among several problem areas these youth encounter and is often not necessarily the most challenging condition to treat (Vincent & Saleh, 2004).

Victims

Juveniles are more likely to offend in groups and are more likely to offend against acquaintances. As described earlier, juvenile sex offenders are more likely to target young children as their victims more than adults (OJJDP, 2009). Adults tend to focus their wrongdoing against victims age 13 and older. In contrast victims of juvenile sex offenders are more dispersed and victims that are 16 and 17 represent a small portion. Juvenile sex offenders tend to target other juveniles who are younger (OJJDP, 2009).

Recidivism

Another significant difference between adult and juvenile offenders is the rates of recidivism. Recidivism rates may differ between juveniles and adults because deviant patterns of sexual behavior are less established in the juvenile sex offender (Trivits & Reppucci, 2002). Recidivism rates, however, for adult offenders are significantly higher. In a study conducted by Hanson, Steffy, and Gauthier (1993) they reviewed the long term recidivism rates of adult child molesters and found that overall, 42% of the offenders were reconvicted for a sexual offense, a violent offense or both (as cited in Trivits & Reppucci, 2002).

Because of the diversity of reasons that juveniles commit sexual offense, it is important to avoid stereotypes about juvenile sex offenders and to develop prevention and treatment strategies that can accommodate many of the various types of youth and offenses. Amenability to treatment is the cornerstone of the juvenile justice system's balance between rehabilitation and community safety.

B. Juvenile Recidivism Rates

Legislators appear to consider the juvenile sex offender as untreatable and dangerous which serves as the reason they include them under statutes such as Megan's Law (42 U.S.C. § 14071). Additionally, there is belief that juveniles will reoffend because a portion of adult offenders report they began offending while they were juveniles (Trivits & Reppucci, 2002). Not only does the literature on juvenile sex offenders not support this conclusion but also the statistics repeatedly show that recidivism is low among juvenile sex offenders (Trivits & Reppucci, 2002; Caldwell, 2007, Latourneau, et al. 2009). The low rates of recidivism suggest that the actual

threat of juvenile sex offenders do not match the public's perceived threat (Trivits & Reppucci, 2002).

Research repeatedly indicates that juvenile sex offender recidivism is low which suggests that a substantial portion of juveniles desist from committing sex offenses (Zimring, 2004). More than 90% of arrests of youth for sex offenses represent a one-time event that will never recur (Zimring, 2004). Rates of recidivism differ between juveniles and adults because deviant patterns of sexual behavior are less established in the juvenile sex offender (Trivits & Reppucci, 2002). Recidivism rates, however, for adult offenders are significantly higher. In an examination of data across 25 years, Prentky, Lee, Knight and Cerce (1997) found that the recidivism rate of adult sex offenders was 39% for rapists and 52% for child molester (Prentky et al. in Trivits & Reppucci, 2002).

Juveniles' as a group, tend to have high rates of general criminal recidivism ranging from 19% to 96% (Gretton et al, 2004 in Caldwell, 2007). Juvenile sex offenders, while having high non-sexual recidivism rates, are not inclined to specialize in sexual offending. Juvenile sex offenders were nearly ten times more likely to have been charged with a non-sexual offense than a sexual offense (Zimring, 2004). The statistics suggest that children with sexual behavior problems as a group pose a low long term risk for future child sexual abuse perpetration and sex crimes. For teenage sex offenders, years of studies report long term future sex offense rates of the 5%-15% (Chaffin, 2008). The low future sex crime rates among sex offenders is a long standing scientific finding and the long term risk among children with sexual behavior problems is even lower when given correct treatment (Chaffin, 2008).

