Rogers, Laura

From: DCox@ESD.WA.GOV
Sent: Thursday, May 31, 2007 7:58 PM
To: GetSMART
Subject: My Opinion
Attachments: Fw When Worlds Collide.htm

It is my opinion that all of these Sex Offender laws are lumping all sex offenders into one group which is pure asininel There are different degrees of offense from first time offense to repeat offenders and the punishment should NOT be the same for first time offenders. Just take a look at the attachment to see what happened to one man that created a law that came back to haunt him. Shows that anger and good common sense do not have a thing in common. Don't label all sex offenders because I personally know people that have never, ever repeated their crime and have turned their lives over to our Lord and Savior. Be very, very careful how you ruin lives with your anger and ignorance.

Diane Cox
[redacted]

----- Original Message -----
From: Buffy
Sent: Wednesday, May 30, 2007 7:39 PM
Subject: When Worlds Collide

When Worlds Collide

http://www.americanchronicle.com/articles/viewArticle.asp?articleID=28315

Amanda Rogers
May 30, 2007

Cofucius once said, "Before you embark on a journey of revenge, dig two graves."
On February 24, 2005, 9 year old Jessica Lunsford went missing from her Florida home which she shared with her father, Mark and her grandparents. She was later found murdered, her body wrapped in garbage bags, hastily buried just a few yards from her own home. Her killer, John Evander Couey, was convicted earlier this year for the rape and murder of Jessica and has been sentenced to death. Mr. Couey was a registered sex offender with a 23 year long criminal history for a variety of offenses, from DUI, to burglary, unlawful sexual contact with a minor, and just about everything in between. He was a homeless, jobless, drug abusing wanderer with absolutely nothing left to lose. He had asked for help long before killing Jessica, but he never got it.

After his daughter's death, Mark Lunsford took to the streets demanding harsher sentences and punishments for registered sex offenders, stating "I can't get my hands on the guy that murdered my daughter so I've made it my job to make the rest of these sexual offenders and predators' lives miserable, as miserable as I can."

He quickly established the Jessica Marie Lunsford Foundation, collecting contributions to facilitate his lobbying efforts all across the country. As of this writing 30 states have now passed some version of "Jessica's Law", a law named in her memory.

Unfortunately, Mr. Lunsford was so blinded by his anger and rage that he may have inadvertently bit off his nose despite his face as his very own son now stands to suffer the wrath of the litany of ill thought out, punitive, and vengeful laws. Laws which, for the Lunsford family have now come full circle.

On May 18, 2007 Joshua D. Lunsford age 18, son of Mark Lunsford and brother of Jessica Lunsford, was arrested in Clark County Ohio on a felony charge of unlawful sexual conduct with a minor. He has been released on $5,000.00 bond. The charge stems from an incident involving his girlfriend who is 14. The legal age of consent in Ohio is 16.

Court documents reveal what countless others across the nation do, that Joshua and his girlfriend are nothing more than a modern day Romeo and Juliett. Joshua did not force himself upon this young girl, she consented (albeit illegally). It is apparent that, for whatever reason, the young girl's parents did not approve of Joshua. They warned him on numerous occasions to stay away from their daughter and had threatened that if he continued to come around they would press charges because their daughter was in fact a minor.

If convicted of the felony charge, Joshua Lunsford will not only face many years in prison, but also life as a registered sex offender. He will bear the same label as John Couey, the monster that murdered his little sister Jessica. He will also have to bear the burden and consequences of the sex offender legislation that his own father, Mark Lunsford has fought so very hard for. The road to hell is paved with good intentions. This has to be a wake up call of extreme magnitude for Mark Lunsford and my heart goes out to him. He must know that his son's life is forever ruined because he will be forced to pay the "collective" price for everyone's sex crimes, including

John Couey's, instead of simply his own. Perhaps while Mr. Lunsford still has the spotlight he can draw attention to this grave disparity in sex offender laws and punishment. While it may be too late to save little Jessica, he might still have a chance at saving his son. It would certainly be a step in the right direction and one that is long overdue.

While I don't condone or advocate teen sex, I do consider myself a realist. I have a 14 year old daughter too and can tell you first hand that teens do in fact have a sex drive and some of them do and will have sex regardless of whether or not it is legal, against their parents wishes, or what is in their best interests. This is nothing new or deviant.

Teens have been having sex since time began and in the not too distant past it would be considered more abnormal than not if a young woman reached her 18th birthday and was not married.

It is hard to believe that here in the 21st century we are still resorting to "shaming" and "collective" forms of punishment which is what registering as a sex offender is really all about, and incarcerating people for consensual activity. Lumping people together under one stereotypical label which more often than not doesn't even begin to reflect the "crime" for which one was actually guilty of is a crime in and of itself..

If convicted, Joshua will join a growing number of thousands of young men and women across the nation that bear the child molester label (i.e. Registered Sex Offender). He will have to abide by residency restrictions, and registration requirements, and may even be forced into homelessness, joblessness, and hopelessness. Why? How will doing that to him, like we have so many others before him, make our world a better or safer place? It is high time we, as Americans, pull our heads out of the sand and say enough! Don't wait until it happens to your child. Think it can't? I'll bet Mark Lunsford used to think the same thing up until a few weeks ago.

Amanda Rogers
5/29/2007

Rogers, Laura 4 wks

From: [redacted]
Sent: Thursday, July 05, 2007 4:13 PM
To: GetSMART
Subject: DocketNoOAG121

I have a concern regarding the provisions of the SORNA.

The section that deals with the "tiers" of sex offenders.
All a victim has to do is say I was forced, doesn't matter if it was true or not. That puts the offender in a "tier" III. That is registration for life. It would seem to me that a better determination, such as a psychological profile, would help to better put a person in the correct "tier". The very broad classifications are most unfair. What would happen if a sex offender, convicted of CSC 3rd degree - force, received HYTA. In our state that is Holmes Youthful Trainee Act. There is no conviction and the records are sealed. However, they still must register. Other similar cases in other states do not have to register nor do they if they received HYTA after 2004 in our state. The state should determine the length of time a person should register.

Thank you very much.

Rogers, Laura

From: Kaplan, April
nt: Friday, July 13, 2007 8:52 PM
Rogers, Laura
Subject: Fw: SORNA guidelines

SORNA comment

----- Original Message -----
From: Mary_Schuman@utp.uscourts.gov <Mary_Schuman@utp.uscourts.gov>
To: Kaplan, April
Sent: Fri Jul 13 16:08:44 2007
Subject: SORNA guidelines

I suggest the first line in which talks about TIER classification being based on "substance" and not form or terminology, be reworded so it is more clear that we are basing the tiers on conduct of the offense and not what the count of conviction may ultimately have been.

Rogers, Laura

From: [redacted]
Sent: Tuesday, June 12, 2007 3:59 PM
To: GetSMART
Subject: OAG Docket No121

I am writting to you today to express my concern that under the new SORNA you did not make it manditory that each state set up some type of Tier system to classify sex offenders. The failer to do so will lead to the watering down of the usefulness of the law. If a state includes all sex offenders under one classification system, the public has no idea of who on the SOR they should realy worry about. States such as Michigan have over 40,000 S.O.s on the SOR and it is like trying to find waldo on the old game of were in the world is waldo. Futhermore if you are truly interested in protecting the public you would require that this tier system be based on empirically determained risk to re -offend. Using a scientifically based risk assessments to determaine whether and individual should be placed on the registry and at what tier level. The way you have set it up now valuable law enforcement resources will be used to check on ex offenders who are of no danger to the pubic.

Rogers, Laura

From: [redacted]
Sent: Tuesday, June 19, 2007 3:54 PM
To: GetSMART
Subject: OAG Docket No 121

The following should be added to the SNORA. A way for a tier II to be reevaluated from a tier II to a Tier 1. If truly we are interested in protecting the public from these sex offenders then no good is shown by keeping a person at a higher Tier level then they really are. If you do that you are opening up for the courts to look at this as additional punishment and not a safety measure as the court ruling Smith V. Doe (01-729) 538 US 84 (2003) says it is set up to be.

Rogers, Laura

From: [redacted]
Sent: Wednesday, June 20, 2007 12:56 PM
To: GetSMART
Subject: OAG Docket No 121

I would like to see the following added to the law. Each state will within three (3) years of enactment of the SONRA be required to set up a tier system of placing sex offenders level of danger to the public on the public web sight. This system will include but not be limited to the following, a empirically based risk factors to show who the high risk offenders are. Tier 1 offenders will be of the least risk and the information on them will not be on the public sex offender registry. Tier 2 will be moderate risk and the states may determine if they are to be included on the public registry. Tier 3 offenders will be high risk offenders and in keeping with the reasoning for having a Sex Offender Registry, the information on this tier level offender will be mandatory on the public sex offender registry and the SONRA.

The reasoning here is that if we are looking to get those high risk offenders on the National Registry as the United States Supreme Court declared that the registry was never intended to be used as a punishment for low - risk offenders. (Smith V. Doe (01-729) 538 U.S. 84 (2003). Then removing those of low risk will be in line with what the court was saying. Furthermore if we put all levels of offenders on the registry, it will water down the usefulness of the registry in the publics mind. It will also make it harder for the public to pick out a sex offender if they live in an area that has a lot of sex offenders in it. By just having the high risk offenders on the registry that will help limit the number of faces and locations offenders live, the public will have to recall.

Rogers, Laura

From: [redacted]
Sent: Friday, June 22, 2007 9:26 AM
To: GetSMART
Subject: OAG Docket No121

V classifications of Sex Offenders.

(Small print is copyed from the OAG Docket;) For example, tier I includes a sex offender whose registration offense is not punishable by imprisonment for more than one year, a sex offender whose registration offense is the receipt or possession of child pornography, and a sex offender whoes registration offense is a sexual assault against an adult that involves sexual contact but not a completed or attempted sexual act.

Problem: If you read the above as you have written it a Tier 1 offender would include a person who is in possession of child pornography. And yet a person who is convicted of physical contact by touching trough the clothing of an adult will not be able to be classified as a Tier 1 under the SONRA as written. The reason, in some states the crime although a misdemeaner, it is punishable by more than one year in jail.

Recommendations: Adopt a tiered approach to identify **high risk** offenders founded on empirically based risk factors. This would show that the SNORA is not trying to punitive. It would also set up a system that would identify the high risk offenders, and is that not what you really want to do. Certainly you are not trying to set up a registry that has a lot of people on it just to set up a large data base.

At a minimum the way to correct this is to change the wording from any crime that is less than one year in Jail is a Tier 1; to any crime that is classified as a misdemeanor is a tier one crime.

Rogers, Laura

From: [redacted]
Sent: Thursday, June 28, 2007 1:58 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

Under the SORNA as your office has written it, the same law broken, will be a Tier1 in one state while being a Tier 2 in another state. I understand that the Tier system is not mandatory in any state however under the SORNA you are trying to standardize the sex offender registry. One way to do that would be to make any misdemeanor conviction a tier 1. As stated above if you go with the wording as you have it now, the SORNA will be inconsistent. In that in some States a misdemeanor is any crime you can get less than one year in jail for. In other states a misdemeanor includes any crime so set by the state as a misdemeanor that is punishable by two years or less in prison.

Another way this issue could be cleared up would be to go to a tiered approach to identify HIGH-RISK offenders founded on empirically based risk factors. This would go to the real meaning of the SORNA and protect the citizens form high-risk offenders. This would also let law enforcement use its resources to track the high-risk predators, instead of using law enforcements precious resources tracking low-risk offenders. This would go to the hart of the Alaska V J.Doe case, in that as ruled the sex offender registries were not intended to be punitive to low risk offenders.

Rogers, Laura

From: [redacted]
Sent: Friday, June 29, 2007 1:58 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

Sec III (2)-(4) Classifications of sex offenders. The SORNA does not require that state set up classifications of sex offenders. The SORNA should require states to set up a tiered system of classifications of sex offenders. This should be done using testing that is available and will show what danger the offender is to the public. This would assist the public and the police as to who they should be watching out for. The Tier system should be a three level system with the following. Tier I offenders being the least likely re-offend. Offenders in this tier level should not be posted on the public sex offender registry or the SORNA. Tier II would be those who tested to be of some risk to re-offend and the availability of offender information on the internet should be limited to the name, photo, location were the offender lives and all sex crimes the offender has been convicted of, and the dates of those convictions. Tier III should include those that are the most likely to re-offend and information about this tier level offender would not be limited as to what was posted on the internet about this offender. This would fill the purpose of the sex offender registry and keep the public informed of those who are a danger and the most likely to re-offend.

The Tier level should include a system that would let those in Tier II and in tier III to request retesting at the cost of the offender to be reevaluated for a tier of lower danger level to the public. Furthermore a petition process for removal form state and federal registries if they are tested and found to be of no chance of re-offending at all should be available to anyone on any tier level. No public good is done by keeping people on the registry that are of no threat to the public. And to further stigmatize and isolate low - risk or rehabilitated people, exposing them to harassment , and depriving them of the normal opportunities for education, employment, and housing. Furthermore by keeping them on registries we are wasting Law Enforcement resources tracking and monitoring these low risk or no risk offenders. Our best use of precious Law Enforcement resources would be to monitor high-risk predators. The use of a system like I am suggesting would also be more in line with the supreme courts ruling Smith V Alaska. It would also show that this Attorney General is not trying to be punitive in the rules he is issuing, but is trying to be prudent and fair.

Rogers, Laura

From: [redacted]
Sent: Monday, July 09, 2007 2:35 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

SEC.III (2) - (4) Classification of Sex Offenders. The SO Classification does not require states to classify sex offenders on a Tier System it does however lay out what it does want sex offenders classified as to how long they will have to stay on a sex offender registry. Tier I 15 years or 10 if no crimes committed Tier II 25 years on a sex offender registry with no possibility of being reclassified to a Tier I offender. Tier III life time registry required with no availability of ever being lowered to another lower tier level. And states may be harder on sex offenders because this is just the floor and their is no ceiling as to how hard or placing more restrictions on sex offenders than the floor that is required in the SONRA. IE if a person would normally fall in a Tier I status the state may instead place them in a Tier II or Tier III status because this would meet the requirement of the floor set by the SONRA of 15 years or more of registration in a Tier I.

Furthermore if one reads what the SORNA recommends a Tier I as stated in the SONRA; child pornography possession of would under the guide lines of the SONRA allow the states to place this type of conviction in a Tier I. And yet if one reads on an adult who touches another adult though clothing the victim has on; with or without force in many states is a classification of a Tier II under the SONRA as written, as in many states this is a misdemeanor that will get a person more than one year in jail. I find it very troubling that this is written this way. The SONRA should have realized that when setting up the floor for placing people on Tier levels, the best way to accomplish this would have been adopt a tiered approach to identify 'high-risk' offenders founded on empirically based risk factors. The system the SONRA is recommending will confuse the public and will identify so many low risk offenders, the public will not find that this is of any use at all. Also law enforcement will be forced to use precious resources tracking low-risk offenders rather than monitoring **high-risk predators.** The SONRA is setting up a sex offender registry that will at a minimum have over 600,000 names on it and the number of names on it is a number well top way past that point with no end in sight. So what the SONRA is asking the public to do is pick out those on the sex offender on the registry that are of the most danger to the public, without any mandatory guide lines from empirically based risk factors. So what is being asked of the public is to pick out from over 600,000 names and photos the very small number that are a real danger to them. This is like the old game of Were in the World is Waldo. In that game it was almost imposable to find waldo among a little over 1,000 photos that were alike. Given the boundary's the U.S. Attorney Generals office has set up, one has to question is the A.G. just trying to be harder on sex offenders than the next guy or is he really trying to protect the public? I will not attempt to answer that one because one only has to read the rules as written to see what the real motive is. The SNORA as written does not let a sex offender petition for a new threat level or tier level, nor does it allow for a reasoned, circumspect petition process for removal form state and federal registries. No public good is done by keeping people on the registry that are no risk or low risk to the public. The only purpose for keeping them on the registry is so that they can be continually stigmatized, isolated, harassed and depriving them of the normal opportunities for education, employment, and housing.

Rogers, Laura

From: [redacted]
Sent: Wednesday, July 11, 2007 12:01 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

The SNORA as written does not require states to set up a Tier system of any type, does require the states to follow the general guide lines of what the SNORA has determined crimes committed would then fall into a general guide line of a Tier system.

Tier I duration of required time on the SNORA is 15 years. With some possibility of being removed after (10) ten years if conditions are met. This is a very good crime prevention measure that will put the work on the sex offender not to re-offend and if they stay crime free they can be removed from the registry sooner. This is good for the public, in that the offender who reaches this goal has not committed another crime and has not cost the tax payer anymore money.

Tier II Duration of required time on the SNORA is 25 years. This level has no crime prevention measures in it. And furthermore a Tier II has no way to became a Tier I even if they do not do any more crimes. Also as by way of example the SNORA lets a sex offender who has been caught and convicted for having child pornography be classified as a Tier I offender. And yet Tier II offenders will include those who are convicted of a misdemeanor that is punishable by more than one year in jail. Many states including Michigan have misdemeanors that are punishable by more than one year in jail. CSC 4th the touching of a person by another even if the touching is done though clothing; in Michigan this is is a misdemeanor punishable by up to two years in jail. So what I am trying to say is that the SNORA is very inconsistent in how the Tier levels are arrived at.

Tier III Duration of required time on the SNORA is lifetime. This one offers no chance to have your tier level changed. This tier level has no crime prevention tools in it at all. This one will cause many sex offenders to have no hope at all, and they will decide to keep offending. In that they will have little chance of getting any employment with this classification they will re-offend. This will not be good for the victim, the public or the government. Far thinking would have you understand that by offering this group no hope at all you are setting them up to repeat crime. If you were to give this group hope as I am suggesting below, you will probably save more children and adults from being the victim of a crime.

I am suggesting that all Tier level offenders should have an opportunity to be re evaluated to a lower tier level. This should be done so that the sex offenders will have a goal to work toward, that they know if they fail not only will they have to spend time in jail, but their status of a sex offender will remain on the SNORA for a longer time frame. With what I am suggesting the SNORA will reach its goal of having those that are the most high risk predators on it. At the same time it will let law enforcement use the precious resources tracking and monitoring high risk offenders and not wasting those resources on low risk offenders.

The above can be done in a number of ways but the best would be to use a testing system that identifies individuals based on empirically based risk factors. After which the offender is placed on the tier which best shows their risk factor.

This system would cut down on the numbers of sex offenders that would be on the SNORA, but after all

is said and done is not the idea of the SNORA to protect the public from those that are at the most risk to re-offend. No public good is served by keeping a lot of people on the SNORA that are low risk or rehabilitated people, and just being stigmatized, harassed, and depriving them of normal opportunities for education, employment, and housing.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Thursday, July 26, 2007 3:44 PM
To: Rosengarten, Clark
Subject: FW: OAG Docket No 121

From: Tim Poxson [redacted]
Sent: Wednesday, July 25, 2007 1:05 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

The SORNA as written did not include any way for a person who is in a higher tier level (II) or (III) to be assessed to a lower level. Placement on the SORNA is offense based even when a tier approach is used by a state. It is not based on te facts of the case or an emmpirically determainded risk to re-offend. Even if the sex offender has participated in, and successfully completed, sex offender treatment programs. Some sex offenders have also undergone risk assessments and determained to be low or no risk for re-offending, but will still be required to abide by the SORNA rules of placement on a tier level based on SORNA. Many states have been using scientifically based risk assessment to determine whether an individual should be place on the states registry or at what risk level. The SORNA will undo ıis, and force each state to use an out dated system that does not prove what risk a sex offender is. Some tier I (crime based) sex offenders may be more of a risk than some tier III (crime based) sex offenders. If the goal of the SORNA (ADAM WALSH ACT) is to protect the public from known sex offenders, all efforts should be made to identify which ones are the most risk to re-offend.

