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THE MISINFORMATION AND STIGMATIZATION USED TO JUSTIFY HARSH SEXUAL OFFENSE LAWS UNDERMINE THE WELFARE OF SOCIETY, CREATING UNNECESSARY PANIC AND DISTRUST

Executive Summary

Much of this country's public policy towards sex offenders is based on misinformation or ignorance of the extensive research that has been conducted in this area. Too often, all sex offenders are viewed as a single entity: the predatory stranger unable to control his or her urge to prey upon children. Not being able to be rehabilitated, the individual needs to be incarcerated for long periods of time and have severe restrictions imposed once released. This image is all too often reinforced by politicians, the media, and others who profit from panicking the public with visions of an ever-spiraling increase in sexual abuse. However, the fact is that this definition fits only a small percentage of sex offenders. The vast majority have virtually the lowest re-offense rate among all criminal categories and can be safely and productively reintegrated into their communities. In addition, child sexual abuse is far rarer than politicians and the media would make out, and in fact has declined significantly over the past few decades.

Sex offenders come in every size, shape, age, and background. Each person is an individual with his or her own story. A fundamental problem is that society, the media, and our criminal justice and political systems tend to treat them as if they are all the same individual, bound to repeat their offenses and posing the same high risk to the public. Furthermore, much of what guides public policy towards sex offenders is based on misinformation, which often flies in the face of professional opinion and years of research.

This misinformation is commonplace and is found in settings ranging from web site commentary to legislative debate to U.S. Supreme Court rulings to media stories. For

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instance, following an Internet item related to a sex offender, a commentator using the pen name “Swans” wrote: “I am led to believe through common knowledge within our society that sex offenders—and especially child molesters—can NEVER be rehabilitated at all... Consequently, one who has the sex offender living next door and with a small community can expect a violent criminal always on the prowl.”¹

Professor Roger Lancaster of George Mason University, in his authoritative book *Sex Panic and the Punitive State*, notes, “Advocates for laws to register, publicize, and monitor sex offenders after their release from custody invariably assert that those convicted of sex crimes pose a high risk of recidivism. But according to a U.S. Department of Justice study that tracked male sex offenders (men convicted of rape or sexual assault, including child molestation and statutory rape), who were released from prison in 1994, only 5.3 percent had been rearrested (and 3.5 re-convicted) for another sex crime within three years.”²

A Human Rights Watch study of North Carolina sex offender registrants found low recidivism rates among them. The overwhelming majority of the five hundred registrants who were randomly sampled—98.6 percent—were one-time offenders; that is, the offense for which they were registered was their first and only conviction for a sex offense. Not a single offender who had been living in the community for ten to twelve years after release had been re-convicted.³

In another instance of an unsupportable assertion, U.S. Supreme Court Justice Anthony Kennedy noted in a ruling that the risk of recidivism rate posed by sex offenders is “frightening and high,” and in an earlier ruling he stated that the risk of untreated [sex] offenders has been estimated to be “as high as 80%.” Unfortunately, neither of these statements is borne out by research, and his often-quoted “80%” figure is not from a study at all. It was published in a 1986 article in the lay magazine *Psychology Today* that was written by a counselor touting his own treatment program, not a researcher, and provided no source or supporting evidence for the claim.⁴

It is no secret that the media eagerly publicizes sex offenses, particularly those involving children, and it often pays short shrift to the facts. Extensive, often highly emotional, reporting on heinous offenses involving children contributes mightily to feelings among the public that there is a growing epidemic of attacks on children taking place in this country when in fact the opposite is true.