Caldwell (2007) conducted a large sample study of incarcerated teenage sex offenders and found that 7% of adjudicated teen sex offenders had a subsequent sex offense. He also found that 6% of adjudicated non-sexual delinquent had a sex offense. In a study conducted by Sipe, Jensen and Everett (1998), they followed 124 juvenile sex offenders beginning in 1978 through 1993. The Arrest data showed that only 9.7% from the sample were arrested for sexual offenses as adults (as cited in Caldwell, 2007). Bremer (1992) reported the results from a longitudinal study of 193 former participants of the juvenile Sex Offender Program in Minnesota and found that only 6% of the participants had been charged with an additional sex offense. (as cited in Travits & Reppucci, 2002). In contrast, a study by Hagan & Gust-Brey (2000) found that 20% of those juveniles who had completed a treatment program for a serious sex offender reoffended sexually during a 10-year period. They noted that the offenders they studied were a particularly delinquent subsample of sex offenders. These offenders could have been sentenced for at least 10 years in prison for their original offense had they been adults. These individuals had also been imprisoned only after several attempts at community intervention had not been successful. Moreover they found that these offenders received treatment at a time when knowledge about adolescent sex offenders was extremely low (Hagan and Gust-Brey (2000) in Travits & Reppucci, 2002).

Low rates of sexual recidivism suggest that there is little benefit to registration and notification of the community about the juvenile sex offense adjudication. These restrictive policies that include juveniles in their web are unlikely to substantially benefit community safety. What has been shown to be beneficial to community safety and the most effective way of reducing sexual offending is through comprehensive treatment programs.

C. Sex Offender treatment programs.

Over the years there have been continuous discussions regarding the legal and treatment dispositions of adolescents arrested for sexual offenses. In 1977, the Personal Social Awareness Program was established by Lutheran Social Services of Minnesota to discuss and address the treatment needs of adolescent males experiencing sexual issues of a critical nature (Seabloom et al. 2003). Included in these discussions were the argument for lifelong placement on sexual offender registries and extended residential treatment versus the emphasis on the need for strength focused, community based services (Letourneau et al, 2009).

Research shows that the risk factors for adolescent sexual offending are very similar to those observed for other types of serious antisocial behavior (Letourneau et al, 2009). Ronis and Bourduin (2007) found that juvenile sex offenders similar to other serious juvenile offenders, had difficulty with family and school bonding and higher involvement with deviant peers than non-delinquent youth (as cited in Letourneau et al. 2009). Numerous factors come into play when a juvenile commits a sexual offense. Often juvenile sex offenders come from dysfunctional families (Calley, 2007). Many juveniles have been sexually and or physically abused themselves and abuses alcohol and/or drugs or it is a significant issue within the home (Righthand & Welch, 2004). Parents with chemical dependency are more apt to act hostile towards their children or show indifference or even rejection (Kelley, Lewis, & Sigal, 2004). Consequently, children form beliefs that contradict socially acceptable behaviors (Righthand & Welch, 2004). Additionally, juveniles who commit crimes have issues with social competency, low self esteem, symptoms of depression, antisocial tendencies and impulsive behavior (Smith, et al. 2005). Academic problems are prevalent as is impulsivity and criminal behaviors (Smith, et al. 2005). These

factors are all critical when addressing the treatment plan of the juvenile sex offender. Treatment that is focused on the sex offense alone will undoubtedly fail (Smith, et al., 2005).

Calley (2008) found that early intervention with comprehensive treatment programs is the most successful way to address recidivism (See also Chaffin, 2008). Treatment interventions that have been identified as effective in treating other types of antisocial behavior in adolescents are effective in dealing with the comprehensive array of risk factors of the juvenile sex offender. Recent literature supports a multi-systemic intervention approach to successful treatment of juvenile sex offenders (Letourneau et al. 2009; Trivits & Reppucci, 2002; Calley 2008). The Surgeon General's report on youth violence identified three treatments for juvenile criminal behavior with established effectiveness (U.S. Public Health Service, 2001 in Letourneau et al. 2009). The treatment included multi-systemic therapy that included a family based focus as well as the ability to address the comprehensive array of risk factors that are present in youth and family's natural environment (U.S. Public Health Service, 2001 in Letourneau et al. 2009). In the study conducted by Letourneau et al, (2009) they compared treatment typically provided for juvenile sexual offenders to multi-systemic therapy that included a family based approach with community based services. They found that the multi-systemic therapy was more effective in decreasing deviant sexual interest/risk behaviors, delinquent and substance use behaviors. It also reduced the costly out of home placements. These findings have significant clinical and policy implications. The outcomes of the multi-systemic therapy brings into question the need for severe legal consequences such as registration, notification and long term residential treatment, placed on juveniles who offend (Chaffin, 2008).