Rogers, Laura recid

From: JERRY BEAL [redacted]

Sent: Wednesday, July 25, 2007 4:42 PM

To: GetSMART

Subject: You're making a big mistake!

I have studied for over 20 years, something that TRADITIONAL psychology hasn't been studying at all. I have made myself an expert on this subject.

Non violent sex offenders are being prosecuted with no "causation" proven in the trials... as a matter of fact! And it would be on thing if this only had to do with the supposed perpetrator... buy way worse is the robbing of young minds and young emotions of their own personal truth and power. You're doing just that in coming from the premise... "the event or events or the adult person in the event or events with a youth causes the mental and emotional anguish the youth is having."

It's not! It's coming from the youth's own IMPOSED definitions and meanings, in the form of a mind context, that turns 'what happened' to a judgment ABOUT what happened. An ancient noted Roman philosopher named Epictetus said clear back in the year, 101AD... "People's minds are not disturbed by events, but by their [own] judgments ON events." I say the same thing this way... "Conditions and events often affect bodies, but conditions and events never affect our mental or emotional state of mind. Only our own beliefs and interpretations ABOUT the conditions and events are giving us our feelings and our experiences and nothing else is."

What's really happening with all of this is that we're using our own beliefs and interpretations to gain our feelings, one way or the other, and then we're blaming a condition or event for what our own interpretations are causing. This is called, "trouble making" and you're right in the middle of all of this nonsense!

Listen here... I can prove to you, that non violent sexual activities, performed by anyone with any other one... where there is no bodily harm done, does not matter at all... because it can't matter at all. You're saying that "it" matters. "It" doesn't matter, because "it" can't matter. It's our own interpretations that SEEM to make it matter, but then we're ignoring our own interpretations completely, as having anything to do with our feelings and experiences, and then we're blaming the symbol, the condition, the activity for what our own interpretations are causing.

'Do-gooder people' like those that rush to the scene of a youth being sexual with an adult and cry foul... and way much more. How else then is the youth able to experience their own personal truth and power that PROVES... "I create or mis-create all of my feelings and all of my experiences and all of the time."

YOU ARE BEING FLAGRANTLY WRONG WITH ALL OF THIS!!!! And yet you're the "justice" system. Stop lying to these little ones, please! Stop blocking and start helping these young mind and young emotions... please!

You are really making a mess of things with these lies... "events cause feelings and experiences"... when they don't and can't. I have a written manuscript with 56 short chapters to it that explains much more about this horrible thought reversal problem that virtually everyone on earth is unconsciously conspired in. I also have a website at www.eventsdontcauseexperiences.ws

ps... **Here's proof you're making a terrible mistake!**... It's never what someone else did to you, that's bothering you now. And if the deed was done 10 years ago or 10 seconds ago, it's still the same thing. It's never what someone else did to you, that's bothering you now. Instead, its what you're doing to them, that's bothering you now. And what is it that you're doing to them, where you're thinking of it as some way they've victimized you? Right now, in your own mind, and at your own choosing, you giving them a role of perpetrator and you're giving yourself

a role of victim and then you're experiencing your feelings based on your own CHOSEN mind scenario, **and that's based in the false idea, that the event caused the experience.** Meanwhile you're leaving out entirely, your own interpretation, has having anything to do with your experience. How dishonest and irresponsible is that!? It's very dishonest and irresponsible.

Please... please... please reply to this email. I have tried over a hundred times to get traditional psychology to deal with this greatest social blunder, which is also traditional psychology's fundamental flaw. Please surprise me and reply to this! But way more... **please stop lying to young minds and young emotions.** Please stop robbing them of their own personal truth and power... please!!

Rogers, Laura recid

From: [redacted]
Sent: Sunday, July 08, 2007 9:10 AM
To: GetSMART
Subject: Feedback re: proposed SNORA

To whom it may concern,

I applaud your efforts to continue working towards the protection of children. However, I have many concerns about the proposed SNORA. First, I'd like to know what evidence you have suggesting that monitoring sex offenders and requiring registration is effective at reducing the number of sex offenses being committed. The USDoJ reported that 94% of sex crimes are being committed by people not on the sex offender registry. In my humble opinion, knowing this means to me that the government should be spending tax payers money not on developing means for monitoring those who've already been convicted but on preventing new sex crimes. Also, is it not a violation of Civil Rights to those who've been charged, convicted and done their time to change their sentence by forcing them to now give their DNA and change their registration requirements? What kinds of problems with identity theft will ensue if you make their Social Security numbers public? Also, what is the purpose of posting their criminal histories? The justice system in the United States is supposed to be based on rehabilitation. Where is the plan for treatment of sex offenders in SNORA?

One of the problems occurring as a result of the Sex Offender Registries is that communities in which a sex offender lives are in states of mass hysteria. They think that their neighbor now is hiding in the bushes waiting to attack and kill their child. Where is the plan for public education about the facts related to sex offenders (i.e., the 5.3% recidivism rate, the education to curb the myth of "stranger danger"; the fact that at least 90% of sex offenses against children are committed by family members, etc)?

I believe this proposal is going way too far and a complete waste of tax payer money and a violation of the Civil Rights of those who are registered sex offenders. I absoluetly do not support this at all.

Rogers, Laura

recidivism

From: [redacted]

Sent: Wednesday, May 30, 2007 8:55 PM

To: GetSMART

Cc: [redacted]

Subject: Docket No. OAG 121

My comments regarding the proposed registration:

I have spent 23 of my 30 years as a therapist practicing in the subspecialty field of sexual abuse.

I'm one of the founders, and past president of the Montana Sex Offender Treatment Association from cities (in 1987). Our recidivism rates have consistently been 2% and under for decades. (Less than 1% for low-risk sex offenders)

I'm also a specialist in the treatment of sexual abuse victims.

I think registration of TRUE PREDATORS is a good idea.

Though we all share protective and emotional reactions to children being sexually abused -- (almost all my and my colleagues' work is motivated by the purpose of preventing further victims) -- this idea of registering people is an example of a law based on fear, not facts.

Emotional reactivity creates very poor policy. This proposal represents an unfortunate example of such policy.

UNFORTUNATELY, the Adam Walsh act is crafted in a way that predator is defined by the age of the victim, which in my clinical experience, appears to be more closely related to win a sex offender was abused in some way -- often sexually. This has implications for registration.

The age of the victim is not correlated in the research to risk to reoffend, so I cannot support a law that will create more victims than it will prevent. Offenders will go underground.

Registration of low and moderate risk sex offenders create a force whose impact will be to INCREASE recidivism. This statement is based on lots of research that provides evidence that increasing isolation, and decreasing access to positive based support people, housing, and jobs, etc. will have the exact opposite effect that I trust you intend.

Research demonstrates that 93% of sex offenders **know their victims** and their families. **They don't molest strangers.**

I have yet to have anyone explain to me how registering a low or moderate risk sex offender has ever prevented a sex offense. What these rules actually do is reinforce untrue myths about the danger of sex offenders, **unnecessarily scaring the public.**

Putting their pictures ensures increased vigilante action -- not just towards them, but victimizing their children and relatives.

This is even worse idea for adolescents.

'andating evidence based evaluations that separate sex offenders by risk level, and then using the justice stem to create an external control towards breaking any remaining denial in the low and moderate risk sex offenders has been a very rewarding experience. It would also be a much more effective way to spend taxpayer money.

With good evaluations, the decision to register a person should be based on scientific evidence that supports the possibility of victim prevention. This would pretty much limit registration to the highest risk sex offenders, and since treatment can work with many of them, there should also be a mechanism that reflects the lowering of their risk IF they respond positively to treatment.

Accurate education about the Bureau of Justice statistics on sex offenders released and is there recidivism rates (which are very low) should also accompany any registry.

Rather than play on fear, how about educating the public about what incredibly positive and effective results come from a good partnership between probation and specialized treatment providers, who have combined the best of the chemical dependency, law enforcement (polygraph use), and mental health therapy fields, have accomplished?

Wouldn't that be something?

We could register true predators, treat the majority of sex offenders who are low and moderate risk that their own expense and the community, (instead of at taxpayer expense), and create a society consistent with the redemption and accountability values that I believe most people actually have -- all while saving money!

Andy Hudak LCPC
[redacted]

Rosengarten, Clark assesmt tools

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, July 23, 2007 1:01 PM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121 (Submitted by Kelly Ward for Larry Michael Francis)
Attachments: Docket OAG 121.doc

From: Kelly Ward [redacted]
Sent: Sunday, July 22, 2007 3:15 PM
To: GetSMART
Cc: [redacted]
Subject: Docket No. OAG 121 (Submitted by Kelly Ward for Larry Michael Francis)

July 18, 2007

Docket No. OAG 121

Public Comment on Sex Offender Registration and Notification Act
aka: Adam Walsh Act's Sex Offender Registration and Notification
or SORNA, for short

Specifically these comments refer to the National Guidelines for Sex Offender Registration and Notification which were posted May 30, 2007, in the Federal Register. Comments must be received by August 1, 2007. The Adam Walsh Act was passed July 27, 2006, which gave the states a deadline of July 27, 2007, to implement the Walsh Act in order to maintain federal law enforcement funding. Some states, in a panic to keep in favor with the Washington politicians, have gone forward with their own interpretation of the Walsh legislation, guessing at what they believe could be the final government guidelines. Any guidelines which impinge on inalienable rights must, whether federal or state, also provide recourse and remedy, including due process for defense (for example when mitigating circumstances exist or when sex offenders have been restored through treatment and no longer pose a risk to society) and equal protection (to insure that a low risk or no significant risk offender is not categorized or stereotyped with high risk or violent offenders).

The Guidelines Must Be In Keeping With The Nature of The Act

Clearly, the nature of the Act, also conveyed by the common name of the Act, is to protect our children from sexual predators. Since there seems to be a mean-spirited segment of the government that wishes to see persons with sex offenses punished, shamed and banished as long as possible, and seeks to

find another way to cause further anguish to sex offenders' lives; then surely there must be substantial evidence that these guidelines will actually protect our children, and the evidence does not show that. Historically rather there is evidence that registration and notification provides a source of information for discrimination, stigmatism, and vigilante-based attacks against offenders, regardless of their risk factors, rehabilitation, recovery, restoration, or even the actual crime (sometimes just a failure to appear in court). Perhaps the worst problem with the guidelines is that the dangerous sex offenders are driven underground and farther away from preventative treatment.

Sex offenses are deviant behaviors, but just like most other crimes the deviant behavior is a learned behavior. Just like any other learned behavior, that behavior can be retrained, re-learned, and modified through treatment. Some sex offenders, such as true-incest offenders, only have a 5% recidivism risk in the first year after discovery, and for them the risk drops to 0% after the first year, even without treatment. The behavioral modification curve shows that the recovery and restoration process for a sex offender is like any other treatment process and that the offender is finally returned to a normal state. The Guidelines allow only for a continual registration, perhaps for a lifetime, that does not take restoration into account. There are even cases where a statutory offender is now married to his "victim-girlfriend" and should be able to live a normal life without interference by government. If the guidelines adhered to the nature of the Act, then there would be provisions within them to exclude certain offenders from the initial registration, and to remove offenders from the requirement once they have met treatment benchmarks of recovery.

There are tools available to forensic psychologists to assess risk to our children based on a clinical evaluation. The guidelines should consider these assessments over a strict determination made by mean-spirited governmental agencies or vigilante groups. Simply put, if a sex offender's behavior is controlled, then they are not a threat.

Respectfully Submitted,
Larry Michael Francis, Commentor
[redacted]

Rogers, Laura

From: [redacted]
Sent: Monday, June 25, 2007 1:50 PM
To: GetSMART; christine_leonard@judiciary-dem.senate.gov
Subject: OAG Docket No 121

In that the Adam Walsh act (SNORA) will become law within a few years in all states. And in that the U.S. A.G. is the official rule maker of how this law will be applied. Also in that the U. S. Dept. of Justice Bureau of Justice Statistics on Recidivism is the official keeper of the records on recidivism for the U.S. government. I am suggesting that in the disclaimer and the part that every citizen that is checking a sex offender registry have to read and check a box that they have read it. That the statistics that the U.S. Dept. of Justice has on recidivism of sex offenders be posted on the opening pages of any sex offender registry in the U.S. A. That also must be checked that the person opening the sex offender registry has read it and understands it. And that a link to the U. S. Dept. of Justice Bureau of Justice web sight also should be posted. The web sight is as follows:
http://www.ojp.usdoj.gov/bjs/pub/press/rsorp94pr.htm

Reason: I am suggesting that this be added in that would help cut down on the wrong ideas about sex offenders, that they are all going to repeat a sex crime. Also it would cut down on the vigilante effects that present sex offender registry's are having on people posted on the registry. Given that the official department of the government puts sex offenders that may re-offend within 3 years of release from prison at 5.3% charged with a sex crime and 3.5% of them reconvicted of a sex crime. In that this is one of the lowest recidivism rates for all criminals with the exception of those criminals that have committed murder. It should be incumbent on the government that is requiring Sex Offender Registries, to also put out the official numbers on recidivism so help educate the public. Furthermore this will assist with the public not thinking that they are safe fully if they know were all sex offenders are. The governments own numbers show that over 90% of all sexual assaults are committed by a person well known and trusted by the victim, be that victim an adult or child, with over 50% of those being a family member. So it is important to the public and in the best interest of the government to require that all the official facts be placed on all sex offender registries within the United States. Thank You

Rogers, Laura

From: [redacted]
Sent: Tuesday, June 26, 2007 12:08 PM
To: GetSMART
Cc: christine_leonard@40judiciary-dem.senate.gov
Subject: OAG Docket No 121

I am writing to you today about the rules that the AG's office has issued on the Adam Walsh act. I find that they are missing some very important points. The reasoning behind the SONRA is to identify sex offenders who are at high risk to re- offend. If that is the case and you are not just trying to punish offenders further, the SNORA should provide a reasoned, circumspect petition process for removal from the SNORA and state registries. A provision is needed to allow registered individuals, identified empirically as a low - risk to the community, the opportunity to petition for release fro the registry. No public good is served by stigmatizing and isolating low - risk or rehabilitated people, exposing them to harassment, and depriving them of the normal opportunities for education, employment, and housing. By leaving these low - risk offenders on the registry we are also making it harder for the public to locate which offenders are high risk and require special watching. Furthermore it goes against the original Supreme court ruling (Smith v Doe) that said that sex offender registries are not meant as punishment and should be used to protect the public from high risk offenders.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Thursday, July 26, 2007 3:40 PM
To: Rosengarten, Clark
Subject: FW: OAg Docket No 121

From: Tim Poxson [redacted]
Sent: Tuesday, July 24, 2007 1:08 PM
To: GetSMART
Cc: christine_leonard@judiciary-dem.senate.gov
Subject: OAg Docket No 121

The SORNA should include a requirement that each state have an opening page to the sex offender registry that as the reader signs off they will comply with the terms and conditions of use of the sex offender registry, and before doing the check off the reader is given some educational facts with directions to the web pages that support the educational facts on sex offenders. One such fact that should be included is that the US Dept. Of Justice Bureau of Justice Statistics on Recidivism says that " within three years of release from prison sex offenders 3.5% of them will be reconvicted of another sex crime. " This information needs to be included so the public gets some more of the facts known to the government. If sex offender registries fail to include this type of information the public is given the false idea that if they know who and were all sex offenders are, they and their family's will be safe from sexual assaults. Given that the governments own statistics show that over 90% of sexual assaults are committed by a person well known and trusted by the victim, and over 50% of sexual assaults are done by a family member, to give the public the false idea that knowing were all sexual offenders are will protect them is not good public policy. The full picture should be painted so the public does not move forward with a false sense of security.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Tuesday, July 31, 2007 10:59 AM
Rosengarten, Clark; Rogers, Laura; Kaplan, April
Subject: FW: OAG Docket No. 121 Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification ACT (SORNA) regarding adults

Attachments: 20121-Home Office-Review of the protection of children from sex offenders.pdf; Shajnfeld, A. & Krueger, R-Non-Puntive Responses to Sex Offending copy.pdf; Z-Los Angeles Times- The new American witch hunt.pdf; Static-99-coding-Rule#80763.pdf


20121-Home ffice-Review of th..


Shajnfeld, A. & Krueger, R-Non...


Z-Los Angeles Times- The new A...


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-----Original Message-----
From: Richard B. Krueger, M.D. [redacted]
Sent: Monday, July 30, 2007 7:27 PM
To: GetSMART
Cc: Alisa Klein; Meg Kaplan
Subject: Re: OAG Docket No. 121 Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification ACT (SORNA) regarding adults

Dear Ms. Rogers:

A colleague pointed out that there was an editing issue with my recent e-mail to you, so please find my re-edited comments below:

I writing to offer some broad commentary on the proposed guidelines.

I have done research on and evaluated and treated adult sex offenders for 20 years.

I have evaluated several hundred offenders arrested for crimes against children using the Internet and/or involving child pornography obtained via the Internet. Additionally, I have performed risk assessments on hundreds of sex offenders for the State of New York.

Broadly speaking, I support a system of registration and tracking of individuals convicted of sex offenses who are at substantial risk of reoffense. The proposed federal guidelines are analogous to the current system of national registration of physicians who have had malpractice or disciplinary actions against them, and who, before the creation of a national physician database, could pick up and move to another state. This has ended with the national database.

I am concerned, however, that the proposed guidelines go too far in terms of public notification and in the removal incentive for individuals to not reoffend.

I am appending an article which I co-authored on the so-called "non-punative" aspects of sex offender sentencing and an op-ed that I was asked to write for the Los Angeles Times, which questions the logic of including offenders in public notification using the Internet whose only crime has been the possession of child pornography.

Additionally I am including a report that was just released by Great Britain's Home Office which examined the system of community notification existent in the United States, and concluded that a system of controlled disclosure made more sense for Britain, because public disclosure in the United States had actually been counterproductive, resulting in homelessness and authorities losing track of sex offenders.