Lancaster points out, “In a nation whose population is roughly 300 million, about one hundred high-risk abductions of children by strangers occur every year, and about half end in murder. You would not know it from news reports or political deliberations, but the incidence for all varieties of child disappearance and abduction

is down significantly from the 1980s (along with most other forms of violent crime). In real terms, then, a child's risk of being killed by a sexually predatory stranger is comparable to his or her chance of being struck and killed by lightning (1 in 1,000,000 versus 1 in 1,200,000).⁵

"In raw numbers," he continues, "the fifty abduction-murders rank far below more common causes of child death: disease or congenital illness (36,180), motor vehicle accidents (7,981), drowning (1,158), accidental suffocation or strangulation (953), fire (606), firearm accident (167)—or death at the hands of a family member. The U.S. Department of Health and Human Services estimates that about fifteen hundred children die every year as a result of abuse or neglect. One or both parents is deemed responsible in 70 to 80 percent of these deaths."⁶

A detailed study by Dr. Emily Horowitz of St. Francis College found that the number of all newspaper stories containing the terms "sex offender" or "sexual predator" as a prominent part of the story rocketed from 107 in 1991 to 5,006 in 2006—a factor of nearly 50 times. In addition, the number of all newspaper stories with the term "sexual predator" in the headline leaped from 536 to 15,558 during the same period. Horowitz said an obvious explanation would be a corresponding increase in sexual offenses over this period. However, her research showed the incidence of rape and child sexual abuse actually declined "significantly" during the period.⁷

"The increasing frequency of news stories and legislation relating to sex offenders, and the corresponding decrease in sex offenses, makes it clear that the national news media has increasingly focused on this topic for reasons other than an increase in incidents...As media coverage of sex offenders has increased and sex offense incidents have decreased, advocates have pushed for new and more extreme policy responses and new and extreme statements about sex offenders." An example, she said, was when former Attorney General Alberto Gonzalez claimed that 50,000 child sex predators are online at any given moment—"a statistic that cannot be confirmed or documented, yet which is commonly used."⁸

The upshot, Horowitz says, is that "...the United States is in the grip of a media fixation and collective moral panic about sex offenders, and ...that many of the new legal remedies emerging from false fears, false assumptions, and hysteria are ineffective, costly, and an affront to civil liberties. Most troublingly, this context sets the stage for future miscarriages of justice, as individuals (including juveniles) accused of even minor sex crimes are subject to a rush to judgment, an inability to get a fair trial, and harsh, long-term penalties that can be disproportionate to the severity of the crime."⁹

The California Sex Offender Management Board was created by the state legislature a decade ago. Composed of major stakeholders and experts, including district

attorneys, police chiefs, probation officers, psychologists, and state judges, the board offers authoritative perspectives on sex offender management. In January 2016, in a detailed report pertaining to proposed legislation regarding residency restrictions for sex offenders, the board took the occasion to address what it felt were a number of faulty assumptions by the authors of the legislation.

“Assumption 1. *“...Residence restrictions and exclusion zones are actually effective in preventing the commission of new offenses by previously identified [sex offenders]... [T]his assumption is not true. These types of policies simply do not accomplish the purposes for which they have been enacted.*

“Assumption 2. *All convicted sex offenders are equally likely to reoffend and so it is effective to develop ‘one-size-fits all’ policies.* This assumption is false. There is a wide range of re-offense risk among sex offenders.

“Assumption 3. *Most convicted sex offenders will reoffend. Therefore extremely robust controls and restrictions are needed to stop them.* This assumption is not supported by the research...[A]ll of the various published studies indicate that the overall rate is considerably lower than is commonly believed...Research recently conducted in California by one of the most highly respected researchers in the world found that the recidivism rates for sex offenders who have been identified...as ‘Low to Medium risk’ fall in the range of 1 to 2 percent.

“Assumption 4. *Every sex offender will continue to be a significant risk to reoffend for the remainder of his or her life.* The research provides ample evidence that this assumption is not true. The longer a sex offender remains offense-free in the community, the lower the risk that that individual will reoffend in the future.

“Assumption 5. *Previously convicted sex offenders account for a substantial proportion of the new sex offenses committed.* This assumption is false. The research has found that only about 5% of new sex offenses were committed by individuals previously convicted of a sex offense. Conversely, almost all new sex offenses are committed by individuals who have never been previously convicted of a sex offense.