Because of the controversy surrounding juvenile sex offender legislation, there have been legal attempts to avoid registration and community notification for juvenile offenders. Legal strategies to avoid these requirements become complex and often result in the treatment needs of juvenile offenders not being addressed (Calley, 2008). In an effort to avoid the significant impact and consequences of registration and notification, prosecutors often manipulate the charges ultimately ending in less serious charges that no longer allow for sex offender treatment (Calley, 2008). Bremer (2003) identified three cases illustrating that resulted in legal efforts to avoid these laws: 1) being granted a trial where evidence may be insufficient to produce judicial findings of fact and youth may receive no intervention at all; 2) being granted a stay of adjudication for youth to begin treatment only to have treatment disrupted when adjudication is resolved prior to completion of treatment and 3) accepting a reduced charge that prohibits treatment even when evaluations indicate treatment is needed (Bremer, 2003 in Calley, 2008). Calley (2008) analyzed a year of juvenile sex offender data from Michigan including the initial charges, the dispositional charges and the treatment and or services related to the dispositional charges. Calley (2008) found that while 82% of those studied were initially charged with Criminal Sexual Conduct I and II, two of the most severe forms of sexual conduct, 97% of those were pled down to lesser charges of Gross Indecency (Calley, 2008). The apparent motivation for pleading Gross Indecency was avoidance of the registration requirement. As a consequence, the juvenile offender was no longer eligible for sex offender treatment. The results of this are devastating in light of the body of empirical research that indicates early intervention and treatment of youthful sex offenders have significant effects on recidivism. The failure of the

juvenile sex offender to successfully complete treatment can ultimately have serious implications for society.

III. THEORITICAL FRAMEWORK

A. Moral Panic Framework

The concept of “moral panic” historically has had a significant impact on sociology as well as the creation of new laws. Moral panic has been defined by Stanley Cohen (1972) as

“a condition, episode, person or group of person emerging to become defined as a threat to society values and interest; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnosis and solution... sometimes the panic passes over and is forgotten...at other times it has more serious and long-lasting repercussions and might produce such changes...in legal and social policy or even in the way society conceives itself.”

(Cohen, 2004 in Garland, 2008).

The first indication that moral panic has gripped a nation is a heightened level of concern which is, in most cases, elevated beyond the actual threat (Goode & Ben-Yehuda, 1994 in Zgoba, 2004). Despite the low frequency of child abductions, the media’s persistent reporting creates an epidemic of child abductions, molestations and homicides (Welch, Price & Yankey, 2002). The massive coverage by the media supported the movement towards a demand for a resolution. Communities and legislators reacted strongly towards individuals who harm children causing compelling the growth of legislation in this area (Zgoba, 2004). Moreover, the emphasis becomes more punitive, increasing the amount of time offenders spend in custody, as well as increased sanctions for offenders such as notification to the community (Milloy, 2001 in Zgoba, 2004).

Cases involving child abductions, molestations and homicides “are the most vilified in the media and the criminal justice system” (Finkelhor & Ormrod, 2000 in Zgoba, 2004). They are seen as dangerous sexual predators that cannot be treated and are at high risk for reoffending (Wakefield, 2006). These beliefs are prevalent and unproven by facts and ultimately have severed as the basis to create harsh laws targeting sex offenders (Quinn, Forsyth, & Mullen-Quinn, 2004 in Wakefield, 2006). These types of cases have received national media attention causing the issues of child abduction and molestation to rise quickly to the top of the social agenda. A fear factor among parents is created and parents begin to question the safety of their own children. The publicity of cases such as Erica Pratt, Elizabeth Smart, Jacob Wetterling, Megan Kanka, Adam Walsh, Polly Klass, just to name a few, have kept the public mesmerized at both the community level and the national level (Zgoba, 2004). The intense emotion that comes from these events were influential enough to allow most to overlook the false presumptions and misperceptions generated by laws that promoted what individuals consider to be a sense of security albeit a false sense of security (Zgoba, 2004). The Jacob Wetterling Act, The Walsh Act and Megan’s Law are examples of this publicly driven child-safety legislation. These laws are easily passed because it is politically dangerous to take any stance other than to be tough on sex offenders (Wakefield, 2006).