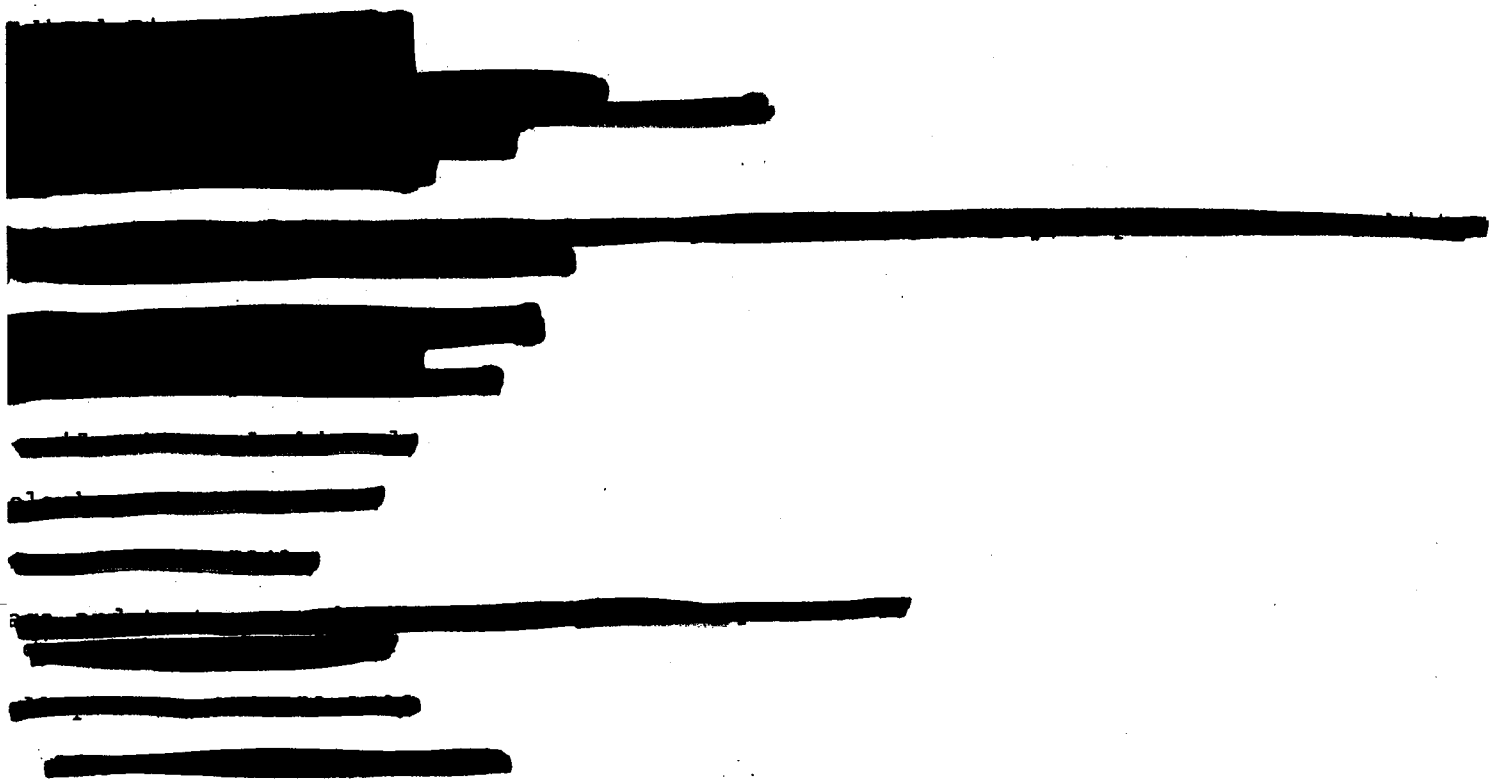
I would also suggest that better discrimination of sentencing and conditions of probation in the community should be developed which would take into account an individual's risk of sexual reoffense utilizing modern actuarial instruments developed to assess risk, and I

anada routinely, and now in New York State.

hank you for your consideration of my commentary

cerely,

ard B. Krueger, M.D.



. DO NOT EVEN IN THE LEAST KNOW THE FINAL CAUSE OF SEXUALITY. THE WHOLE SUBJECT IS IDDEN IN DARKNESS--CHARLES DARWIN 1862.

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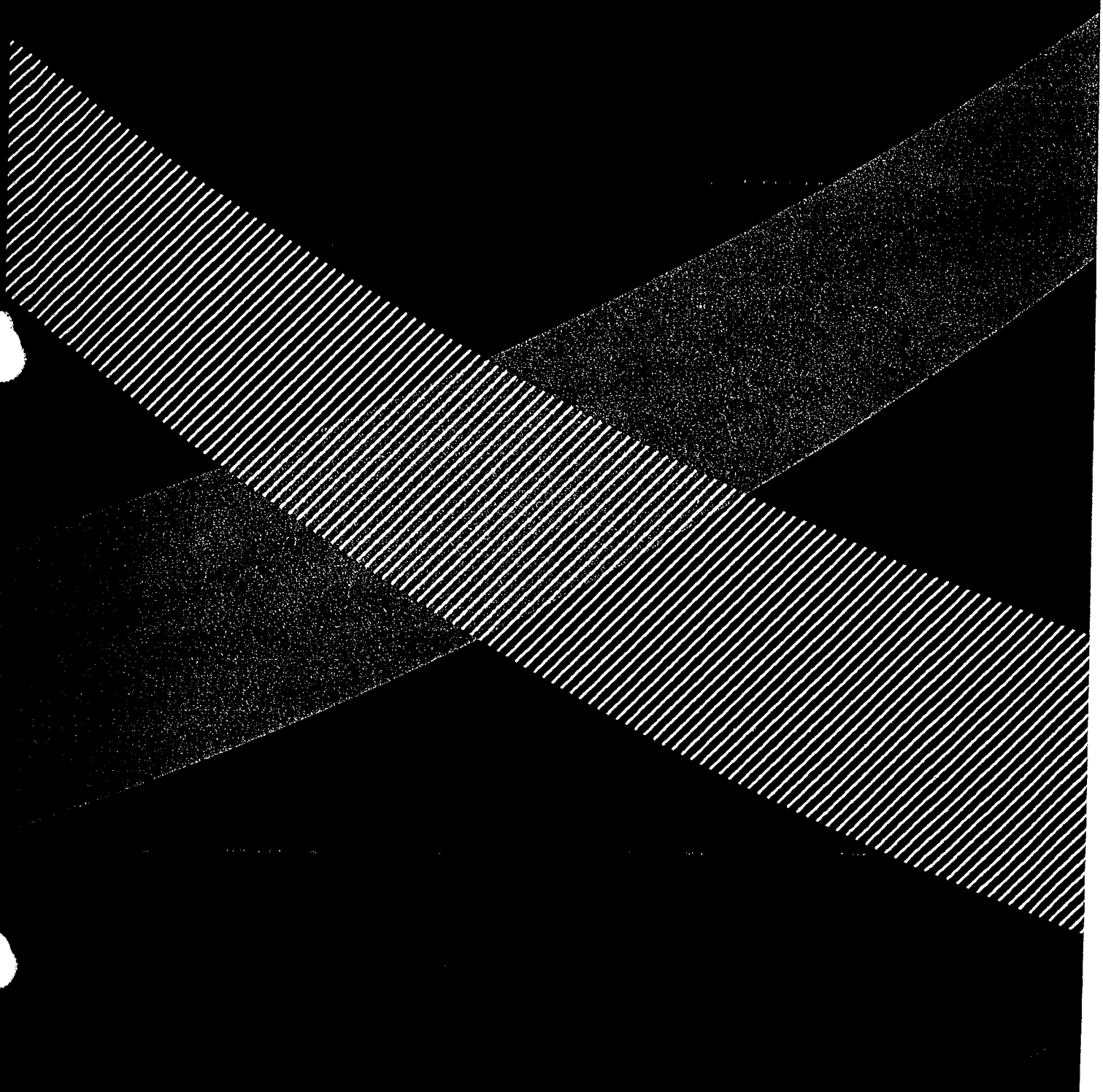
REVIEW OF THE PROTECTION OF CHILDREN FROM SEX OFFENDERS

Home Office



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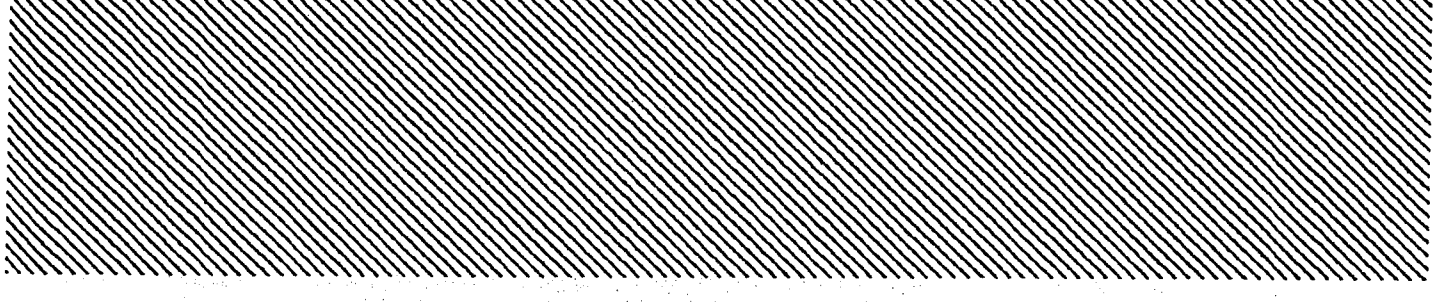


Ministerial foreword

The protection of our children is of the greatest importance to all of us. There are few crimes more damaging, more emotive and more sensitive than sexual offences against children. The impact of these offences on the victims and their families is devastating. The public deserves to be protected from these offenders, by keeping them in prison while they pose too great a risk to be released, and by effectively managing and monitoring those who are released into the community. We should be ready to use the most up-to-date methods and technology to help us achieve this.

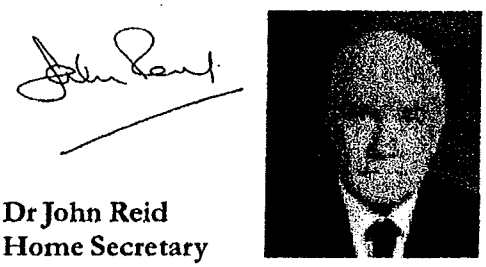
We have done a lot in recent years to improve public protection. Sex offenders must register with the police, they are visited in their homes, and if they break the rules they are sent back to prison. We have developed treatment shown to be effective in preventing re-offending. There are over 100 approved premises where high-risk offenders are closely supervised.

But while these measures have greatly increased public protection from sex offenders, I believe we can still do much more, and so in June last year I called for a review of the management of child sex offenders. This review has been a careful examination of where improvements in public protection can be made, to give greater reassurance to the public by creating a safer environment.

As Home Secretary, public protection is my priority. As part of the review, we have looked at how other countries operate. Although we have found that we are one of the leading countries in the management of sex offenders, I still want to see a process of continual improvement.

The proposals set out in this review will lead to short, medium and long-term improvements in how we protect children from sex offenders. They range from strengthening guidance and bringing in new laws, to providing more information about convicted child sex offenders to the public. We have consulted closely with police, childcare agencies and victims' organisations, and listening to stakeholders has been vital to the review. I want to see that continue through the national stakeholder advisory group for sexual violence and abuse. It is important that these views are heard as we begin to implement the actions in this report.

The Government and authorities have a vital role in managing offenders, but as parents, grandparents and carers, we all have a stake in protecting children and an important role to play.



Dr John Reid
Home Secretary

Executive summary

In June 2006, the Home Secretary commissioned a comprehensive review of child sex offenders and protecting the public.

The review has carefully explored how we can improve child protection and provide greater reassurance to the public on the management of these offenders. The test of any proposal in this area should be whether its introduction would enhance the protection of children.

To inform the process there have been extensive discussions with organisations with a stake in child protection, such as the National Society for the Prevention of Cruelty to Children (NSPCC) and Barnardo's. The views of police and probation professionals working on the front line have also been sought, and international comparisons have been carried out on approaches to sex offender management. This process of consultation will continue through the national stakeholder advisory group for sexual violence and abuse.

This document sets out our plans to improve the way we protect our children. The main actions are listed below:

GREATER RIGHTS AND MORE INFORMATION FOR THE PUBLIC

- We will strengthen the multi-agency system (Multi-Agency Public Protection Arrangements – MAPPA) that manages offenders and apply good practice more consistently, and we will seek to improve public awareness of how we manage known sex offenders.
- There will be a duty on MAPPA authorities (including the police and probation services) to consider the disclosure of information on offenders in every case.
- We will pilot a new process whereby certain people can register with the police their child protection interest in a named individual. Where this individual is a known child sex offender, there will be a duty on the police to consider disclosure. In all instances, general guidance on child protection will be provided in response to enquiries about offenders.

NEXT STEPS

- We will change the law so that we will be able to require registered sex offenders to notify the police of any foreign travel, whether anyone under 18 is living at their registered address, e-mail addresses and their passport and bank account details.
- We will optimise use of the latest technology in the management of offenders, including trialling the use of mandatory polygraph tests (lie detectors), and we will review the use of satellite tagging and tracking.
- We will maximise the number of offenders treated and the effectiveness of that treatment.
- Restrictions on placing child sex offenders in approved premises immediately adjacent to schools and nurseries will continue.
- We will develop national standards for MAPPA and ensure each area has strong central co-ordination and administration. There will also be greater MAPPA engagement with the community, and a central point of contact for the public.
- We will establish a defined and consistent role for MAPPA lay advisers, which will include increasing public awareness.
- There will be compulsory programmes of activity for offenders residing at approved premises, and there will be a standard set of core rules of residence.

Introduction

In June 2006, the Home Secretary commissioned a comprehensive review of the arrangements for protecting children from sex offenders. The review considered the way in which the risks presented by child sex offenders in the community are managed, including the amount of information about child sex offenders that is disclosed to the public.

There have always been child sex offenders, and we know that they are present in every community around the world. These offences cause enormous anxiety and trauma because the victims, the children, are vulnerable and unable to protect themselves. As parents and carers, we want to protect a child's innocence, which is immensely precious to us.

To prevent these offences from occurring, we need to manage offenders effectively and be alert to the risks. Child sex offenders do not all fall into the same category. There is a wide range of offending activity, some of which involves physical contact and some of which does not (for example internet offences). But all of these are serious crimes. Of the offenders themselves, we know that about 30 per cent are aged under 18,[1] approximately 99 per cent are male,[2] and at least 75 per cent are known to their victims as either a relative or a family friend.[3]

In recent years we have learnt more about child sex offending and have begun to talk more openly about it, although it is still a greatly under-reported crime. We need to do more to encourage victims to break the taboo and speak out. Research shows that 72 per cent of sexually abused children do not tell anyone about what has happened at the time, and that 31 per cent still have not told anyone by early adulthood.[4]

In addition, we have developed increasingly sophisticated systems for managing offenders and protecting children. The UK is now considered to have a better management system than most other countries. Although we will never be able to build an entirely risk-free environment, it is our aim to do everything we can to minimise the risk to children.

In carrying out this review, the Home Office has looked at every aspect of how child sex offenders are managed, and has explored how the systems and arrangements in place might be improved. As well as working closely with other government departments and police and probation service professionals, we have sought the opinions and expertise of a wide range of non-governmental organisations and lobby groups representing children and victims of sexual abuse, and offenders. These include organisations such as the NSPCC, Barnardo's and Stop it Now!

We have looked at practice in other countries to see whether any elements might enhance child protection in the UK, including detailed research and a conference with colleagues from a number of EU states. We have also visited the United States to investigate how 'Megan's Law' is working and what impact it has had on child protection. 'Megan's Law' allows communities direct, uncontrolled access to information on offenders, mainly through websites.

We have been in discussion with colleagues in the Department of Health and the Department for Education and Skills, as well as in Scotland and Northern Ireland. Close discussion will continue across government when it comes to implementing the proposals in this report.

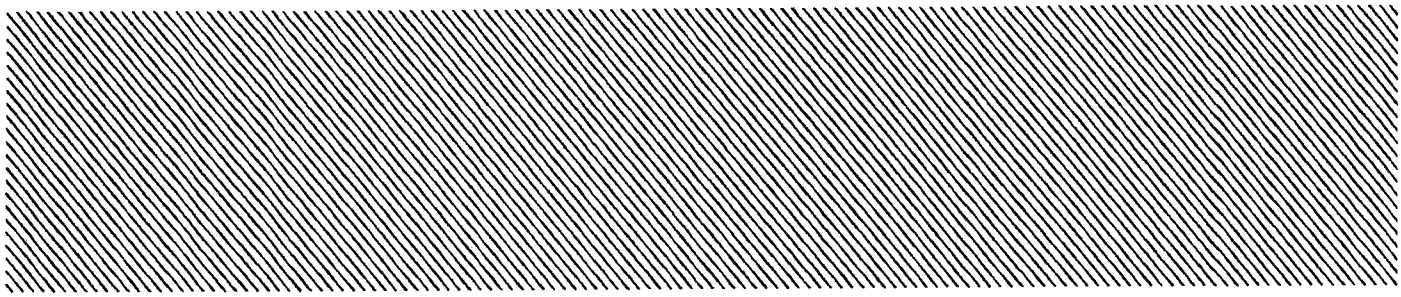
The principal aim of all the actions in this report is to provide greater child protection. This may be achieved through reducing re-offending by known offenders, preventing initial offending, and identifying where offences are taking place by increasing people's confidence to report them.

[1] Fisher, D and Beech, A, Adult Male Sex Offenders in Kemshall, H and Melvor, G (eds), *Managing Sex Offender Risk* (pp 25–47), Research Highlights in Social Work 46, Jessica Kingsley Publishers, London, 2004.

[2] *Offender management caseload statistics 2005*, Home Office Statistical Bulletin 18/06, Research, Development and Statistics, National Offender Management Service, 2006.

[3] Grubin, D, *Sex offending against children: Understanding the risk*, Police Research Series Paper 99, Home Office, 1998.

[4] *Key child protection statistics: sexual abuse*, NSPCC, March 2006.



This report identifies three parties that need to be addressed in order to achieve greater child protection:

- **the public** – who protect the children in their care and are in a position to prevent harm and to work with the authorities to expose offending where it is taking place. It is important that parents and carers are equipped with the information and understanding needed to protect children;
- **offenders** and those concerned about their sexual behaviour – who in addition to punishment need to understand the gravity of their actions, accept responsibility for what they have done, and undergo treatment as well as legal controls over their future behaviour where necessary; and
- **the authorities** – who can further improve the management of known offenders through ensuring the provision of effective monitoring and housing. **Technology** can play an important role in enabling the authorities to improve the monitoring of sex offenders.

The focus of this review is on how child sex offenders are managed and how sexual offending against children can be prevented. For this reason, it does not directly address victim support. However, support for victims is, of course, a vitally important part of the response to child sex offending, and the Home Office is taking forward a range of work to improve services for victims. Over the last three years, the Home Office has supported services by, for example:

- extending the network of Sexual Assault Referral Centres – this work will continue into 2007/08;
- supporting voluntary sector counselling services for victims of sexual violence through the Victims Fund; and
- funding, training and evaluating independent sexual violence advisers, who provide advocacy and support to victims delivered by a number of different agencies.

The report refers on many occasions to child sex offenders. For the avoidance of any confusion, that wording refers to people who commit sex offences against children, not to young sex offenders. However, sex offences committed by young people are also a significant problem addressed in this report.

Background – what has been done so far?

Serious child sex offenders should be in custody for as long as they present a severe risk to the public. Those offenders who present a sufficiently lowered risk to be released safely should be effectively monitored and managed in the community. If their risk levels increase, tough enforcement should be in place to return them to prison to prevent them committing a further offence.

Over the last decade, the Government has made a number of significant improvements to the systems that protect the public from child sex offenders (see page 8 for a summary). These new measures have moved us from a system where there were no formalised arrangements for managing child sex offenders when they were released from prison, to one that is regarded as among the most effective in the world.

Offenders are managed under multi-agency arrangements, known as Multi-Agency Public Protection Arrangements, primarily involving the police, probation and prison services. Sentences can be served both in prison and on licence in the community, and any prison sentence of 12 months or more will involve a period of both. Release from the custodial part of the sentence is either at a point specified by law or decided by the independent Parole Board. Offenders serving life sentences, or one of the new indeterminate sentences we have introduced for dangerous offenders, will not be released until the Parole Board considers it safe to do so.

When an offender is serving part of a sentence on licence in the community, they are supervised by the probation service and must comply with a range of conditions designed to support rehabilitation and reduce the risk of re-offending. These may, for example, include requirements to attend treatment courses, to reside at a hostel, not to have contact with children or not to enter a particular area. If an offender breaches any of the conditions of their licence, or takes any action that increases their risk of re-offending, they may be recalled to prison for the remainder of their sentence.

Notification requirements provide the authorities with an additional means to continue protecting the public from sex offenders after they have completed their sentence. The Sex Offenders' Register requires offenders to provide details of their whereabouts to the police on a regular basis once they are out of prison. This helps the authorities keep track of sex offenders and effectively monitor their risk.

Some offenders may also be subject to a Sexual Offences Prevention Order, which prohibits certain activities, for example going near schools or playgrounds. There are also robust systems in place for vetting people seeking to work with children and barring all those who have convictions for sex offences from doing so.

Figures show that re-conviction among sex offenders is low (less than 0.5 per cent of medium to high-risk managed offenders committed serious further offences last year). But we recognise there is no room for complacency as reporting is low – any child sex offence has a terrible impact on the victim, their family and the wider community. The public is understandably concerned about every child sex offender and the risk they may pose when released from prison. Although a comprehensive set of arrangements exists, we recognise that this is not a perfect system and can be improved.