“Assumption 6. *Sex offenders are all alike in terms of their potential danger of offending against a juvenile victim...This assumption is obviously not true. Many sex offenses involve victimization of adult women or men. When it comes to offenders with no history of victimizing children, community safety is not improved by regulating their access to places where children gather.*

“Assumption 7. *Molests perpetrated by persons who are strangers to the victim make up a substantial portion of sex offenses against children.* This assumption is discredited by the research...[T]he reality is that sex offenses perpetrated against strangers account for only about 5% of total offenses. In the vast majority of cases, the offender is already known to the victim through some existing relationship, including being a member of the same family.

“Assumption 8. *Sex offenders find their victims and commit their crimes in or around schools or parks or other places where children gather.* This assumption is not correct.

Research on these questions discloses that such scenarios are by far the exception. Most contact with child victims and most actual offenses occur in the home of the victim or the offender.”¹⁰

The International Community Corrections Association, which represents professionals working in residential and other community corrections programs, has also noted the pervasive lack of objective information surrounding sex offender policies. “Driven by misinformation, fear of sexual victimization, and pressure from citizens, new laws, penalties, and regulations regarding sex offenders are growing at a high rate,” the group reported. “The public believes a number of things about sex offenders that are not supported by facts such as sex offenders recidivate at high rates, sex offenders target strangers, and sexual crimes are on the rise.”¹¹

Furthermore, the group said, “Current research does confirm that sex offender treatment is associated with reduced recidivism among sex offenders...While the public tends to view all sex offenders as high risk, the research does not support this... Distinctions between lower and higher risk sex offenders should be accurate and based on scientific findings rather than politics or public perception. This differential approach to managing sex offenders...will result in the greatest protection to the community. This approach also is more cost-effective: public resources are concentrated where they will produce the greatest effect on public safety.”¹²

Similarly, a study published in the journal *Sex Offender Treatment* noted, “...the public subscribes to popular myths about sex offenders.” The researchers said their findings “...have important implications for policy and practice. Public perceptions about sex offenders and sex crimes differ significantly from empirical data, so it comes as no surprise that lawmakers and their constituents lobby for harsh punishments and intrusive monitoring for those who seemingly pose a threat to community safety. The media tend to promulgate and reinforce the perceptions identified here, often leading to misguided approaches that are fueled by anger and fear rather than scientific evidence.”¹³

In particular, the researchers noted the peril of acting as if all sex offenders pose an equal risk to their community: “Broad policies that treat all sex offenders equally despite their heterogeneity divert attention and resources from monitoring the highest risk offenders. As a result, these laws are less likely to be effective in enhancing public safety, and may inadvertently create a false sense of security for community members.”¹⁴

Lancaster, in his book, concurred with this view, writing, “No doubt, a small number of violent repeat offenders, serial rapists, and child stalkers are among those listed in the burgeoning registries of sex offenders. But a great many of the offenses listed in public

sex offender registries are either less violent or nonviolent.”¹⁵

¹ <http://www.vimovingcenter.com/talk/read.php?4,164399,164716>

² Roger N. Lancaster, *Sex Panic and the Punitive State*, Berkeley: University of California Press, 2011, p. 78

³ <https://www.hrw.org/reports/2007/us0907/4.htm>

⁴ <http://floridaactioncommittee.org/how-the-supreme-court-used-a-made-up-statistic-to-expand-sex-offender-registries/>

⁵ Roger N. Lancaster, *Sex Panic and the Punitive State*, Berkeley: University of California Press, 2011, p. 77.

⁶ Ibid.

⁷ <http://ncrj.org/get-informed-2/growing-media-and-legal-attention-to-sex-offenders-more-safety-or-more-injustice/>

⁸ Ibid.

⁹ Ibid.

¹⁰ http://www.casomb.org/docs/CASOMB_LetterRegarding%20AB201_1-7-16.pdf

¹¹ http://iccalive.org/icca/index.php%3Foption%3Dcom_content%26view%3Darticle%26id%3D287%26catid%3D90%26Itemid%3D714

¹² Ibid.

¹³ <http://www.sexual-offender-treatment.org/54.html>

¹⁴ Ibid.

¹⁵ Roger N. Lancaster, *Sex Panic and the Punitive State*, Berkeley: University of California Press, 2011, p. 79.