The increased awareness, while holding some beneficial effects, gives in to some detrimental and counterproductive side effects. Much of the current legislation surrounding the registration and notification laws was created in response to the parental demand for protection of the children (Zgoba, 2004). Policies that affect the safety of children are rarely met with resistance which calls into question whether the legislation has been thoroughly researched or

should it be considered a knee jerk reaction to what the public perceives to be an emergency situation (Zgoba, 2004). Public policies for youthful sex offenders have been driven by misperceptions that have resulted in a set of ultimately flawed policies and practices that do not provide child protection or juvenile justice. These include the federal and state policies pertaining to public registration and notification (Chaffin, 2008). Placing youth on public registries creates a series of effects that result in social segregation creates barriers in areas such as employment restrictions, residency restrictions and educational restrictions (Chaffin, 2008). Consequently, permitting public warnings and notification draws attention to these juveniles setting them apart from their peers and setting them up for a lifetime of stigmatization and social exclusion during critical development period of their lives not only harming them unnecessarily but also failing to protect the community (Chaffin, 2008). In contrast, in a study conducted by Anderson and Sample (2008) of Nebraska citizens, the public's demand that legislators address their concerns and ease public fears of sex offenders were in fact addressed. They found that the notification laws required private citizens to take some personal responsibility for addressing problem behavior and required proactively accessing information and subsequent action on it (Anderson and Sample, 2008).

Permanent stigmatization and exclusion are directly opposite of the goals and policies of the juvenile justice system (Chaffin, 2008). Public notification and registration policies are unlikely to deliver real community protection and there remains little justification for these policies as applied to juveniles. Farkas and Zevits (2000) observed hostility and anger in community members who attended notifications meetings. Very few seemed willing to accept him in their neighborhood (Farkas & Zevits, 2000 in Wakefield, 2006). Levinson (2003) observed that

notification may undermine pro-social and rehabilitative efforts by offenders exacerbating the stressors that often trigger sexual offenders to relapse (as cited in Wakefield 2006).

B. Culture of Control

Over the last 30 years there has been a dramatic change in crime control and criminal justice (Garland, 2001). While the penal system is still present, their function has changed over time. The central focus of the criminal justice field has moved to punish offenders and protect society (Garland, 2001). Garland identified central changes that have occurred over the years: 1) the decline of the rehabilitative ideal; 2) the re-emergence of punitive and expressive justice; 3) changes in the emotional tone of crime policy; 4) the return of the victim; 5) public protection; 6) politicization and populism; 7) reinvention of the prison; 8) transformation of criminology; 9) expanding infrastructure of crime prevention and community safety; 10) commercialization of crime control; 11) new management styles; and 12) a perpetual sense of crisis (Garland, 2001). Increasing concerns about personal safety have contributed to a culture where policies and laws are being created to allow for incarceration of more and more offenders. Laws are passed that have become increasingly harsh and there is an imposition of control upon behaviors that were previously tolerated (Garland, 2001).

Changes to the criminal justice system were directed through attempts to address the problems where there were high crime rates and there were limitations of the criminal justice system (Garland, 2001). Politicians and administrators had a different focus in alignment with their personal goals. Politicians seeking re-election have an interest in policy responses that generate popular public support regardless of research findings or expert advice. In contrast, administrators are looking for efficiency irrespective of their political influences. They are

focused on maintaining their organization and are not so much in the eye of public scrutiny (Garland, 2001). The new focus is on the consequences of crime instead of its causes.