Strengthening public protection: recent changes

- The **Sex Offenders' Register** was established under the Sex Offenders Act 1997 and is an invaluable way for the police to keep track of the whereabouts of known offenders. The Association of Chief Police Officers has assessed compliance with the requirements by sex offenders as 97 per cent.
- Established by the Criminal Justice and Court Services Act 2000, **Multi-Agency Public Protection Arrangements (MAPPA)** place a legal duty on the relevant authorities to work in partnership and share information to manage high-risk offenders in the community. The level of public protection from such offenders has increased considerably, and the number of serious further offences committed by MAPPA-managed offenders is very low.
- The Criminal Justice Act 2003 introduced sentences to protect the public from dangerous violent or sex offenders:
  - **Extended sentences** – offenders will serve the usual term in prison but will have an extended licence period of up to eight years.
  - **Indeterminate public protection sentences** – offenders will not be released until their level of risk is manageable in the community. They will then be on licence for a minimum of 10 years and must apply again to the Parole Board for their licence to be removed.
- The Sexual Offences Act 2003 introduced the **Sexual Offences Prevention Order (SOPO)**, which can impose prohibitions on sex offenders who pose a risk of serious sexual harm. For example, a SOPO could be used to prohibit an offender from being alone with children under 16. It is a criminal offence to breach these prohibitions, punishable by up to five years' imprisonment. The Act also introduced Risk of Sexual Harm Orders, restricting those who have not committed sex offences but are at risk of doing so, and Foreign Travel Orders banning travel abroad.
- **Local Safeguarding Children Boards (LSCBs)** were established by the Children Act 2004. A range of organisations in each local area, including the police, local authority, social and health services, have a legal duty to work together to safeguard and promote the welfare of children in that area. LSCBs play a key role in ensuring local agencies work together to prevent abuse and neglect, proactively targeting particular groups that are vulnerable, for example to sexual violence or exploitation, identify abuse and neglect where they occur and take action to protect children who are suffering or at risk of suffering.
- The **Child Exploitation and Online Protection (CEOP) Centre** was set up in April 2006. Affiliated to the Serious Organised Crime Agency and with powers under the Serious Organised Crime and Police Act 2005, CEOP employs police officers with specialist experience of tracking and prosecuting sex offenders, professionals from child protection charities and secondments from key IT providers. CEOP works closely with the police and has a national remit to gather and co-ordinate intelligence on high-risk child sex offenders, to reduce the harm caused to children and to support operations against child sex offenders.
- The **Violent Crime Reduction Act 2006** included law changes that give the police powers of entry and search when visiting the homes of registered sex offenders, for the purpose of assessing risk. (The police already had powers of entry if they believe a crime may have taken place.)
- The **Safeguarding Vulnerable Groups Act 2006** provides for the creation of a **new vetting and barring scheme** for all those working with children and vulnerable adults. An independent statutory body will be created to use its expertise to take all discretionary decisions as to those individuals who should be barred from working with children and/or vulnerable adults. All those working closely with these groups will be required to be centrally vetted, and employers will need to check their status in the scheme. The new scheme is expected to be rolled out from Autumn 2008. It will integrate List 99, the Protection of Children Act list and the Disqualification Order regime into a single list of people barred from working with children. There will be a separate, but aligned, list of people barred from working with vulnerable adults.

Equipping the public with the information and understanding needed to protect children

During the review, those involved in protecting children stressed the importance of public involvement in enhancing child protection. We need to give the public the means to fulfil this role, and we need to achieve a culture change whereby the relationship between the police and the public is more open, with information being shared in both directions.

Part of this process will be to provide general information to the public about how offenders are managed and how we can protect our children. Part of it will also involve sharing, or disclosing, information about specific sex offenders who may pose a threat to particular children. But the police will maintain discretion over who will be given this information.

COMMUNICATING GENERAL INFORMATION

There is already a lot of information available from the Government and child protection organisations on protecting children from sexual abuse, but we need to do more to make the public aware of how child sex offenders are managed. Some people believe that sex offenders are unsupervised once released from prison, with no restrictions on their behaviour and nothing to prevent them committing further offences. This false perception of unmanaged sex offenders adds to the anxiety that parents and carers feel about the safety of their children.

We need to ensure information about child protection and risk awareness is reaching the people who need it. Although public concern has focused on predatory stranger sex offences, at least 75 per cent of child sex offenders are in fact related or known to their victim.[5] Enabling the public to accept and react appropriately to difficult messages like this requires excellent communication between public protection experts and communities. Helping parents have an open and honest relationship with their children, and be more alert to any warning signs of abuse, will enable them to protect their children better from all sex offenders – both the convicted, managed sex offenders and those who have not yet been detected.

ACTION 1

Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers safeguard children effectively

- to equip parents with the knowledge required to safeguard their children.

ACTION 2

Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of MAPPA's work

- to reassure the public that protection arrangements are in place, and to ensure a transparent system operates in which the public is fully aware of the true level of risk.

[5] Grubin, D, *Sex offending against children: Understanding the risk*, Police Research Series Paper 99, Home Office, 1998.

SHARING SPECIFIC INFORMATION

More information can and should be placed in the public domain as long as it can be shown, in every case, that sharing the information enhances public protection.

There have been calls from some groups for the public to have direct, uncontrolled access to information about specific sex offenders living in their area. This would be similar to the US system under 'Megan's Law'. Others have expressed concern that such a law could be counter-productive and hinder child protection, as uncontrolled access to information could lead to offenders going 'underground'. We have examined the options and the experiences of child protection professionals in the US, and have considered what increases child protection in the US model and what has a negative impact.

'Megan's Law' was introduced in the US in 1996 and requires individual states to keep a register of offenders convicted of sex crimes against children, and to make private and personal information about registered sex offenders available to the public. Information may include their name, address and photograph. Individual states can decide how they implement 'Megan's Law', but all states proactively advise members of local communities about the presence of some sex offenders, and all states operate websites on which members of the public can search for known sex offenders living in their area.

When considering this kind of information disclosure, it is important to remember that it only applies to offenders who have committed an offence and have been convicted of it. Disclosure about known, convicted offenders does not remove the need for public engagement to protect children from new and unknown offenders.

Under existing MAPPA guidance, the police in England and Wales already disclose information about registered sex offenders in a controlled way. The police disclose information to a variety of people, including head teachers, leisure centre managers, employers and landlords, as well as parents. However, the extent to which information is disclosed and the way decisions are recorded varies from area to area.

In addition to disclosure under MAPPA guidance, the website operated by the Child Exploitation and Online Protection (CEOP) Centre (www.ceop.gov.uk) publishes details of high-risk offenders who have gone missing.

There is a risk, which is supported by evidence from the US, that if offenders' details were automatically made available to all members of the public, a proportion would no longer comply with the notification requirements and could disappear, leaving the authorities unsure of their whereabouts and unable to monitor them. Also, some US states have a high proportion of offenders registering as 'homeless', suggesting that they either are not being truthful with the authorities or are choosing to live rough to avoid having their whereabouts published. In either case, the risk they pose increases considerably.

The aim of sharing information about offenders must always be to provide greater protection to children. High levels of non-compliance with the notification requirements would make it harder for authorities to manage offenders, and would therefore increase the risk to children. Public disclosure of non-compliant offenders' details, as on the CEOP website, is helpful, however, as it reinforces the offender's need to comply with notification requirements, and helps the police find them and take further action if they do not.

There also needs to be a responsibility on the person receiving the information to use it solely for the purpose of child protection. It should not be used to facilitate vigilante activity, or to attack or harass offenders.

Greater use should be made of controlled disclosure of information about child sex offenders to those who need to know, for example a single mother who might be sharing a home with a registered offender. We will introduce a new legal duty on the responsible authorities to consider disclosure in every case. This process should

be formalised and auditable, with clear guidance to ensure it is a consistent and accountable part of the MAPPA process.

Disclosure should be a two-way process. The police will continue to proactively disclose information where appropriate and members of the public will share information with them. The public will be able to register an interest in someone with whom they have a personal relationship and who has regular unsupervised access to their children in a private context. The police will then establish whether that individual has any convictions for child sex offences, and, if so, whether they present a risk of serious harm to the children of the member of the public who registered the interest. If they are considered to pose a risk, the presumption will be that the police will disclose that information to the member of the public.

This model would offer the advantage of bringing to light intelligence about risk that would not otherwise have been available to the authorities. Anyone providing false information in registering their interest, or misusing any information disclosed, for example by engaging in vigilantism or the harassment of sex offenders, would be subject to police action.

ACTION 3

Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

ACTION 4

Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public.

We want to pilot the new policy in order to work through the details of implementation and to ensure we have a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, we will consider whether this principle of two-way disclosure should be extended.

How this might work

Mr A, a 42-year-old man, was convicted in the early 1990s of a number of offences of indecent assault, relating to the abuse of a friend's young daughter who he was babysitting. He served his prison sentence and his time on licence without incident, and has had no further convictions. He is now living in the community and has not come to the attention of the police for any reason. Because he was convicted before the Sex Offenders Register was introduced, he is not subject to the notification requirements.

Miss B is a 30-year-old woman who lives on her own with her 5-year-old daughter. She recently met Mr A in a bar, and the couple have now formed a relationship. Mr A will regularly look after Miss B's daughter alone while she is out. Mr A has asked if he can move into Miss B's home.

Miss B is told by a friend that her new boyfriend is a convicted child sex offender. Miss B is understandably very concerned to hear this, although Mr A has given her no reason to believe his behaviour towards her daughter is inappropriate, and she doubts it is true. Miss B is also afraid to question Mr A about the rumours as, due to her previous abusive relationships, she is afraid of confrontation and fears she will be at risk of domestic violence. She approaches her local police force and registers her interest in Mr A, explaining her situation.

Police check whether Mr A has any previous convictions for child sex offences, and, on finding that he has, they refer the case to the local Multi-Agency Public Protection Arrangements (MAPPA).

At a multi-agency meeting, the MAPPA authorities discuss the case and consider whether Mr A's convictions should be disclosed to Miss B. They balance the fact that he has not been re-convicted, and has not come to the attention of the police for any reason since his first offences, against the similarities between his present domestic situation and the one in which he previously offended, the fact that the child is in the same age group as his previous victim, and the risk of serious harm to the child if he does re-offend.

Having considered the facts of the case, the MAPPA authorities conclude that the risk Mr A poses to Miss B's daughter is such that it is necessary to disclose his convictions to Miss B, so that Miss B is able to take the appropriate steps to protect her child. Social services will have been involved in the decision to disclose, and will then take the lead in any follow-up child protection work.

Minimising the risk to children posed by certain individuals through the provision of treatment

Child sex offenders vary greatly. Some understand that their actions and thoughts are wrong and take positive steps to change, but others are more challenging to deal with. Psychological treatment is one of the means available to us to manage the risk posed by sex offenders and to reduce re-offending, and this kind of treatment has been shown to be one of the most effective in addressing offending behaviour.[6] Treatment of sex offenders involves helping the offender confront their criminal behaviour, take responsibility for their actions, and develop victim empathy. It also involves helping them learn to recognise and avoid risky situations where they are more likely to offend. The UK is seen as one of the world leaders in the field of sex offender treatment.

TREATING MORE OFFENDERS

The main treatment programmes in the UK are a suite of Sex Offender Treatment Programmes (SOTP), undertaken by offenders in prisons and on licence in the community. The target for sex offenders completing treatment in prison for 2006/07 is 1,240, and for offenders in the community is 1,200. We need to increase the number of offenders who receive treatment, and improve the quality of that treatment. We have reviewed the programme delivery and have considered where there are gaps, and where the system might be improved. We will also explore more methods to provide intensive treatment to certain highest risk sex offenders in the community.

Currently, not all sex offenders in prison undergo treatment. There are various reasons for this. For example, the offender may be serving a shorter sentence and may not be in prison for long enough to complete the SOTP course; they may deny their offence and therefore be unsuitable for the course; or they may refuse to attend. Young offenders who commit sexual crimes also do not all receive treatment at present, as there are no treatment programmes specifically aimed at young people. When developing our treatment programmes, we therefore need to look at how the risk these offenders present is affected by the lack of treatment. We also need to look at the treatment needs of the individuals in question, and to consider how we can better engage with these groups.

EARLY TREATMENT

Existing treatments are mostly for convicted offenders. Some people realise they are developing worrying sexual thoughts and behaviour towards children and want help before they go on to offend. There are a small but significant number of these potential offenders, and we should not wait until a crime has been committed before taking action. The Government has funded the Stop it Now! helpline, to which about 40 per cent of the 4,000 or so callers have been individuals concerned about their own behaviour and seeking help to deal with their own deviant sexual thoughts about children. It is in everyone's interests that we are able to prevent these people from becoming offenders.

ACTION 5

Provide early access to help for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring

- to prevent sexual abuse before it has started, and to provide interventions where risk is not already managed within the criminal justice system.

[6] Losel, F and Schumucker, M, 'The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis, *Journal of Experimental Criminology*, 2005, 1, 117–46.

IMPROVED TREATMENT

Current treatment takes a psychological approach, but we need to explore the use of drug treatment as well. This would involve using either hormonal medication to reduce an offender's sexual urges, or one of the newer antidepressant drugs (SSRIs), where early evidence of greater control of deviant urges is encouraging. This needs to happen in combination with psychological treatment to help people understand their sexual thoughts and to challenge deviant thought processes. The advantage of this approach is that it would both reduce an offender's sexual urges and help them break the cycle of offending behaviour. However, there are side effects with any drug treatment, so such an approach is unlikely to be appropriate in all cases.

ACTION 6

Develop the use of drug treatment to support existing psychological treatment

- to reduce offenders' sexual urges through the use of medication, and to support them in successfully completing psychological treatment. In addition, we will explore intensive treatment options for those of greatest risk.

CIRCLES OF SUPPORT

Sex offenders are often very isolated individuals with poor social skills. Being alienated from mainstream society can increase the risk of them offending. In addition to treatment programmes, an initiative known as 'Circles of Support and Accountability' (CSA) has been running as a pilot project since 2001. CSA provide a group of four to six volunteers to act as a support network for socially isolated sex offenders in the community, particularly those with learning difficulties or personality disorders.

This approach has also been successfully used in Canada and is considered to be an innovative way of monitoring offenders. The results are encouraging. An evaluation of the programme in Canada found that only 5 per cent of offenders who had attended CSA went on to re-offend in the next four years, compared with 17 per cent in a group that did not attend.[7] The Home Office has provided funding for this programme in the UK.

MORE JOINED-UP TREATMENT

Some offenders do not begin treatment in prison, as they are not there long enough to finish the programme. We need to examine ways in which such offenders can begin treatment in prison and continue it in the community. The programmes run by the probation service for offenders in the community currently have a different structure, so an offender cannot continue the same course begun in prison. We will consider the feasibility of developing a joint prison and probation treatment programme. This approach may help more offenders access treatment, and would facilitate continuity between offender management in prison and in the community.

ACTION 7

Conduct a feasibility study of joint prison and probation treatments

- to ensure risk is reduced as much as possible during the time sex offenders are in prison and there is continuity between offender management in prison and in the community.

[7] Wilson, R J, Picheca, J E and Prinzo, M, *Circles of Support and Accountability: An evaluation of the pilot project in South-Central Ontario*, R-168, Correctional Service of Canada, 2005.

Maximising the effectiveness of the management of known sex offenders by the authorities

Offenders released from prison are much less likely to re-offend if managed by professionals than if left to their own devices. Effective management means ensuring all relevant authorities work together to make collective decisions about offenders and the level of risk they pose.

Multi-Agency Public Protection Arrangements (MAPPA) were introduced in 2001 and are a set of arrangements under which the prison, probation and police services (the 'responsible authorities') in all 42 MAPPA areas across England and Wales are legally required to share information and work together to assess and manage the risk posed by dangerous violent and sex offenders. A range of other agencies are also under a duty to co-operate, for example local government, health, Youth Offending Teams (YOTs) and housing services.

Information and intelligence about offenders who are subject to MAPPA, or who have been identified as posing a high risk of harm to the public, are stored on a computer database called ViSOR (Violent and Sex Offender Register). This system is being developed to support quick and easy sharing of information between the responsible authorities.

The offender management system uses various methods to assess the level of risk an offender poses. Police or probation officers visit offenders, and the information gathered is used to evaluate and re-evaluate their risk over time. Once a particular level of risk is identified, representatives from the relevant responsible authorities and 'duty to co-operate' agencies will regularly meet to discuss the case of the offender. These discussions will consider many areas of an offender's life, including their relationships, employment, housing, health, treatment and social activities. The disclosure of information to the public is also considered.

There are different ways in which the authorities can increase the level of monitoring of an offender. Registered sex offenders are required to provide personal information, including their address, on a regular basis.

There are also various civil orders available, prohibiting offenders from certain activities such as going near schools or travelling abroad. Finally, offenders on licence can be housed in supervised accommodation where they can be monitored daily.

Overall, those involved in public protection consider the MAPPA system to be very effective. In 2005/06, 13,783 high-risk sexual and violent offenders were referred to MAPPA, and 61 (0.44 per cent) of those offenders went on to commit a serious further offence.[8] While we will never be able to eliminate entirely the risk of serious offences being committed, we want to do everything possible to reduce that risk further and to maintain the success we have achieved so far. There are a number of ways in which we can further improve the system.

STRUCTURAL AND MANAGEMENT IMPROVEMENTS TO THE MAPPA SYSTEM

The 42 MAPPA areas in England and Wales operate according to national guidance which explains the principles and activities of MAPPA. Local MAPPA areas have built up local practices and have developed different ways of tackling similar issues. This needs to be addressed to make practice more consistent across areas, and to enable the sharing of good practice. A consistent approach is necessary in order to build up a national picture of performance.

One way of achieving consistent practice between MAPPA areas is for them to put in place dedicated administrative support, and to follow the same administrative 'model'. This support could also act as the point of contact for public enquiries, and could help communicate the work of MAPPA to local communities.

Offenders are managed at three different levels under the MAPPA system, depending on their level of risk and the level of resources required to manage it. It is important to ensure these levels are being assigned in the same way across the country. Strong central co-ordination could help with this.

[8] MAPPA, 2006 annual reports press release.

Another area that needs addressing is the recording of information on individual cases. At each Multi-Agency Public Protection Panel (MAPPP) meeting, intelligence about offenders is discussed and decisions are made about their management. However, there is a lack of consistency across MAPPA areas in what information should be recorded and stored on ViSOR. Dedicated administrative support, with consistent standards in minute taking and inputting data on ViSOR, and a supporting template for data gathering, would have many benefits. It would enable faster, more detailed and more consistent recording of information about offenders, thereby providing a larger, more reliable and more up-to-date intelligence database for the authorities. It would also remove some of the administrative burden from the front-line probation officers who currently undertake these duties.

PERFORMANCE MANAGEMENT

We need robust performance management arrangements for MAPPA, so that we can make proper comparisons on how each area is performing; for example, how quickly each MAPPA area recovers missing offenders, or recalls to prison offenders who are non-compliant. The new information gathered under the administrative model we are proposing will allow this kind of performance measurement and management.

LAY ADVISERS

When MAPPA were first created, there were calls for the public to have a direct role in the system of managing offenders. Lay advisers were introduced into MAPPA in 2003, and each MAPPA area has two lay advisers. However, their activities vary between MAPPA areas. Lay advisers form an essential link between the authorities and the public, and should play a key role in communication. We need a clearer definition of the lay adviser role, and to ensure it is applied across all areas.

CROSS-BORDER CASES

Sometimes an individual will commit an offence in a different jurisdiction of the UK from where they usually live. Someone who lives in England but commits an offence in Scotland, for example, will usually be sentenced and imprisoned there. On release from prison, it will often be considered appropriate to let them return to were they formerly lived, to encourage a more stable home life and so manage risk better. At present, there are insufficient guidelines and standard procedures for the handover of responsibility for these offenders between jurisdictions. We intend to review the processes and the relevant legislation and make changes as necessary.

ACTION 8

Develop national MAPPA structural and management arrangements to be applied in each area to ensure consistent, auditable processes

- to ensure best practice is followed consistently across the country and the public is consistently protected from sex offenders.

ACTION 9

Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of ViSOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up

- to ensure best practice is followed on risk assessment and there is a single point of contact for the general public.

ACTION 10

Develop robust performance management arrangements for MAPPA

- to ensure the performance of MAPPA can be monitored and managed, and to drive up standards.

ACTION 11

Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness

- to make the best use of the lay adviser role to increase public awareness and respond to public concern about child sex offenders.

ACTION 12

Develop the current process for managing cross-border MAPPA cases

- to improve the management of this group of offenders, and to ensure the public is consistently and effectively protected from them throughout the transfer process.

NOTIFICATION REQUIREMENTS

Sex offenders can be required by the courts to register their personal details with the police. Often referred to as the Sex Offenders' Register, this system requires offenders to provide their local police station with a record of their name, address, date of birth and National Insurance number. The register allows the police to keep track of the whereabouts of individual sex offenders. It is an invaluable tool to the authorities in managing the risk of known sex offenders and is thought to deter them from re-offending, as the police will immediately know which offenders are living in the area if an offence is committed.

Expanding the list of notification requirements could enhance public protection. We will change the law so that we can require all registered sex offenders to:

- provide a DNA sample where one has not been given previously;
- notify the police of any e-mail addresses;
- notify the police of passport numbers;
- notify the police of any bank account numbers;
- notify the police if they are living in the same household as a child under the age of 18;
- notify the police of *any* foreign travel (at present only trips of three days or longer must be notified); and
- report regularly to a police station if they register as homeless.

These changes would mean that the police would have more information to assist in the investigation of offences. Offenders could also be formally required to tell the police about risk factors that might increase the likelihood of them re-offending, for example if they form a relationship with a woman who has children. As with the current notification requirements, if an offender breached these rules, they would be subject to a maximum penalty of five years in prison.

All of these possible changes would be made easier by a legal change to the Sexual Offences Act 2003, to allow amendments to notification requirements to be made through secondary legislation rather than primary.

ACTION 13

Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.

THE MANAGEMENT OF YOUNG OFFENDERS

The issues involved in managing young sex offenders are different from those for adults. Young offenders are still growing in maturity and have a better chance of changing their behaviour.

To be sure that we are managing the risk of young sex offenders as effectively as possible, and that this is central to any new MAPPA model, we will specify that issues relevant to young sex offenders must be included in future amendments to the MAPPA guidance.

In every local authority in England and Wales, there is a YOT, which comprises representatives from the police, probation and social services, health, education, drugs and alcohol misuse, and housing officers. We should improve multi-agency responses to youth offending generally. Specific guidance and training should be available to YOTs on the MAPPA system, and protocols for YOT engagement with MAPPA should be formally set out in a public protection policy.

Formally bringing together MAPPA and YOTs in this way will help ensure all the agencies responsible for managing young sex offenders are aligned to work together to protect the public, and equipped with the knowledge to do so in the most effective way possible.

ACTION 14

Revise MAPPA guidance to provide direction on managing young offenders

- to ensure specific issues concerning the management and risk assessment of young sex offenders are considered by MAPPA.

ACTION 15

The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA

- to ensure all the agencies responsible for the management of young sex offenders are aligned to work together to protect the public, and are equipped with the knowledge to do so in the most effective way possible.

HOUSING CERTAIN SEX OFFENDERS

When offenders are released from prison, they are on licence for the remainder of their sentence. They must be supervised by the probation service for that period, and must adhere to the conditions of their licence, which may include a requirement to live at a specified address or at approved premises (formerly known as probation or bail hostels). There are 104 approved premises in England and Wales, providing around 2,200 bed spaces.

Approved premises are places approved by the Government for the supervision of people on bail, on community orders or on licence. They offer a range of advantages over other types of housing for high-risk offenders, due to the tight controls and strict measures available to manage the residents. These include curfews, round-the-clock staffing, CCTV, monitoring of residents' movements and behaviour, room searches, drug testing and strong links with MAPPA, including the facility for immediate recall to prison.

The purpose of approved premises for offenders on licence is to provide additional monitoring of their risk and supervision to manage that risk while they are resettling into the community. Naturally, there are strong feelings in communities about the location of approved premises. However, the alternative is for these offenders to be in private accommodation, or in some cases homeless, where supervision would be less effective and more costly.

The public has been understandably concerned about some approved premises that are immediately adjacent to schools. In response to this concern and to reassure the public, the Government has excluded sex offenders from 15 approved premises in these types of location.

Having reviewed the use of approved premises, we think it is right for certain high-risk child sex offenders to be supervised on release from prison in approved premises. These are offenders who are due to be released from prison and might otherwise be released to an address close to vulnerable families, without the kind of supervision provided by approved premises. But there are some important improvements that can be made.

At present, demand for places at approved premises is greater than supply,[9] and we should work in the future to increase capacity where possible. In seeking to create additional capacity, it is vital that we address public concerns about where approved premises are and how they are run.

Offenders in approved premises may be required to keep to a night-time curfew, or to report to the approved premises during the day, depending on their level of risk. Offenders are required to have regular meetings with their probation officer and may be required to attend treatment to address their offending behaviour. Approved premises are not always able to provide a significant amount of structure or purpose to the offender's day, especially if they are unemployed. Lack of occupation can increase the risk of them returning to offending. We are therefore recommending that compulsory programmes of purposeful activity be introduced for offenders residing in approved premises. This activity could, for example, take the form of improving the offender's educational or vocational skills. It would also mean that offenders would be subject to increased supervision during the day.

[9] Wood, J et al., *The operation and experience of Multi-Agency Public Protection Arrangements*, Home Office Research Findings, Home Office, 2007.

ACTION 16

Develop guidance on compulsory programmes of purposeful activity for residents in approved premises

- to increase the supervision of approved premises' residents and get them engaged in useful activity during the day.

Each approved premises has its own set of rules that offenders must follow in order to stay there. If a resident breaks the rules they may be evicted, and in some cases they may then be recalled to prison. The obvious advantage of having rules is that clear boundaries are set for residents, which limit disruptive or risky behaviour and allow enforcement action to be taken if a resident does not comply. While the rules at individual approved premises are generally robust and effective, they are not standardised, so there is some inconsistency between areas in the circumstances in which residents are warned, evicted or recalled to prison for breaching the rules. A standard and rigorous set of rules, to which all offenders at approved premises must conform, would also help reassure the public that clear restrictions are placed on residents of approved premises.

ACTION 17

Implement standard rules of residence for all approved premises

- to place clear and non-negotiable boundaries on the behaviour of offenders in approved premises.

Harnessing new technologies to provide additional management capabilities

Recent advances in technology have provided new ways to monitor child sex offenders and to assess and manage risk, including more efficient ways of gathering and sharing information.

However, with the development of the internet, technology has also opened up new ways of offending. Some offenders use chat rooms and internet forums to groom victims, and obtaining and distributing child pornography has become easier. It is vital that we act on these developments to ensure we are able to protect children online as well as offline.

The following examples highlight where new technology has already been harnessed to help manage offenders:

- A new database, ViSOR, has been developed to record information on dangerous offenders and share it nationally between the MAPPA responsible authorities. This has facilitated the enforcement of the Sex Offenders' Register.
- Various types of offender are electronically tagged, enabling the authorities to impose curfews and monitor compliance remotely.
- CEOP provides a dedicated service to protect children and conduct surveillance of child sex offenders both online and offline.
- Trials have been run of voluntary polygraph (lie detector) testing for child sex offenders on licence. This report recommends a change in the law to allow trials of their compulsory use on offenders.

These are significant achievements, but as technology continues to move forward, so must our solutions. We need to build on the trials conducted and, where possible, implement these modern approaches on a wider scale.

USING TECHNOLOGY TO SHARE EXISTING INFORMATION

Gathering information is only the first step in successful offender management; sharing it with the right people is also vital. ViSOR is a computer database that stores a substantial amount of information (including photographs) about offenders. It holds records of offenders who are subject to MAPPA, registered sex offenders and other individuals who have been identified as posing a high risk of violent or sexual harm to the public.

ViSOR is already accessible to the police and is now being rolled out to the probation and prison services. This will ensure authorities at all stages of the criminal justice process are able to access the same information about dangerous individuals. They will also be able to record on it any new information they gather, so that it is not lost and can be shared with the other agencies.

The CEOP website (www.ceop.gov.uk) publishes a 'most wanted' list of high-risk child sex offenders who are not complying with their notification requirements and have gone missing. Offender details include photographs, names and aliases, dates of birth and other identifying information. The profile of this website should be raised, so the public is aware of the most high-risk offenders who have absconded and are therefore not being managed by the authorities. The website has already been shown to increase the likelihood of listed offenders being apprehended.

ACTION 18

Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders

- to make the best use of this resource, maximise public awareness of high-risk non-compliant and missing sex offenders, and maximise intelligence received from the public on the whereabouts of these offenders.

POLYGRAPH TESTING – GATHERING NEW INFORMATION ON OFFENDERS

A polygraph (lie detector) test is designed to support traditional supervision by encouraging offenders to be more truthful in discussing their behaviour, in a way that helps both themselves and those who manage them. The test measures an offender's physical reactions when asked questions: their breathing, their heart rate and how much they are sweating. The offender is asked questions, and the results of the polygraph are used to help assess whether or not they are answering truthfully. They are used routinely by probation officers in the US.

The use of polygraphs was trialled in the UK with sex offenders who volunteered to take part. The majority of probation officers considered them very useful in managing offenders; however, testing on volunteers is limited in proving these benefits. We will therefore begin trialling mandatory polygraph testing. This requires a change in the law, expected later this year.

Polygraphs are not appropriate for all offenders and are not a stand-alone solution: they are one of a range of offender management tools. Results from polygraphs will not be relied on for gathering criminal evidence.

ACTION 19

Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool

- to establish whether compulsory polygraph tests lead to increased disclosure of information that is helpful in the treatment and supervision of child sex offenders.

THE INTERNET

As the internet becomes a greater part of everyday life, so it becomes an increasing source of risk to children. The anonymity it offers and the opportunities it brings for contact with new people of all ages provide new avenues for child sex offenders.

Of course, most families use the internet quite safely. Parents can monitor their children's use of the family computer and can teach their children not to meet anyone they contact on the internet. However, many parents do not have the knowledge to monitor their children's use of the internet properly, and some child sex offenders are very skilled at concealing their identity online or masquerading as a child. This means that some children are at risk from predatory child sex offenders on the internet.

It is vitally important for parents to supervise and monitor their children's use of the internet. However, as a second line of child protection on the internet, CEOP conducts online surveillance of child sex offenders, and in its short history has had a major impact in stopping offenders harming children.

We should maintain and, where possible, develop this capability to monitor the online activities of child sex offenders. We will investigate the possibility of developing software to install on offenders' computers, to keep a record of websites and chat rooms visited and to record what is typed. This software could also be designed to contact the police automatically if certain trigger words or phrases that indicate grooming activity are typed.

SATELLITE TRACKING

Finally, the use of satellite tracking could be expanded to monitor the highest risk offenders. This can be used to monitor compliance with orders or licence conditions that ban the offender from a specified area. It could also potentially be used to conduct general surveillance of offenders' movements. The offender wears a tag, which, using the Global Positioning System (GPS), allows their location to be tracked as they move around.

This could help identify risky behaviour at an early stage, so that pre-emptive action could be taken to protect children before they become victims. Breaking licence conditions can lead to recall to prison, so, as the offender would be aware of the monitoring, there may also be a deterrent effect.

ACTION 20

Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders

- to improve the monitoring of offenders, and help prevent child sex offences from occurring.

Contact

We are keen to hear your views and suggestions on the proposals contained in this review report. We would be grateful if you could direct your observations and enquiries to:

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Annex 1 – Contributors

Stakeholders

Association of Chief Police Officers

Barnardo's

Child Exploitation and Online Protection Centre

Churches' Child Protection Advisory Services

Circles of Support and Accountability

Derwent Initiative

GMAP

Kidscape

Langley House Trust

Leicestershire Children and Young People's Service

Local Government Association

Lucy Faithfull Foundation

Metropolitan Police Service

National Association for Probation and Bail Hostels

National Children's Home

National Organisation for the Treatment of Abusers

National Society for the Prevention of Cruelty to Children

Newcastle Hospital, Sexual Behaviour Unit

Office of the Children's Commissioner

Parole Board

Phoenix Survivors

Probation Board Association

Victim Support

International stakeholders

Anstalten ved Herstedvester State Prison, Denmark

Circuit Court of Warsaw, Poland

Circuit Court of Wroclaw, Poland

Colorado Bureau of Investigation

Department of Corrections, Washington State

Department of Justice, Equality and Law Reform, Ireland

Department of Prisons and Probation, Denmark

Interior Ministry, France

Justice Ministry, France

Justice Ministry, Poland

Latvian Probation Service

Oregon Department of Corrections

Seattle Police Department

Officials

Attorney General

Avon and Somerset Probation Service

Department for Education and Skills

Department of Health

Her Majesty's Courts Service

Her Majesty's Prison Service

Home Office

Local Government Association

London Probation Service

National Probation Directorate

Northern Ireland Office

PA Consulting

Scottish Executive

Violent and Sex Offender Register

Welsh Assembly Government

Youth Justice Board

Annex 2 – Project terms of reference

The terms of reference for the project are:

- to assess the strengths and weaknesses of the current arrangements for managing child sex offenders in England and Wales;
- to examine the case for adopting community notification requirements, including the benefits and costs, the experience in the USA of operating 'Megan's Law', and the impact of MAPPA and policies on rehabilitation, treatment and sentencing;
- to review the arrangements, in particular community notification requirements, for managing child sex offenders in the EU and selected overseas jurisdictions;
- to consider community education and awareness issues;
- to identify any research gaps; and
- to make costed recommendations to ministers with a view to publishing recommendations in spring 2007.

Annex 3 – List of actions

ACTION 1
Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers safeguard children effectively.

ACTION 2
Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of MAPPA's work.

ACTION 3
Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

ACTION 4
Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public.

We want to pilot the new policy in order to work through the details of implementation and to ensure we have a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, we will consider whether this principle of two-way disclosure should be extended.

ACTION 5
Provide early access to help for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring.

ACTION 6
Develop the use of drug treatment to support existing psychological treatment.

ACTION 7
Conduct a feasibility study of joint prison and probation treatments.

ACTION 8
Develop national MAPPA structural and management arrangements to be applied in each area to ensure consistent, auditable processes.

ACTION 9
Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of ViSOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up.

ACTION 10
Develop robust performance management arrangements for MAPPA.

ACTION 11
Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness.

ACTION 12
Develop the current process for managing cross-border MAPPA cases.

ACTION 13
Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.

ACTION 14
Revise MAPPA guidance to provide direction on managing young offenders.

ACTION 15
The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA.

ACTION 16
Develop guidance on compulsory programmes of purposeful activity for residents in approved premises

ACTION 17
Implement standard rules of residence for all approved premises.

ACTION 18
Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders.

ACTION 19
Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool.

ACTION 20
Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders

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Reforming (purportedly) Non-Punitive Responses to Sexual Offending

By Adam Shajnfeld* and Richard B. Krueger**

I. Introduction

Clovis Claxton, who was developmentally disabled and wheelchair-bound after contracting meningitis and encephalitis as a child, was twenty-four years old and living with his family in Washington state in 1991 when he exposed himself to the nine-year-old daughter of a caregiver.[1] Although he had the mental capacity of a ten- to twelve-year-old child, he was charged with first-degree child molestation and served twenty-seven months in prison.[2] When his family moved to Florida in 2000, Claxton was listed as a sexual offender on the Florida Department of Law Enforcement website, but the website inaccurately indicated he had been charged with the rape of a child.[3] Claxton had not been charged with any other offense since his release from prison, but sheriff's deputies in Florida did take him into custody at least five times for threatening suicide.[4]

In 2005, brightly-colored fliers were dropped into mailboxes and pinned to trees around Claxton's neighborhood, where he lived in an apartment adjoining his parents' house.[5] A short time before, a county commissioner had urged that warning signs be posted in neighborhoods where convicted sex offenders live.[6] The fliers displayed Claxton's picture and address, downloaded from the Florida website, and the words "child rapist."

Claxton, distraught and fearing for his life, called the sheriff's office and said he wanted to kill himself.[7] He was taken for an overnight psychiatric assessment, but released the next day.[8] The following morning he was found dead, an apparent suicide, with one of the fliers lying next to him.[9]

Alan Groome was eighteen years old when he was convicted of a sex offense.[10] He was paroled after serving a number of years behind bars in the state of Washington. Upon his release, he moved in with his mother, but they were evicted from their apartment when residents learned of his past. They then moved in with his grandmother, but Groome was forced to leave when police officers knocked on the doors of 700 neighbors, handing out fliers with his address and photo.

Groome became homeless, begging for money. "I got the feeling no one cares about me, so why should I care about myself and what I do?" said Groome. One detective described Groome as "a man without a country." His parole officer loaned him money because he believed Groome had "a lot of potential." A little over two years after being

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[1] Cara Buckley, *Town Torn Over Molester's Suicide*, MIAMI HERALD, Apr. 23, 2005, at 1; Daniel Ruth, *Who Was the Real Threat to the Town?* TAMPA TRIB., Apr. 27, 2005, at 2.

[2] Buckley, *supra* note 1, at 1.

[3] *Id.*

[4] *Id.*; Ruth, *supra* note 1, at 2.

[5] Buckley, *supra* note 1, at 1; Ruth, *supra* note 1, at 2.

[6] Buckley, *supra* note 1, at 1.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] The quotes and facts in this paragraph are taken from Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, at 12. This article does not address the many issues surrounding juvenile sex offenders. For a treatment of these issues, see Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163 (2003).

released from prison, Groome had not been re-arrested but was living in a homeless shelter, looking for employment.[11]

As will be discussed, the United States Supreme Court has distinguished between society's punitive and non-punitive responses to sexual offenders, granting society more discretion and affording sexual offenders few protections in conjunction with non-punitive responses. Although all agree that sexual offenses should generally result in punitive sanctions, including prison sentences, the so-called non-punitive responses to sex offenders currently employed by society are not only very punitive in nature, but they are also largely unhelpful in curbing and may even be increasing sexual offending. Sex offender registration and notification requirements, for example, place offenders in physical danger, force offenders out of their homes and cause them to lose their jobs, and create public hysteria.[12]

These requirements often bear little relation to the risk posed by the offender. The label "sex offender" can refer to anyone from a child rapist to an adult involved in a consensual, albeit incestuous, relationship with another adult. These requirements are typically insensitive to differences in motivation and intent, the nature of the offense and its impact on the victim, and the likelihood of recidivism and risk to society. Further, these regimes rarely allow sex offenders who successfully undergo treatment or who can be demonstrated to be highly unlikely to reoffend to be relieved of these requirements before at least many years have passed, if at all.

Legal and societal responses should take better account of what is currently known about sex offenders and be changed accordingly. This Article describes the characteristics of sex offenders (Part II), discusses various registration and notification requirements (Part III), explores Constitutional challenges to registration and notification laws (Part IV), addresses the civil commitment of sex offenders (Part V), analyzes the various problems with current responses to sex offenders (Part VI), reports current options for treating sex offenders (Part VII), provides various recommendations for implementing a more appropriate societal response to sex offenders (Part VIII), and offers some concluding remarks (Part IX).