Garland identified a growth in concerns about victims, anti-social behavior and how public safety controls social policy. Reduction of the fear of crime has become another goal in the new criminal justice system (Garland, 2001). Victims have become a central to the mission of the criminal justice system. Victims have fought for their own rights regarding their cases, such as being allowed to deliver victim impact statements during sentencing trials (Minn.Stat.§611A). Reduction of fear of crime is another goal of the system. Individual's perception of crime plays a major role in policy decisions. Those policies are made to reduce the fear of crime regardless of their effect on crime rate (Garland, 2001). Political rhetoric and expressive action against offenders has become a means to reassure the public, to denounce crime, to demonize offenders and to legitimize the effort to remove and detain criminals (Garland, 2001).

There is a new emphasis on harm reduction and risk management, aiming to minimize criminal opportunities, enhance situational controls and channel conduct away from criminogenic situations (Garland, 2001). The offender has become secondary to establishing controls to prevent crime from occurring (Garland, 2001). These changes appear to have forged the way for the creations of the laws allowing for registration and notification of sex offenders regardless of the effects they have on deterrence and recidivism rates.

IV RECOMMENDATIONS

A. Reform in the Juvenile Court

Deciding what to do with youthful offenders involves weighing public safety, just punishment, while allowing them to develop into productive and moral citizens. As it stands, the

legislation for registration and notification as applied to juveniles departs from traditional juvenile justice and redefines juvenile court adjudication for a sexual offense as synonymous with conviction (Caldwell, Ziemke and Vitacco, 2008). The mission for juvenile courts should be to adhere to traditional goals of rehabilitation and utilize the results of studies and statistics about juvenile sex offending as the basis for proposing reforms in policies aimed at juvenile sexual offenses and juvenile sexual offenders. Understanding the children and adolescents who commit these sex offenses is critical when addressing changes to these policies.

The task of dealing with juvenile sex offenders should fall equally between prosecutors, juvenile court and treatment staff when making decisions about the prosecution and disposition of juvenile sex offenders (Zimring, 2004). The power to deal with this class of offenders should be shared by judges and prosecutors in the same manner as cases are dealt with in other serious juvenile offenses. Because of the heterogeneity of the juvenile sex offender in terms of the harm, the offender's capacities, the extent of exploitation, the role of situational pressures and the presence or absence of force or significant threat of violence makes it "one of the least appropriate categories of juvenile offenses and offenders for fixed price sentencing" (Zimring, 2004). Individual case determinations should be made for the appropriate disposition of each juvenile sex offender.

Often state statutes criminalize peer sex and consider it predatory applying sanctions such as registration and notification. Developing appropriate policies to keep the sexual relationships between young adolescents from becoming a felon in any state. The easy part of reforming juvenile court policy is distinguishing between the conduct of adolescent sexual conduct where

there is culpability because of the age of the victim or the use of force by the offender (Zimring, 2004). There is no basis for punishing youth for consensual adolescent sex.

Policies directed to first time offenders versus repeat offenders takes into consideration the studies that show most juvenile sex offenders do not repeat their sexual offenses. Allowing for a distinction in sanctions for first time offenders allows for accountability while keeping them from being falsely classified as sexually dangerous. Community interest in the personal accountability and in safety can be met if the offender remains in the community setting (Zimring, 2004).

The developmental needs of the youth should be measure against the seriousness of the offense along with the minimum disciplinary response that is required to accommodate the concerns of the court and community (Zimring, 2004). The imposition of the punishment must be done in a manner as to not affect the juveniles' ability to mature without permanent disadvantage (Zimring, 2004). Zimring (2005) proposed that we consider adolescence as a period of having a "learner's permit. He based this proposal on the idea that learning involves experimentation and the risk of making mistakes. Society has a stake in minimizing the harm from those mistakes and in helping those who have trouble learning (Zimring, 2005).