II. Characteristics of Sex Offenders

"Sex offender" is a legal, not a psychological term.[13] There is no uniform definition of a sex offender. One who engages or attempts to engage in a sexual act with a minor, or who commits or attempts to commit aggravated sexual battery against a person of any age, is widely considered to be a sex offender.[14] In many states, persons who have been

[11] *Turning Point with Barbara Walters* (ABC News television broadcast Sept. 21, 1994), transcript available on LexisNexis ("Interview with Alan Groome, Transcript #131").

[12] Although this article mainly addresses three particular so-called non-punitive responses: civil commitment, registration, and community notification, there are others, including restrictions on where a sex offender can reside and work. In Virginia, for example, a person convicted of various sex offenses involving children is permanently prohibited from loitering within 100 feet of a primary, secondary, or high school or a child day program (VA. CODE § 18.2-370.2 (2006)), residing within 500 feet of any child day center, or primary, secondary, or high school (VA. CODE § 18.2-370.3 (2006)), or working or engaging in any volunteer activity on property that is part of a public or private elementary or secondary school or child day center (VA. CODE § 18.2-370.4 (2006)).

[13] Richard B. Krueger & Meg S. Kaplan, *The Paraphilic and Hypersexual Disorders: An Overview*, 7 J. PSYCHIATRIC PRAC. 391, 393 (Nov. 2001).

[14] The federal enactment establishing the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program Act defines "sex offender" as "an individual who was convicted of a sex offense" and defines "sex offense" generally as a criminal offense that has an element involving a sexual act or sexual contact with another, various listed criminal offenses against a minor, or an attempt or conspiracy to commit these offenses. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 111 (2006). Many state statutes are more specific. *See, e.g.*, VA. CODE ANN. § 9.1-902 (2006); WASH. REV. CODE § 9A.44.130(9) (2006).

convicted of possessing child pornography are also classified as sex offenders,[15] as are adults engaged in consensual incest,[16] persons who indecently expose themselves,[17] and statutory rapists (for instance, a twenty-two year old who has sex with her sixteen year-old boyfriend).[18] The legal definition of a sex offender includes a very wide range of offenders. From a psychological perspective, though, sex offenders are extremely diverse. The psychological profiles, recidivism rates, and effective treatment modalities of such offenders vary greatly. To appropriately respond to these individuals, a better understanding of these variations is needed.

For example, it is important to distinguish between paraphilic sex offenders and non-paraphilic sex offenders. Paraphilias are psychiatric disorders defined as

> recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons that occur over a period of at least 6 months.[19]

To be diagnosed as having a paraphilia, depending on the type of paraphilia,[20] the person must also either have acted on the urge or there must be resulting clinically significant distress or impairment in important areas of functioning.[21] Those who develop paraphilias tend to lack social skills and suffer from depression, substance abuse, or other co-occurring psychiatric disorders.[22] Far more men than women develop paraphilias.[23]

Paraphilias need not involve illegal behavior. Transvestic fetishism, where a heterosexual male engages in cross-dressing, is not a crime. Further, not all sex offenders suffer from paraphilias. For example, many rapists commit sex offenses out of anger and desire for domination, not for sexual gratification.[24] In one study involving thirty-six convicted male sex offenders, only 58% could be diagnosed with a paraphilia.[25]

Regardless of these variations, as of 2006, there were roughly 566,700 registered sex offenders in the United States.[26] This figure, however, is not a reliable measure of the actual number of sex offenders, as sex offenses are extremely underreported.[27] At

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[15] FLA. STAT. §§ 775.21(4)(a)1b, 827.071(5) (2006); BURNS IND. CODE ANN. § 35-42-4-4(c) (2006). An Indiana appellate court left open the question of whether that state's statute could be applied to virtual child pornography. Logan v. State, 836 N.E.2d 467, 472 (Ind. Ct. App. 2005). The federal law governing sex offender registration and notification was recently expanded to include possession, production, or distribution of child pornography. Adam Walsh Child Protection and Safety Act of 2006 § 111(7)(G).

[16] LA. REV. STAT. ANN. § 14:78 (2006). The statute includes within the definition of incest an uncle and niece either marrying or having sexual intercourse with one another, regardless of how old they are. *Id.*

[17] TEX. PENAL CODE § 21.08 (2006). Under Texas law, a person can be guilty of indecent exposure even if no one else actually sees the defendant's genitals. Boyles v. State, No. 05-94-01727-CR, 1996 WL 403992, at *8 (Tex. App. July 12, 1996).

[18] N.Y. PENAL LAW § 130.25(2) (Consol. 2006).

[19] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: FOURTH EDITION, TEXT REVISION 566 (2000) [hereinafter DSM-IV-TR].

[20] The various types of paraphilia include Exhibitionism, Fetishism, Frotteurism, Pedophilia, Sexual Masochism, Sexual Sadism, Transvestic Fetishism, Voyeurism, and Paraphilia Not Otherwise Specified. *See id.* at 569-76.

[21] *Id.* at 566.

[22] SIMON LEVAY & SHARON M. VALENTE, HUMAN SEXUALITY 469 (2002); Krueger & Kaplan, *supra* note 13, at 399-400.

[23] THE MERCK MANUAL OF DIAGNOSIS AND THERAPY, § 15, Ch. 192 (1999-2005), *available at* http://www.merck.com/mrkshared/mmanual/section15/chapter192/192d.jsp.

[24] KAREN J. TERRY, SEXUAL OFFENSES AND OFFENDERS: THEORY, PRACTICE, AND POLICY 92 (2006).

[25] Krueger & Kaplan, *supra* note 13, at 393 (citing Susan L. McElroy et al., *Psychiatric Features of 36 Men Convicted of Sexual Offenses*, 60 J. CLINICAL PSYCHIATRY 414, 416 (1999)).

[26] National Center for Missing and Exploited Children, *Registered Sex Offenders in the United States* (Mar. 6, 2006), *at* http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

[27] TERRY, *supra* note 24, at 7, 10.

the same time, this number can be mistakenly read to indicate the number of current active sex offenders in this country, a conclusion that fails to take into account the effects of treatment and monitoring, and the fact that many of these offenders are relatively unlikely to reoffend.

One of the most complicated and contested issues regarding sex offenders is that of recidivism.[28] Calculating their rate of recidivism is difficult for a number of reasons. First, as noted, sex offenses are underreported.[29] Second, sex offenders may continue to re-offend for many years, and thus recidivism rates differ depending on the length of time considered.[30] Third, recidivism differs substantially depending on the type of sex offender in question.[31] For instance, sex offenders who molest a family member (i.e., those who commit incest) are less likely to re-offend than those who molest non-family members.[32] Similarly, one study found recidivism rates for rapists and child molesters to be 18.9% and 12.7%, respectively, over an average four to five year follow-up period.[33] Collapsing all sex offenders together into a single category and making generalizations about this diverse range of offenders using this aggregate determination is likely to result in substantial mischaracterizations regarding the risk of re-offending for many of these individuals.

Even though lumping the recidivism rates of all sex offenders together is unhelpful in assessing the risk posed by these offenders, it does shed light on the dubiety of popular claims about sex offender recidivism. One meta-analysis of recidivism studies of over 23,000 sex offenders found the rate of recidivism to be 13.4% on average for a four to five year follow-up period.[34] Another study, from the United States Department of Justice, found recidivism for sex offenders released from prison to be 5.3% for a three-year follow-up period.[35] In contrast, a Department of Justice report of recidivism rates for nearly 300,000 released prisoners found that 13.4% of those imprisoned for robbery were rearrested for robbery after release, and 22% of those imprisoned for assault were rearrested for assault following release, all within a three-year follow-up period.[36] Thus, while recidivism rates are difficult to measure and reported results vary, and there are numerous factors that make recidivism for a particular individual more or less likely,[37] the recidivism of sex offenders is neither inevitable[38] nor nearly as high as popularly believed.[39]

A number of studies have reported higher recidivism rates for sex offenders, most prominently the so-called "Abel study" where 561 non-incarcerated paraphiliacs reported that they had committed a total of 291,737

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[28] For a good review of the recidivism issue, including the results of many studies, see CENTER FOR SEX OFFENDER MANAGEMENT (PRINCIPAL AUTHOR TIM BYNUM), RECIDIVISM OF SEX OFFENDERS (May 2001), http://www.csom.org/pubs/recidsexof.pdf.

[29] TERRY, *supra* note 24, at 7, 10.

[30] Lucy Berliner, *Sex Offenders: Policy and Practice*, 92 Nw. U. L. Rev. 1203, 1209 (1998) (citing R. Karl Hanson et al., *Long Term Recidivism of Child Molesters*, 61 J. CONSULTING & CLINICAL PSYCHOL. 646 (1993)).

[31] *Id.*

[32] Hanson et al., *supra* note 30, at 646.

[33] R. Karl Hanson & Monique T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOL. 348, 351 (1998).

[34] *Id.* at 357. The meta-analysis included studies that measured recidivism in terms of re-conviction, re-arrest, and offenders' self-reports. *Id.* at 350.

[35] PATRICK A. LANGAN ET AL., RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, 1 (2003), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf.

[36] PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994, NCJ 193427, at 9 (2002), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf.

[37] LEVAY & VALENTE, *supra* note 22, at 467.

[38] Hanson & Bussière, *supra* note 33, at 357.

[39] ROBERT ALAN PRENTKY & ANN WOLBERT BURGESS, FORENSIC MANAGEMENT OF SEXUAL OFFENDERS 237 (2000). *See also* SARAH BROWN, TREATING SEX OFFENDERS: AN INTRODUCTION TO SEX OFFENDER TREATMENT PROGRAMS 8 (2005).

"paraphilic acts" against 195,407 victims.[40] The Abel study suffers from a number of serious problems. First, "paraphilic acts" are defined very broadly, including fetishism, homosexuality, sadism, and masochism.[41] These behaviors, though, are not illegal when they involve a consenting adult, and homosexuality is no longer considered a paraphilia. In fact, the Abel study hints at this confusion, at one point using the term "victim/partner."[42] Thus, it is doubtful that the high rate of recidivism is reflective of what is currently thought to be a sex offense. Second, the median values of the number of victims per paraphiliac are significantly lower than the mean (average) values, which indicate that a small percentage of paraphiliacs are responsible for a disproportionately large amount of the sex offenses.[43] Broad generalizations from a study such as this one fuel panic, but do not accurately reflect the fact that, although there are outliers who are extreme offenders, recidivism rates are low for most sex offenders.

III. Registration and Notification Laws

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.[44] While not imposing mandatory obligations on the states, the Wetterling Act was a significant milestone because it provided significant financial incentives for the states to adopt various provisions pertaining to sex offenders.[45] For example, it required sex offenders to register for at least ten years with authorities following release from prison or placement on parole, supervised release, or probation.[46] Further, state officials were expected to collect and maintain information about offenders, such as their name, home address, photograph, fingerprints, offense history, and documentation of any treatment received for mental abnormality or personality disorder.[47] In 1996, the Wetterling Act was amended to include a notification provision, known as "Megan's Law," which allows states to disclose information collected through registration for "any purpose permitted under the laws of the State."[48] Megan's Law, like many other broad sex offender laws, was enacted in the politically and emotionally charged aftermath of a brutal act against a child.[49] Currently, all fifty states have enacted some type of Megan's Law.[50]

Recently, Congress passed a new version of the Wetterling Act as part of the Adam Walsh Child Protection and Safety Act of 2006.[51] The bill expands the sex offender registration and notification requirements previously imposed on the states. First, it broadens the definition of sex offender, divides sex offenders into three tiers (tier III being the most serious) based on the severity of the crime for which the offender was convicted, and requires that all sex offender registries include the offender's name (including any alias), physical description, current photograph, Social Security number, residential address, vehicle and license plate number, DNA sample, fingerprints, criminal offense, and criminal history; the name and

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[40] Gene G. Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 J. INTERPERSONAL VIOLENCE 3, 19 (1987).
[41] *Id.* at 18.
[42] *Id.* at 17.
[43] *See id.*
[44] 42 U.S.C. 14071 (2006). As will be discussed, this law was recently amended. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).
[45] *Id.* at (g), (i). States that do not comply face a reduction of 10% of funds allocated under § 42 U.S.C. 3751 for criminal justice projects.
[46] *Id.* at (b)(6).
[47] *Id.* at (b)(1)(A)(iv), (b)(1)(B).
[48] Pub. L. No. 104-145 (1996) (codified as 42 U.S.C. § 14071(e) (2006)).
[49] *See* Michele L. Earl-Hubbard, *Comment: The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U.L. REV. 788, 813 (1996); TERRY, *supra* note 24, at 184.
[50] Doron Teichman, *Sex, Shame, and the Law: An Economic Perspective on Megan's Laws*, 42 HARV. J. LEGIS. 355, 357 (2005).
[51] Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).

address of any employer; and the name and address of any school that is being attended.[52]

Second, it requires all jurisdictions to make virtually all sex offender registry information publicly accessible via the Internet and creates a national sex offender website.[53] This generally forces states to broadly disseminate information on every registered sex offender, not just those who pose the greatest risk of re-offending.[54]

A few items cannot be posted, including the identity of any victim, the Social Security number of the sex offender, and any reference to arrests that did not result in conviction, and a few items are left to the discretion of the state, including any information about a tier I sex offender convicted of an offense other than a specified offense against a minor, the name of the employer of the sex offender, and the name of an educational institution where the sex offender is a student.[55]

Third, the bill imposes a registration and Internet notification requirement of fifteen years for a tier I sex offender (with a reduction of five years if a "clean record" is maintained), of twenty-five years for a tier II sex offender, and of life-long duration for a tier III offender.[56] A tier I offender is required to re-register in person at least once a year, a tier II offender every six months, and a tier III offender every three months.[57]

For purposes of comparison, the following are some existing examples of state registration and notification regimes. In Washington, a sex offender can be relieved of the requirement to register ten years after the offender has either been released from confinement, or, if there was no confinement, ten years from entry of judgment and sentence.[58] In Florida, the earliest a sex offender who offended as an adult can be relieved of the requirement to register is twenty years after the offender has been released from sanction, supervision, or confinement, whichever is later.[59] To be relieved of this requirement after twenty years, the offender cannot have been arrested for any felony or misdemeanor (not just a sexual or related offense) since his release,[60] and a court must grant the offender's petition for relief.[61] In Washington and Florida, even if a sex offender no longer poses a risk of re-offending, he must still register as a sex offender until at least either ten or twenty years, respectively, have passed.[62]

Registration, though, did not necessarily mean that the community would be notified about the sex offender. Under the previous Wetterling Act, states were required to notify the community of certain offenders, while notification for others remained optional.[63] State-sponsored Internet sites were routinely used as a means to provide this notification.[64]

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[52] *Id.* at §§ 111, 114.
[53] *Id.* at §§ 118, 120.
[54] Some states had already begun to take this step. In Virginia, for example, the General Assembly in 2006 expanded dissemination via the Internet from individuals "convicted of murder of a minor and violent sex offenders" to individuals "convicted of an offense for which registration is required." *See* VA. CODE § 9.1-913 (2006).
[55] Adam Walsh Child Protection and Safety Act of 2006 § 118.
[56] *Id.* at § 115.
[57] *Id.* at § 116.
[58] WASH. REV. CODE § 9A.44.140(1)(c) (2006).
[59] FLA. STAT. § 943.0435(11)(a) (2006).
[60] *Id.* at 11(a).
[61] *Id.* at 11.
[62] In these states, an offender who was a physically castrated quadriplegic suffering from dementia would still have to register for this entire period of time.
[63] *See* 42 U.S.C. 14071(e)(2) (2006), which requires that states release information to the community when "necessary to protect the public concerning a specific person required to register under this section." The Department of Justice has interpreted this provision to require release of information to the community about the most dangerous offenders, but permits a state to choose not to release information regarding sex offenders it deems are not a threat to public safety. U.S. DEP'T OF JUSTICE, MEGAN'S LAW; FINAL GUIDELINES FOR THE JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT, AS AMENDED, No. RIN 1105-AA56, 582 (1997).
[64] Of the fifty states, only Rhode Island provides no information about sex offenders on an Internet site.

Many states, however, made information regarding *all* sex offenders accessible via the Internet as well.[65] The amount of information available on a particular offender varied from state to state, but all states included the offender's name, offense, physical characteristics, and age.[66] Florida's Internet sex offender database also included the offender's photograph and last known address.[67]

Some states employed risk-tiers, with offenders classified by their risk of re-offending. For example, Rhode Island law provided for three risk-tiers: low risk, moderate risk, and high risk.[68] The level of community notification, if any, depended on the offender's classification.[69] Law enforcement agents were notified of low risk offenders.[70] For moderate and high risk offenders, Internet notification was permitted.[71]

While community notification today is typically provided via the Internet, this need not be the exclusive means. Louisiana, in addition to having a searchable Internet database of sex offenders,[72] also has perhaps the strictest and most comprehensive notification requirements of any state.[73] Upon release from confinement, a sex offender must supply his name, address, crime information, and photograph to all residences and businesses within a one-mile radius in a rural area, or 3/10 mile radius in an urban area, of the offender's residence. The offender must also notify all adults also residing in his place of residence and the superintendent of the school district in which he resides of his status.[74] A court may even require the offender to wear special clothing indicating that he is a sex offender.[75]

IV. Constitutionality of Registration and Notification Laws

The Supreme Court has issued two major rulings on the constitutionality of sex offender registration and notification laws, both in 2003.

A. Procedural Due Process: *Connecticut Department of Public Safety v. Doe*[76]

In 1999, a person (referred to as John Doe) required to register as a sex offender under Connecticut law,[77] filed a federal lawsuit under 42 U.S.C. § 1983[78] against the Connecticut agencies responsible for administering the State's sex offender registry. Connecticut's law required certain classes of sex offenders to register, and provided for community notification of the presence of these offenders without regard to the registrant's degree of dangerousness to the community.[79] Instead, the registration requirement was linked to whether they had been convicted of certain specified sex offenses.[80]

Doe asserted that this registration requirement harmed his reputation and altered his status under state law. Doe alleged, *inter alia*, that the failure to provide him with a pre-registration hearing to determine if he was

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See http://www.klaaskids.org/pg-legmeg.htm (last visited July 17, 2006).

[65] For example, Florida provides a searchable Internet database generally listing all convicted sex offenders available at http://www3.fdle.state.fl.us/sexual_predators/ (last visited July 17, 2006).

[66] Teichman, *supra* 50, at 381.

[67] *See* http://www3.fdle.state.fl.us/sexual_predators/search.asp?sopu=true&PSessionId=819208581& (last visited July 18, 2006).

[68] R.I. GEN. LAWS § 11-37.1-12 (2006).

[69] *Id.*

[70] *Id.* at (b).

[71] *Id.*

[72] *See* http://lasocpr1.lsp.org/ (last visited July 18, 2006).

[73] *See* LA. REV. STAT. ANN. § 15:542 (2006).

[74] *Id.* at § 15:542(B)(1)(a)-(c).

[75] *Id.* at § 15:542(B)(3) ("Give any other notice deemed appropriate by the court in which the defendant was convicted of the offense . . . including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.").

[76] 538 U.S. 1 (2003).

[77] CONN. GEN. STAT. § 54-250-261 (2001).

[78] This section allows a person to sue, in federal court, for a state's violation of his or her civil rights.

[79] *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 4-5, 7.

[80] CONN. GEN. STAT. § 54-258a (2001).

dangerous violated his procedural due process rights under the Fourteenth Amendment because he was deprived of his liberty interests without a hearing.

The Supreme Court found no violation of procedural due process.[81] The Court reasoned that procedural due process only requires a hearing on the existence of a particular fact (or facts) when such fact is relevant under a state statute.[82] Here, as the statute did not claim that the list was comprised of dangerous sex offenders, but instead merely claimed to be a list of sex offenders regardless of level of danger, Doe was not entitled to a hearing to determine his dangerousness.

In *dicta*, the Court noted that one could still challenge the State's law on substantive due process grounds, an issue not brought up nor addressed in the case.[83]

B. Ex Post Facto: *Smith v. Doe*[84]

The Ex Post Facto Clause of the Constitution[85] prohibits the government from imposing punishment for an act that was not a crime at the time it was committed, and from imposing more punishment for an offense than was prescribed by law at the time the crime was committed.[86]

In 1994, Alaska passed its Sex Offender Registration Act (SORA).[87] SORA contains a registration requirement and provides for community notification.[88] Alaska makes much of the information it gathers available on the Internet.[89] Of primary relevance to this lawsuit, however, was that SORA was made retroactive, thereby encompassing sex offenders who committed their crimes before SORA was enacted.[90] Respondents John Doe I and John Doe II, both convicted of sex offenses before passage of SORA and then, after the passage of SORA, required to register under it, brought an action under 42 U.S.C. § 1983 challenging SORA as it applied to them as a violation of the Ex Post Facto Clause. The Supreme Court found no violation of the Ex Post Facto Clause.[91]

The primary question as far as the Court was concerned was whether SORA imposed additional punishment after the fact (i.e., after the crime was committed). The Court determined that if the legislature intended to impose punishment through its legislation, then its retroactive application was indeed a violation of the Ex Post Facto Clause.[92] If the legislature intended to enact a civil (non-punitive) regulatory scheme through its legislation, however, there was an Ex Post Facto violation only if the statutory scheme was so punitive in its effect as to negate the legislature's stated intent.[93] The Court stated that it was required to be deferential to the legislature's stated intent,[94] requiring the "clearest proof" of punitiveness to overcome a presumption that the legislature had

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[81] *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 1.
[82] *Id.* at 7.
[83] *Id.* at 8. A substantive due process claim asserts that the claimant has a fundamental right to some constitutionally-protected interest that is being infringed by the law/action in question, and that the government has to justify abridging that fundamental right. If a fundamental right is implicated, a court strictly scrutinizes the law/action, and a very strong justification is required to overcome a presumption of unconstitutionality. Less strict standards of review are applicable to abridgments of quasi- or non-fundamental rights. *See* Gunderson v. Hvass, 339 F.3d 639, 643-44 (8th Cir. 2003).
[84] 538 U.S. 84 (2003).
[85] U.S. CONST. art. I, § 9, cl 3.
[86] Cummings v. Missouri, 71 U.S. 277, 325-26 (1867).
[87] *See* 1994 Alaska Sess. Laws page no. 41 (codified at ALASKA STAT. §§ 12.63, 18.65.087 (1994)).
[88] *See id.*
[89] *Smith v. Doe*, 538 U.S. at 91.
[90] 1994 Alaska Sess. Laws page no. 41, § 12.
[91] *Smith v. Doe*, 538 U.S. at 84.
[92] *Id.* at 92.
[93] *Id.* at 92 (citing United States v. Ward, 448 U.S. 242, 248-49 (1980)).
[94] *Id.* at 92 (citing Kansas v. Hendricks, 521 U.S. 346, 361 (1997)).

accurately depicted the nature of its legislation.[95]

In the case before it, the Court noted that the Alaska legislature had stated that its intent in enacting SORA was to protect public safety.[96] As a result, the Court found that the stated intent of the legislature was not to impose punishment on sex offenders with the registration requirement.[97] The Court then proceeded to determine whether the legislation had sufficient punitive effect to undercut this characterization.

The Court discussed five of seven factors previously established,[98] which, while not "exhaustive or dispositive,"[99] provided "useful guideposts" in determining if a law is sufficiently punitive in effect to overcome the stated intent of the legislation.[100] The factors were whether the regulatory scheme: (1) has been historically/traditionally regarded as punishment, (2) serves the traditional aims of punishment, (3) imposes an affirmative restraint or disability on the offender, (4) has an alternative (non-punitive) purpose to which it may be rationally connected, and (5) is excessive in relation to the alternative purpose.[101]

Under this analysis, the Court found no punitive effect sufficient to overcome the legislature's stated intent.[102] First, while SORA might resemble colonial shaming punishments—in which the offender was held up before others, forced to confront them face-to-face, and sometimes expelled from the community—SORA was substantively different, as public shaming often involved corporal punishment and, even when it did not, involved more than mere dissemination of information.[103] Second, the Court found that SORA imposed no physical restraint on the offender, nor did it restrain the activities sex offenders may pursue, such as employment.[104] Third, while the statute might deter crimes, the mere presence of a deterrent effect did not render legislation criminal.[105] Fourth, SORA was determined to have a legitimate, non-punitive purpose, namely, that of promoting and ensuring public safety, and its execution was rationally connected to this purpose.[106] Fifth, SORA was not considered to exceed its non-punitive purpose, even though it was potentially over-inclusive by failing to mandate individual determinations of dangerousness, because Alaska could rationally conclude that a conviction for a sex offense provided evidence of a substantial risk of recidivism.[107]

C. Other Potential Constitutional Challenges

By casting Megan's Law statutes as non-punitive (i.e., they do not impose punishment on sex offenders), the Court has also precluded a constitutional challenge based on an Eighth Amendment "cruel and unusual punishment" theory.[108] In addition, although the Supreme Court has yet to address these issues, federal courts of appeals have generally rejected attacks against registration and notification statutes based on purported violations of substantive due process,[109] privacy,[110] and equal protection.[111] In light of

[95] *Id.* at 92 (quoting Hudson v. United States, 522 U.S. 93, 100, 139 (1997) (quoting Ward, 448 U.S. at 249)).
[96] *Id.* at 93.
[97] *Id.* at 96.
[98] Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963).
[99] *Smith v. Doe*, 538 U.S. at 96 (quoting Ward, 448 U.S. at 249).
[100] *Id.* at 96 (quoting Hudson, 522 U.S. at 99).
[101] *Mendoza-Martinez*, 372 U.S. at 168-69.
[102] *Doe*, 538 U.S. at 105.
[103] *Id.* at 98.
[104] *Id.* at 100.
[105] *Id.* at 102 (citing Hudson, 522 U.S. at 105).
[106] *Id.* at 102-03.
[107] *Id.* at 104.
[108] *See id.* at 102-03.
[109] Gunderson v. Hvass, 339 F.3d 639, 643-44 (8th Cir. 2003), *cert. denied* 540 U.S. 1124 (2003) (holding that no fundamental right is implicated by such a statute, and that the statute is rationally related to a legitimate government purpose). *See also In re* W.M., 851 A.2d 431, 450 (D.C. Cir. 2004), *cert. denied* 125 S. Ct. 885 (2005) (holding that Alaska's SORA statute does not implicate a fundamental right).
[110] A.A. v. New Jersey, 341 F.3d 206 (3d Cir. 2003) (stating that any privacy right of a sex offender is

the Court's unwillingness to strike down sex offender registration and notification laws in the two cases it considered, sex offenders would likely face an uphill battle pursuing these other challenges before the Supreme Court.

V. Civil Commitment

Another means widely thought to limit the danger posed by sex offenders is to impose on them civil commitment through "sexually violent predator" (SVP) laws.[112] Under this approach, sex offenders are confined to a treatment facility, typically following the completion of their prison term, based on a finding that "because of a mental abnormality or personality disorder, [the person] finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts."[113] "Mental abnormality" or "personality disorder" is frequently defined to mean "a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others."[114] This approach employs the civil, rather than the criminal, process and allows a person to be involuntarily hospitalized if, following a hearing, that person is found to pose a risk of self-harm or harm to others.[115] This approach permits the state to confine the person until he or she no longer poses a danger to society.[116]

In *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that allowed the involuntary civil commitment of a sex offender who, due to a "mental abnormality or personality disorder," is likely to engage in "predatory acts of sexual violence."[117] In *Hendricks*, the respondent was a convicted sex offender whose pedophilia was considered to constitute the requisite "mental abnormality."[118]

Five years later, the Court issued a second ruling that clarified that *Hendricks* does not require that the state prove that sex offenders are completely incapable of controlling themselves before the state may commit them.[119] In *Kansas v. Crane*, the Court established that the state is only required to prove that it would be "difficult" for the person to control his or her dangerous behavior as a predicate to civil commitment.[120]

As of 2006, nineteen states had civil commitment statutes for certain sex offenders.[121] After an initial rapid proliferation of such laws, enthusiasm for additional enactments has waned. In the decade of the 1990s, fifteen state programs were passed; since 2000, only four states have enacted such programs. Reasons for this vary, but prohibitive cost, lack of ability to control costs, better alternative uses of funds and resources, lack of release back into the community resulting in an ever increasing number of

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outweighed by the state's compelling interest in protecting public safety (citing Paul P. v. Farmer, 227 F.3d 98, 107 (3d Cir. 2000))).

[111] Doe v. Moore, 410 F.3d 1337, 1346-49 (11th Cir. 2005), *cert. denied*, 126 S. Ct. 624 (2005) (finding no equal protection violation).

[112] *See* JOHN Q. LA FOND, PREVENTING SEXUAL VIOLENCE: HOW SOCIETY SHOULD COPE WITH SEX OFFENDERS 128 (2005).

[113] VA. CODE ANN. § 37.2-900 (2006).

[114] *Id.*

[115] ANDREW J. HARRIS, CIVIL COMMITMENT OF SEXUAL PREDATORS: A STUDY IN POLICY IMPLEMENTATION xiii (2005); John Kirwin, *One Arrow in the Quiver--Using Civil Commitment as One Component of a State's Response to Sexual Violence*, 29 WM. MITCHELL L. REV. 1135, 1137 (2003).

[116] *See, e.g.*, FLA. STAT. § 394.917(2) (2005).

[117] Kansas v. Hendricks, 521 U.S. 346, 350 (1997) (quoting KAN. STAT. ANN. § 59-29a01 (1994)). The phrase "predatory acts of sexual violence" has since been replaced with "repeat acts of sexual violence." KAN. STAT. ANN. § 59-29a01 (2005).

[118] *Kansas v. Hendricks*, 521 U.S. at 360.

[119] Kansas v. Crane, 534 U.S. 407, 411 (2002).

[120] *Id.* at 411.

[121] Susan Broderick, *Innovative Legislative Strategies for Dealing with Sexual Offenders*, 18(10) AMERICAN PROSECUTORS RESEARCH INSTITUTE UPDATE 1 (2006), http://www.ndaa-apri.org/publications/newsletters/update_vol_18_number_10_2006.pdf.

individuals committed, and lack of demonstrated efficacy are all cited.[122] As of December 2004, 3,943 people had been confined under these laws, with only 427 of them having been conditionally released (most of them) or discharged.[123]

Civil commitment is arguably the most draconian of the so-called non-punitive sex offender legislation in that it confines, for an indeterminate and potentially life-long period of time, offenders who have already served their criminal sentences. It confines these offenders essentially because of crimes they might commit in the future. Civil commitment should be used as a last resort and only for offenders whose dangerousness has been established on a case-by-case basis.

VI. Problems with the Current Responses to Sexual Offending

Current sex offender legislation regarding community notification in particular needs to be more focused. The broad range of offenders encompassed by these laws detracts attention and resources away from those offenders that need the greatest attention, monitoring, and supervision, namely, offenders who pose the highest risk of recidivism. As discussed, individuals who commit incest or statutory rape, or who possess child pornography, are often considered to be sex offenders for purposes of community notification. While the putative reason for sex offender legislation is a regulatory one–protecting citizens[124]–notification regimes are not risk-discriminating. For instance, adult relatives who engage in consensual sexual intercourse with one another pose little, if any, risk to the community, yet they can be subject to registration and notification requirements. This broad scope needlessly scares community members by overstating the presence of what are perceived to be dangerous offenders, places burdens on offenders who pose little or no risk of harming anyone, and drains financial, law enforcement, and administrative resources.

Notification also makes it difficult for offenders to obtain housing and employment. In a study involving thirty convicted sex offenders subjected to community notification, 83% reported that they had been excluded from a residence and 57% reported that they had lost employment as a result of their status as sex offenders.[125] In another study, 300 employers were surveyed as to whether they would hire ex-convicts, including offenders who had committed sexual crimes against children or sexual assault against adults.[126] The overwhelming majority of employers surveyed stated that they would not hire the sex offenders.[127] Job stability, however, significantly reduces the likelihood that a sex offender will re-offend,[128] making notification counterproductive in this respect.

Given that landlords are reluctant to house sex offenders, not surprisingly many are homeless.[129] Ironically, this makes monitoring them more difficult. In addition, with sex offenders forced to move from place to place, even state to state, it becomes harder for offenders to maintain needed ongoing relationships with mental health professionals and family members, friends, or community members and organizations that can provide

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[122] John Q. La Fond & Bruce J. Winick, *Doing More Than Their Time* (op-ed), N.Y. TIMES, May 21, 2006, at sec. 14, p. 13.
[123] *Id.*
[124] *See, e.g.*, N.Y. CORRECT. LAW Art. 6-C Note (2005).
[125] Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?* 18 BEHAV. SCI. & L. 375, 383 (2000).
[126] Shelley Albright & Furjen Denq, *Employer Attitudes Toward Hiring Ex-Offenders*, 76(2) PRISON J. 118, 124-25 (1996).
[127] *Id.* at 129-31.
[128] Candace Kruttschnitt et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUST. Q. 61, 80 (2000).
[129] *See, e.g.*, Monica Davey, *Iowa's Residency Rules Drives Sex Offenders Underground*, N.Y. TIMES, Mar. 15, 2006, at A1.

support services, which in turn may enhance the likelihood of recidivism.[130]

Vigilantism has also been associated with community notification laws. When communities are notified about the presence of a sex offender, some community members may harass, intimidate, or even violently attack the offenders. In one instance, a teenage offender received death threats and found his dog decapitated on his step.[131] In another instance, arsonists burned down the home where a released sex offender was supposed to live.[132] One study found that amongst 942 sex offenders in Washington state subject to community notification, there were thirty-three reported incidents of harassment of some form against the offender or his family.[133] While this number may seem low, one must keep in mind that such incidents may be underreported, as offenders may not want to call further attention to themselves or their families, and that even the possibility of such vigilantism can cause significant worry amongst offenders and their families and hamper treatment efforts.

Another common result of notification is isolation. Social ostracism that the sex offender experiences may push him farther from integrating with society, decrease social skills, and make re-offense more likely.[134]

While community notification increases public anxiety,[135] an article published in October 2005 noted that in the ten years that such laws have been in place, there has not been a single study that has shown reduced recidivism of sexual violence attributable to notification.[136] In December of that same year, a report from the Washington Institute of Public Policy did find that sex offenses had decreased in the years since Washington's passage of sex offender legislation that contained registration and notification provisions.[137]

There are a number of problems with drawing conclusions from this decrease, however. First, as the report acknowledges, Washington has increased the length of incarceration for sex offenders during this period.[138] If offenders are incarcerated for longer periods of time, they have less opportunity to offend. Thus, the decrease in recidivism could be attributable to increased length of incarceration. Second, even if one ignores the incarceration issue, the notification regime in Washington is risk-discriminating in that it provides for community notification only for

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[130] Further exacerbating this dislocation, a number of communities and states prohibit convicted sex offenders from living within a certain distance of designated locations such as schools or child-care centers. *See, e.g.*, IOWA CODE § 692A.2A (2005). These restrictions have had the effect of virtually excluding convicted sex offenders from urban areas, as well as preventing them from living with family members. Davey, *supra* note 129. Interestingly, the Iowa County Attorney's Association, an organization of Iowa prosecutors, has criticized such legislation as being counterproductive, asserting that it causes homelessness and is too broad, and that no research shows that such a restriction reduces sex offenses. IOWA COUNTY ATTORNEYS ASSOCIATION, STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA (Jan. 2006), http://spd.iowa.gov/filemgmt_data/files/SexOffender.pdf.

[131] Jan Hoffman, *New Law Is Urged on Freed Sex Offenders*, N.Y. TIMES, Aug. 4, 1994, at B1.

[132] Joshua Wolf Shenk, *Do 'Megan's Laws' Make a Difference?* U.S. NEWS & WORLD REP., Mar. 9, 1998, at 27.

[133] SCOTT MATSON & ROXANNE LIEB, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, COMMUNITY NOTIFICATION IN WASHINGTON STATE: 1996 SURVEY OF LAW ENFORCEMENT, Executive Summary, Doc. No. 96-11-1101 (Nov. 1996), *available at* http://www.wsipp.wa.gov/rptfiles/sle.pdf.

[134] TERRY, *supra* note 24, at 196.

[135] Mary Bolding, *California's Registration and Community Notification Statute: Does It Protect the Public from Convicted Sex Offenders?*, 25 W. ST. U.L. REV. 81, 81 (1997).

[136] EXECUTIVE BOARD OF DIRECTORS, ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, THE REGISTRATION AND COMMUNITY NOTIFICATION OF ADULT SEXUAL OFFENDERS (Oct. 5, 2005), http://www.atsa.com/ppnotify.html.

[137] ROBERT BARNOSKI, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, SEX OFFENDER SENTENCING IN WASHINGTON STATE: HAS COMMUNITY NOTIFICATION REDUCED RECIDIVISM? Doc. No. 05-12-1202 (Dec. 2005), http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf.

[138] *Id.*

moderate and high risk offenders,[139] thus obviating some, but not all, of the inefficiencies and counterproductive components of notification regimes. Those notification regimes that are not risk-discriminating and that are not accompanied by treatment, employment, and housing for offenders are unjust and inefficient. Third, it is notable that with fifty states having enacted community notification laws, this is the only study that we have located that suggests some effect in terms of reducing recidivism. Clearly, more research on the impact of these laws is needed.

Civil commitment as a mechanism for responding to sexual offenders also carries a heavy price. First, a general right to be free from physical restraint and various liberty interests are afforded by the Constitution.[140] There are of course situations where these important guarantees can be tempered, but such restrictions should be limited.[141] Second, civil commitment is very expensive. The cost of housing and treating a civilly committed person for one year in Washington is $138,000.[142] Overall, the cost of operating special facilities for the commitment of sex offenders at the national level is estimated to be $224 million per year.[143] Thus, if there are cheaper or less restrictive ways to achieve the goals of civil commitment, namely, protect public safety and promote rehabilitation, they should be pursued.

VII. Treatment Options

While there is no known cure for inappropriate sexual thoughts and behavior,[144] there are treatments that can significantly reduce their strength and occurrence. Treatments include non-biological therapies such as cognitive behavioral therapy, and biological therapies such as surgical castration and pharmacological (drug) therapy.

Among the non-biological treatments for sex offenders, cognitive-behavioral therapy is the most common.[145] During cognitive-behavioral therapy, offenders may obtain social skills training, sex education, cognitive restructuring, aversive conditioning, and victim empathy therapy.[146]

Social skills training attempts to provide the offender with social competency, so that the individual may pursue appropriate social interactions; sex education informs the offender of the risks and practice of sexual behavior; cognitive restructuring helps the offender avoid cognitive distortions that may have provided the offender with a justification for his behavior; aversive conditioning pairs painful, annoying, or unpleasant experiences, such as a bad smell, with an offender's inappropriate sexual fantasy; and victim empathy therapy helps offenders understand the harm they have caused to the victim and that the victim is also a person with feelings.[147] Offenders may also undergo relapse prevention therapy, a type of cognitive-behavioral therapy, where they learn how to identify problematic thoughts and behaviors and stop their progression.[148]

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[139] WASH. REV. CODE § 4.24.550 (2006).
[140] *See Kansas v. Hendricks*, 521 U.S. at 356.
[141] *Id.*
[142] TERRY, *supra* note 24, at 211.
[143] ROXANNE LIEB & KATHY GOOKIN, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS: COMPARING STATE LAWS, Doc. No. 05-03-1101 (2005), *available at* http://www.wsipp.wa.gov/rptfiles/05-03-1101.pdf. On the other hand, the average cost per year of housing an inmate in state prison is $22,650. JAMES STEPHAN, U.S. DEP'T OF JUSTICE, STATE PRISON EXPENDITURES, 2001, SPECIAL REPORT, NCJ 202949 (June 2004), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf.