B. Modification of registration and notification laws

Sex offender experts and legal scholars stress the importance of reviewing the research about juvenile sex offenders when creating policies such as registration and notification (see e.g., Letourneau & Miner, 2005; Trivitz & Reppucci, 2002; Zimring, 2004). Most important to consider are the developmental differences between adults and juveniles, evidence of low rates of sexual recidivism, statistical evidence which suggests juveniles are not likely to continue their

sexual offending behavior into adulthood as well as the successful multi-systemic treatment programs. (Chaffin, 2008; Letourneau & Miner, 2005).

Researchers in Iowa evaluated sex offenders who were involved in the criminal justice system before the state's registration statute was enacted with sex offenders who were involved in the system after the registration statute was enacted (Adkins, Huff, & Stageberg, 2000). After a more than 4 year follow up period, no significant differences were discovered in respect to sexual recidivism (i.e., reconviction). Researchers in Washington compared the sexual recidivism rates of sex offenders "pre-enactment" and "postenactment" of the community notification legislation (Schram & Milloy, 1995). They found that there were no significant differences in recidivism between the groups after a 4.5 year follow-up.

Sex offender legislation has met much controversy and there is little empirical evidence that demonstrates these laws have any preventative or deterrent effects. There is evidence however, of the negative effects of the stigma associated with sex offender registration and notification. The social stigmatism of labeling the juvenile a sex offender may be substantial and long lasting (Letourneau and Minor, 2005 in Caldwell, 2007). The results suggest that restrictive public policies such as registration and notification of juvenile sex offenders are unlikely to substantially benefit community safety (Caldwell, 2007). Sex offender registries have detrimental effects on a juvenile offender's ability to transition successfully to adulthood (Markman, 2008). Notification laws have subjected juvenile sex offenders to become undeservedly stigmatized leading to isolation and rejection from peers, family, and other community members. The end result is the loss of some of the very support systems that could be helpful to the youth in their efforts to rehabilitate. Furthermore, there is strong statistical

evidence that the registration status at the time can increase the risk/hazard of new charges (Letourneau, et al., 2009).

Juvenile records normally are protected from public exposure and the focus is on bringing youth more in the mainstream rather than excluding them. Crime is more likely to occur when bonds with society are weakened (Chaffin, 2008). Therefore it is critical to allow juveniles the ability to develop the social ties such as school involvement, employment, stable residence, and social friendship networks (Sampson & Laub, 2005 in Chaffin, 2008). Serious stigmatization can set a course for criminal behavior as well as other problems. (Zimring, 2004). Creating appropriate policies directed solely at juveniles is critical.

States vary in the way their registration and notification laws apply to juveniles. In 2007, the Illinois' Sex Offender Registration Act eliminated the provision that required youth adjudicated with a sex offense to register on the adult, public registry when they reached the state's age of criminal responsibility (17 years). The Act also decreased the registration time for juveniles for a sex offense on the non-public, juvenile registry (from ten years to two years for a misdemeanor; and from life to five years for a felony). Under this act, juveniles are now allowed to petition the court to have their names removed from the registry after the required time period (S.B. 121/Public Act No. 95-0658, effective October 11, 2007).

Texas also allows juvenile sex offenders to petition the court to be released from registration requirements through a process known as "un-registration" (TX Art. 62.353). This requires the juvenile court to hold a hearing to weigh the protection of the public versus harm to the juvenile and the juvenile's family. The law authorizes judges to terminate registration requirements who are already registered through a process known as deregistration (TX Art. 62.353). The court

also can order a non-public registration which means registration information cannot be disclosed over the internet and can only be used by law enforcement in the course of conducting criminal investigation.

A similar process is in place in Oregon. Oregon Stat. § 181.607 allows juveniles adjudicated for a sex crime in the juvenile court the ability to petition the court and seek relief from the registration two years after the expiration of their supervised period. A court hearing is held to hear evidence in each individual case.

The Alabama legislature considered ways in which juvenile offenders were different from adult offenders when they developed specialized notification legislation for juveniles (Alabama Section 15-20-20.1). They are not required to submit to community notification but are required to participate in sex offender treatment and must register with local authorities upon release from juvenile court supervision. Prior to release of a juvenile sex offender, a risk assessment must be completed.