[144] TERRY, *supra* note 24, at 139.
[145] *Id.* at 154.
[146] Richard B. Krueger & Meg S. Kaplan, *Behavioral and Psychological Treatment of the Paraphilic and Hypersexual Disorders*, 8 J. PSYCHIATRIC PRAC. 24-25 (2002).
[147] *Id.*
[148] THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, REDUCING SEXUAL ABUSE THROUGH REATMENT AND INTERVENTION WITH ABUSERS (1996), http://www.atsa.com/pptreatment.html [hereinafter ATSA].

Cognitive behavioral therapy, while often successful in reducing recidivism amongst sex offenders,[149] does not always work, either completely or at all.[150] Thus, it is very important for a mental health professional to determine when cognitive-behavioral therapy is appropriate, and to monitor its effectiveness.

Surgical castration[151] involves removal of the testes, which has the effect of significantly reducing circulating testosterone.[152] While surgical castration does decrease sex drive,[153] it does not always do so completely.[154] Further, many view surgical castration, which they associate with the eugenics movement that sought to sterilize those with undesirable traits thought to be hereditary,[155] with fear and skepticism. Additionally, the reduction of sex drive achieved through surgical castration can be overcome with the use of exogenous androgens, such as testosterone,[156] which may be obtained surreptitiously. Nevertheless, some authorities believe that surgical castration may become more common, as it has achieved the lowest recidivism rate of any treatment.[157]

Pharmacological therapy,[158] however, is a viable option for many, particularly those with paraphilias. One of the most noteworthy studies on pharmacological therapy for sex offenders tested the efficacy of triptorelin, a drug that reduces male testosterone levels, in decreasing the deviant sexual desire and behavior of thirty men.[159] All of the men suffered from paraphilias, with twenty-five of them suffering specifically from pedophilia.[160] Before triptorelin use, the men reported an average of forty-eight deviant sexual fantasies per week (with a standard deviation of ten) and five incidents of abnormal sexual behavior per month (with a standard deviation of two).[161]

During treatment, which involved monthly intramuscular injections of triptorelin, supplemented with regular supportive psychotherapy (one to four sessions a month), all of the men had a prompt reduction in paraphilic activities, with the maximal reduction in the intensity of their sexual desire and symptoms occurring after three to ten months with the exception of one man in whom it was achieved after two years.[162] All of the men reported that their sexual desire decreased considerably, that their sexual behavior became easily controllable, that their deviant sexual fantasies and urges disappeared completely, and that there were no incidents of abnormal sexual behavior during therapy.[163] Once the maximal effects of treatment were achieved, there were no sexual offenses reported by the men, by their relatives, or by a probation officer.[164] Symptoms returned among those men who stopped treatment, including three who

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[149] Polizzi et al., *What Works in Adult Sex-Offender Treatment? A Review of Prison- and Non-Prison Based Treatment Programs*, 43 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 357, 371 (1999).
[150] See ATSA, *supra* note 148.
[151] Surgical castration is also referred to as physical castration or orcheictomy.
[152] Kurt Freund, *Therapeutic Sex Drive Reduction*, 62 (Supp. 287) ACTA PSYCHIATRICA SCANDINAVICA 5, 15 (1980). For an updated review of surgical castration, see Richard B. Krueger et al., Orchiectomy (in preparation).
[153] Richard Wille & Klaus M. Beier, *Castration in Germany*, 2 ANNALS SEX RESEARCH 103, 129 (1989).
[154] TERRY, *supra* note 24, at 154.
[155] *See* Charles Scott & Trent Holmberg, *Castration of Sex Offenders: Prisoners' Rights Versus Public Safety*, 31 J. AM. ACAD. PSYCHIATRY L. 502, 502 (2003).
[156] J. Michael Bailey & Aaron S. Greenberg, *The Science and Ethics of Castration: Lessons from the Morse Case*, 92 NW. U.L. REV. 1225, 1235 (1998).
[157] Ariel Rosler & Eliezer Witztum, *Pharmacotherapy of Paraphilias in the Next Millennium*, 18 BEHAV. SCI. & L. 43, 44 (2000).
[158] Pharmacological therapy is also referred to as drug therapy or chemical castration.
[159] Ariel Rosler & Eliezer Witztum, *Treatment of Men with Paraphilia with a Long-Acting Analogue of Gonadotropin-Releasing Hormone*, 338 NEW ENG. J. MED. 416 (1998).
[160] *Id.* at 417.
[161] *Id.* The study did not include a control group "because the men might have continued to offend while receiving a placebo." *Id.*
[162] *Id.* at 418.
[163] *Id.*
[164] *Id.* at 418-19.

reported intolerable side effects. Further, for three of these men who were subsequently given an alternative medication (cyproterone acetate), two were subsequently prosecuted and received prison sentences for sex crimes.[165] Case studies of another testosterone-reducing drug, leuprolide acetate (brand name Lupron), reported successful results similar to those of triptorelin.[166]

Currently, medroxyprogesterone acetate (MPA)[167] is the drug most commonly used to reduce serum testosterone levels.[168] MPA is given by injection and need only be administered once every three months.[169] Each injection costs about $30 to $75.[170] Gonadotropin releasing hormone agonists, such as depot-leuprolide acetate, though, are gaining a foothold[171] because they have fewer adverse side-effects[172] and are considered more effective[173] than MPA. Although leuprolide acetate is significantly more expensive than MPA,[174] considering its treatment potential, it may well be worth the cost.

Pharmacological therapies are generally given to those with paraphilias, as they have stronger and more intense deviant sexual desires than other sex offenders.[175] As noted, however, pharmacological therapies may induce unpleasant or harmful side effects or for other reasons may be resisted by sex offenders. While the testosterone-reducing effects of drugs like MPA and leuprolide acetate may be overcome by taking exogenous androgens, standard laboratory analyses of blood and urine can be used to test for the presence of such androgens.[176] It is also important to note that pharmacological therapies need not be life-long; these therapies may be employed for short-term treatment that allows offenders to obtain some measure of control over their sexual impulses and enables other forms of treatment, such as behavioral therapy, to become effective.[177]

However, pharmacological therapies have their limits. For instance, drugs that reduce

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[165] *Id.* 419.

[166] Richard B. Krueger & Meg S. Kaplan, *Depot-Leuprolide Acetate for Treatment of Paraphilias: A Report of Twelve Cases*, 30(4) ARCHIVES SEXUAL BEHAV. 409 (2001). *See also* Peer Briken et al., *Treatment of Paraphilia with Luteinizing Hormone-Releasing Hormone Agonists*, 27 J. SEX & MARITAL THERAPY 45, 52 (2001); Richard B. Krueger & Meg S. Kaplan, *Chemical Castration: Treatment for Pedophilia*, *in* 2 DSM-IV-TR CASEBOOK 309, 309 (Michael B. First et al. eds., 2006).

[167] Available under the brand name Depo-Provera.

[168] TERRY, *supra* note 24, at 153.

[169] MPA can also be given orally. Luk Gijs & Louis Gooren, *Hormonal and Psychopharmalogical Interventions in the Treatment of Paraphilias: An Update*, 33(4) J. SEX RESEARCH 273, 275 (1996).

[170] JENNIFER JOHNSEN, PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., IS THE SHOT RIGHT FOR YOU? (2006), http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/birthcontrol/pub-depo-provera.xml.

[171] Fabian M. Saleh & Laurie L. Guidry, *Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender*, 31 J. AM. ACAD. PSYCHIATRY & L. 486, 490 (2003).

[172] Krueger & Kaplan, *supra* note 166, at 418 (citing Smith et al., *Clinical Effects of Gonadotrophin-releasing Hormone Analogue in Metastatic Carcinoma of Prostate*, 25 UROLOGY 106 (1985)). Side effects of MPA include hyperglycemia, nightmares, weight gain, and lethargy. Rosler & Witztum, *supra* note 159, at 420. Side effects of leuprolide acetate include hot flashes and decreases in bone density, which can be countered by administering, among other things, alendronate, vitamin D, and calcium. *Id.* at 419-20; Richard B. Krueger et al., *Prescription of Medroxyprogesterone Acetate to a Patient with Pedophilia, Resulting in Cushing's Syndrome and Adrenal Insufficiency*, SEXUAL ABUSE: J. RES. & TREATMENT (forthcoming 2006).

[173] *Id.* at 420-21.

[174] Although costs vary, the cost of one four-month dose has been set at $2,660. WALGREENS, LUPRON DEPOT 30MG INJ, http://www.walgreens.com/library/finddrug/druginfo1.jsp?particularDrug=Lupron&id=15887) (last visited July 19, 2006).

[175] TERRY, *supra* note 24, at 153.

[176] *See* Bailey & Greenberg, *supra* note 156, at 1236. For instance, anabolic steroids such as testosterone cypionate, which may help increase sex-drive, are easily detectible, even months after use. Lorenz C. Hofbauer & Armin E. Heufelder, *Endocrine Implications of Human Immunodeficiency Virus Infection*, 75 MED. 262, 271 (1996); Morris B. Mellion, *Anabolic Steroids in Athletics*, 30 AM. FAM. PHYSICIAN 113, 118 (1984).

[177] Krueger & Kaplan, *supra* note 166, at 419.

testosterone levels, like leuprolide acetate and MPA, may not have any effect on nonsexual violence.[178] Thus, for offenders without paraphilias or whose primary problems are non-sexual, or for offenders with paraphilias and nonsexual violence problems, behavioral therapies, either alone or in conjunction with pharmacological therapies, are necessary.

VIII. Recommendations

Before better means to reduce the occurrence of sexual offenses can be established, the potent obstacle of the political process must be recognized. In a representative democracy, elected legislators are responsible to and dependent upon the support of their constituents. Considering the significant inaccuracies in, and overall frenetic nature of, popularly held beliefs and attitudes regarding sex offenders, it is not surprising that legislators often feel they must adopt measures driven by fear rather than sound science or public policy.

In this vein, a Police Chief in Des Moines, Iowa, arguing for the repeal of an Iowa law placing residency restrictions on certain sex offenders that increased their homelessness and subsequently decreased the ability to monitor their whereabouts, worried that state legislators would not re-work the counterproductive statute out of political cowardice.[179] This fear needs to be overcome and the following recommendations implemented.

(1) Current medical practice has embraced "evidence-based medicine," which is "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients."[180] This approach integrates "individual clinical expertise with the best available external clinical evidence [drawn] from systematic research."[181] There is a similar need for "evidence-based legislation." Although recidivism rates are frequently bandied about in the course of legislative debates over proposed sex offender legislation, there is a need for more accurate and precise information on risk and treatment that will enable more appropriate decisions to be made. In general, educational and training programs regarding sex offenders should be made available to legislators and their staff to inform their decision-making.

(2) Sex offender legislation should be preceded by careful study and a projected cost-benefit analysis, rather than rely on speculation and public fears. In addition, any legislation that is enacted should always include a provision mandating and funding a cost-benefit analysis of the legislation and its effects. Building "sunset" provisions into this legislation can provide an opportunity for a systematic review of the cost-benefit analysis and the impact of the legislation, and can be considered in determining whether to modify the legislation.[182]

(3) Sexual offending is a complex behavior and understanding and redressing it is a difficult challenge. Accordingly, proposals to reduce this criminal behavior should be carefully considered and studied. To promote this effort, multidisciplinary commissions should be formed with governmental support and charged to fully evaluate the effects and integration of sex offender-related legislation. These commissions should include mental health professionals, lawyers, criminologists, judges, and legislators. Such commissions should address sex abuse as both a criminal justice and a public health problem. The Centers for Disease Control and Prevention and the World Health Assembly (the decision-making body for the World Health Organization) have declared violence to be a

[178] *Id.*
[179] Lee Rood, *New Data Shows Twice as Many Sex Offenders Missing*, DES MOINES REG. & TRIB., Jan. 23, 2006, at 1A.
[180] David L. Sackett et al., *Evidence Based Medicine: What It Is and What It Isn't*, 312 BRITISH MED. J. 71, 71 (1996).
[181] *Id.*
[182] A "sunset" provision provides that the legislation, unless renewed, will expire after a specified period of time or upon a given date.

public health priority, and The Association for the Treatment of Sexual Abusers has suggested that this framework be extended to sexual violence.[183] The public health model is used to complement the criminal justice approach and strives to prevent the occurrence of crimes through the identification of risk factors and the development of interventions to address these factors.[184] A public health approach can develop not only appropriate post-offense responses, but also generate broader, more systematic, long-term changes that can help prevent the occurrence of sexual abuse and the development of sex offenders.

(4) Risk level classifications should be incorporated into society's responses to sex offenders, particularly with regard to their community notification systems, and a graduated response employed that limits the use of the most "punitive" mechanisms to those offenders that have been shown to pose the greatest risk. This would enable offenders who pose minimal risk and are unlikely to re-offend to reintegrate into society, as well as motivate all offenders to seek and comply with needed treatment programs to obtain this level of classification. Mental health professionals can now identify factors that are related to recidivism and, using sophisticated, empirically-validated instruments, accurately assess the likelihood of future risk.[185] These instruments should be used, for example, to determine what level of community notification is employed for various categories of sex offenders. Community notification should be tailored to the risk these offenders present.

(5) Legislative responses to sex offending should incorporate incentives that reward offenders who undergo, comply with, and maintain treatment, such as relieving these offenders of some of the obligations and hardships they would otherwise face. As noted, the strictest measures should be reserved for those offenders who pose the greatest, most difficult-to-reduce risk of re-offending, thereby targeting scarce resources and focusing attention in a more efficient and productive manner. Such incentives will further motivate offenders to seek and comply with needed treatment programs.

(6) Less restrictive alternatives (including both behavioral and pharmacological treatment) should be considered before civilly committing a sex offender and, where appropriate, be offered to the offender.[186] Such treatment should be provided free of charge or at least at an affordable rate. The successful employment of these alternatives can avoid the huge costs associated with civil commitment, while enhancing the likelihood that an offender becomes a productive member of society. At the same time, the availability of civil commitment or other mechanisms can help ensure treatment compliance.

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[183] *See, e.g.,* THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, SEXUAL ABUSE AS A PUBLIC HEALTH PROBLEM (2001), http://www.atsa.com/pppublichealth.html.

[184] *Id.*

[185] While there are a number of instruments used to predict the likelihood of recidivism, the Static-99 is the most common and most validated. R. KARL HANSON, PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA, THE VALIDITY OF STATIC-99 WITH OLDER SEXUAL OFFENDERS (2005), http://ww2.psepc-sppcc.gc.ca/publications/Corrections/20050630_e.asp. The Static-99 considers ten static factors about an offender, such as the offender's gender and prior sexual offenses, and assigns a score to an offender based on the answers to questions related to these factors. *See* TERRENCE W. CAMPBELL, ASSESSING SEX OFFENDERS 83-84 (2004). Static-99 shows "moderate predictive accuracy." R. Karl Hanson & David Thornton, *Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales*, 24 L. & HUM. BEHAV. 119, 129 (2000). Static-99 has its critics. *See, e.g.,* CAMPBELL, *supra*, at 83-97. It is properly used as a starting point, both in practice and as a springboard for further research. A more comprehensive view of risk would involve considering both static and dynamic (such as current employment stability) factors. Further research is necessary, but risk assessment instruments have experienced steady improvement, improvement that will continue with new research and testing.

[186] Involuntary pharmacological therapy is not addressed here, as it raises numerous constitutional and ethical concerns that merit a separate, thorough analysis.

(7) Government supported opportunities for offenders to obtain employment, housing, treatment, and support services should be enhanced. Offenders cannot reintegrate into society and develop healthy living habits if they have no income, shelter, treatment, or support. Enhancing the likelihood that offenders must or will continually relocate because they lack these opportunities not only virtually ensures that offenders will not improve and exhibit appropriate behavior, but also makes it more difficult to monitor the offender to enhance public safety.

(8) Resources available to treat potential offenders should receive more publicity. Existing state-sponsored websites, publications, and education programs appropriately highlight the resources available to victims, as well as how people can identify and locate sex offenders. There is little or no attention given to advertising how and where a person with a sexual disorder can obtain competent and confidential treatment that will prevent inappropriate behavior from occurring. Governmental funding should be provided to enhance awareness of these services.[187] Additionally, governmental support should be supplied to ensure that people can obtain these resources even when they lack the ability to pay for these services.

(9) Drug and mental health courts have been successfully implemented in some locations.[188] These courts hear mostly or exclusively drug cases or relatively minor criminal cases involving defendants with a mental disorder, respectively, and have thus developed significant experience and expertise in such matters. Sex offense courts may be a viable mechanism in which judges and parole or probation officers are knowledgeable about sex offenders, the treatment modalities specifically designed for sex offenders, the appropriate mechanisms to prevent recidivism, and how best to monitor and supervise offenders to ensure public safety.

However, there is much debate regarding specialized courts in the literature, and thus the matter needs further study.[189] Regardless of whether such specialized courts are implemented, educational and training programs regarding sex offenders should be made available to judges, as well as probation and parole officers, to inform their decision-making.

(10) Because of the limited knowledge and understanding of sex offending, funding and support for research to enhance this understanding is essential. Further research should focus on improving the collection and analysis of recidivism data; studying the effects on recidivism of existing non-punitive responses to sex offenders and possible alternatives; and examining, evaluating, and improving the efficacy of non-biological and biological treatment.

IX. Conclusion

[187] Examples of organizations that provide referrals to mental health professionals and programs that treat sex offenders include: The Safer Society Foundation, P.O. Box 340, Brandon, VT, 05733-0340, (802) 247-5141, www.safersociety.org; The Association for the Treatment of Sexual Abusers (ATSA), 4900 S.W. Griffith Dr., Suite 274, Beaverton, OR, 97005, (503) 643-1023, www.atsa.com, atsa@atsa.com.

[188] *See, e.g.,* Jonathan E. Fielding et al., *Los Angeles County Drug Court Programs: Initial Results*, 23 J. SUBSTANCE ABUSE TREATMENT 217, 223 (2002).

[189] The issue of specialized sex courts is not a simple one. Scholars have long debated the merits and drawbacks of specialized courts as compared to courts of general jurisdiction. Proponents see specialization as beneficial insofar as the courts can develop significant expertise in the area of specialization and produce efficiencies such as those that economists have noted flow from specialization in the production of goods and services. Opponents worry that specialization can render these courts more susceptible to special interests and bias, and that the monotony (hearing the same cases over and over) and lack of prestige of a specialized judgeship might attract a lower-quality judiciary than a generalized judgeship would. For an excellent review of these issues, consult Jeffrey Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 67 (1995).

Crafting appropriate responses for sex offenders is no easy task. As they are some of the most hated and reviled members of society, legislators (even those who are well-intentioned) fear opposing legislation targeting these offenders, regardless of how misguided the legislation may be. In the long run, however, well-informed and carefully crafted measures will prove more effective than impulsive, ill-conceived responses in reducing sex offenses.

Four principles should guide the development of these responses. First, sex offenders should be recognized to be a heterogeneous group, distinguishable by offense type and risk of re-offense. Second, the law should take into account new pharmacological therapies, such as testosterone-suppressing drugs, as well as other innovations and therapeutic approaches as a means of reducing the likelihood of future offenses.[190] Third, greater efforts should be made to promote offender reintegration into society, thereby improving their chances for successful treatment and diminishing the likelihood that they will reoffend. Fourth, it is critical to assess the effects of such legislation and to invest in research into the causes, treatment, and prevention of sexual violence.

By integrating law and therapeutic efforts, responses can be formulated that prevent future offenses and victimization, offer offenders and potential offenders the optimal opportunity to lead healthy, productive lives, and decrease the cost of sexual offending to society. By implementing the recommendations described above, society can move one step closer to these goals.

[190] These therapies are not cure-alls. They must be used appropriately, as discussed in this article and in the medical literature.