C. Determinates of risk for future

Undoubtedly, there will be youth that are likely to commit future sexual offense and some that pose a threat for the commission of more serious forms of juvenile sex crimes. While the rate is low, there are still those adolescents who will pose those threats. Because youth differ from adult sex offenders, treatment, supervision and other juvenile sex offender management should be developed based on a comprehensive assessment of each individual offender. Measuring the risks associated with juvenile sex offending requires creating the base expectancy rates for youth apprehended for various types of offenses (Zimring, 2004). A practical footing

can provide policymakers with a basis for creating developmentally specific policies rather than basing them on adult statistics and analogies.

Measuring the risk of juvenile recidivism is as important as is inquiring about the determinates of future danger in juvenile sex offending (Zimring, 2004). While juvenile sexual reoffending is small in comparison, they should not be ignored. Reoffending may provide evidence of sexual pathology (Zimring, 2004). Risk assessments such as the Juvenile Sex Offender Assessment Protocol-II are utilized in Wisconsin and Rhode Island to determine treatment and supervision decisions (Caldwell, Ziemke and Vitacco, 2008). The New Jersey Registration Risk Assessment Scale generates a total risk score that is matched to a category of risk that determines the tier of registration and community notification (Caldwell, Ziemke and Vitacco, 2008). Texas Department of Criminal Justice has created the Texas Juvenile Sex Offender Risk assessment Instrument that guides the Department of Corrections staff as to the extent of the community notification that is required for each offender (Texas Department of Criminal Justice, 2005 in Caldwell, Ziemke and Vitacco, 2008). Caldwell, Ziemke and Vitacco (2008) found important deficiencies with instruments and their inability to determine future risk and reoffending but noted that all of the participants in the study were assessed or treated in specialize intensive treatment program that demonstrated promising result in treating aggressive delinquents. They acknowledge the possibility that the specialized treatment reduced the risk of reoffending (Caldwell, Ziemke and Vitacco, 2008).

Predicting chronic sexual offending from juvenile behavior is more difficult because the base rate of general criminality is much higher than the officially recorded sex offending that is predicted in adulthood (Zimring, 2004). Moreover, there is less continuity of motive and

similarity of situation pressure between adolescent and adult sex offending. The only clear predictors that have been identified to date are the number of victimizations that can be tied to a youthful offender and that selection of young male targets has been linked to deviant sexual arousal but not consistently to juvenile sex recidivism (Caldwell, 2002 in Zimring, 2004). Undoubtedly, further research and studies will need to be conducted specifically on adolescent sex offenders and their future dangerousness.

D. Continuation of effective treatment programs.

Early intervention with comprehensive treatment programs has been shown to be the most successful way to address recidivism (Calley, 2008; Chaffin, 2008). Treatment interventions that have been identified as effective in treating other types of antisocial behavior in adolescents are effective in dealing with the comprehensive array of risk factors of the juvenile sex offender. Zimring (2004) identified a comprehensive list of issues that sex offender treatment should consider but determined that 80% of these factors are standard concerns that are applicable to all youth and teens and only a small handful of issues of special concern for sex offenders.

Conclusion

Juvenile sex crimes are genuine and widespread requiring serious policy considerations. Studies have shown the differences between youthful offenders and adult offenders making it inappropriate to implement policies based on data of adult offenders. Recidivism rates of juvenile sex offenders are low compared to that of the adult offender. The use of sex offender registration and notification to address the concerns of public safety must be balanced with the significant harm that accompanies public registration and notification of juvenile offenders. Modification of the laws should be done to address the uniqueness of these youthful offenders

which can only serve create a fair, just and effective public policy. The juvenile courts should remain focused on the long standing goals of the juvenile justice system to rehabilitate the juvenile offender. Comprehensive treatment focused on aspects of the juvenile delinquency coupled with reintegration into the community allows for juveniles the ability to move forward to become productive members of society.

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