



ATSA

Registration and Community Notification of Children and Adolescents Adjudicated of a Sexual Crime: Recommendations for Evidence-Based Reform

2020

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ACKNOWLEDGEMENTS

The Association for the Treatment of Sexual Abusers (ATSA) is an international, multi-disciplinary non-profit association of more than 3,000 professionals dedicated to preventing sexual abuse. ATSA promotes sound research, evidence-based and effective practice, informed public policy, and comprehensive prevention strategies that lead to the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse.

ATSA's members include leading researchers in the study of sexual violence; practitioners who evaluate and treat individuals adjudicated or convicted of sexual crimes and those at risk of offending; law enforcement and corrections officials; victim advocates; prosecutors, public defenders, and members of the judiciary; and other individuals who seek to end sexual abuse.

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INTRODUCTION

PURPOSE OF THIS PAPER

Registration¹ and community notification² laws originated in the United States, with international adoption of these policies expanding to other countries in subsequent years. Federal and local laws in the United States, as well as a few other Western countries, often require children and adolescents adjudicated for a sexual crime to “register” their living location and other personal information with the local law enforcement agency on a regular basis. This requirement varies in its duration, but can continue for the rest of the child’s or adolescent’s life. Further, in some jurisdictions, identifying information is posted on the internet and is available to the general public – the most common form of “community notification.” Failure of the child or adolescent to comply with registration requirements is a crime.

The purpose of this paper is to review the emergence and development of sexual offender registration and community notification (SORN) laws, identify how these laws have been applied to children and adolescents adjudicated for a sexual crime, and consider the extent to which these laws:

- Are based on research and scientific knowledge;
- Reduce the chances that others will be victimized in the future by those who are required to register;
- Prevent offending by those who have not previously been adjudicated or convicted for a sexual crime;
- Provide actionable information to law enforcement for criminal investigation purposes and to enable the public to take preventive action; and
- Meet their intended goals of preventing sexual abuse and increasing community safety.

This paper presents conclusions about the effectiveness of registration laws as applied to children and adolescents adjudicated for a sexual crime, and makes recommendations on evidence-based reforms regarding registration and community notification.

¹ **Registration:** A set of procedures that individuals adjudicated or convicted of sexual crimes must follow to disclose information to law enforcement authorities and to periodically update that information so it remains current. Initially designed as private and for law enforcement only, it has expanded to include dissemination of information to the public.

² **Community Notification:** Systems in which information about individuals required to register is transmitted to the public.

REGISTRATION AND NOTIFICATION

HISTORICAL TIMELINE

Registration for adults convicted of a sexual offense originated in the United States (U.S.) in the 1930s and initially was a tool available only to law enforcement agencies. California became the first state to implement sex offender registration of adults in 1947, while Washington became the first state to implement public community notification for adults who had committed sexual offenses in 1990. The original purpose for registering adults convicted of a sexual offense was to provide information to law enforcement for future sex crime investigations. However, based on interest by members of the public to know about registrants in their community, community notification was added to registration laws to allow the public to take protective and preventive actions regarding those required to register.

The U.S. government first implemented a federal registration law with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act in 1994. Jacob Wetterling's parents, Patty and Jerry Wetterling, advocated for a national sex offender registry to provide law enforcement agencies with information to investigate sexual crimes, which might have been helpful in the investigation of the disappearance of their son. However, Mrs. Wetterling never intended for children or adolescents to be registered and has expressed grave concerns about public community notification. She now strongly advocates for returning these laws to their original purpose as a non-public law enforcement tool for adult offenders (Wetterling, 2017).

A U.S. federal community notification law was first enacted with the Megan's Law amendment to the Wetterling Act in 1996 based on the case of Megan Kanka, who was sexually assaulted and murdered by an adult male registrant. Megan's parents, Maureen and Richard Kanka, believed their daughter would be alive today had they known of the registrant's status, and it is difficult to argue with their rationale. However, while cases such as Megan's are horrific, they are the rare exception rather than the norm (Bureau of Justice Statistics [BJS], 2000). Laws and policies based on unusual cases may also be less effective, as they use a one-size-fits-all approach that does not recognize the heterogeneity of individuals convicted of sexual crimes or the differences in recidivism risk potential.

Subsequent to enactment of the federal sex offender registration and notification (SORN) laws, all 50 states have implemented these systems in varying ways. The U.S. government has repeatedly refined and expanded the scope of SORN through a series of amendments to the Wetterling Act (the Lychner Act in 1996, the Jacob Wetterling Improvements Act in 1998, the Campus Sex Crimes Prevention Act in

2000, and the PROTECT Act in 2003). Most recently, the U.S. government set forth a new SORN system with the passage of Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), which replaced the Wetterling Act and its subsequent amendments. SORNA's provisions enhanced registration requirements via tiering based solely on the offense of conviction, expanded the requirement of registration to include children 14 and older for the first time,³ increased availability of sex offender registration information to the public, and required additional jurisdictions, including some Native American tribes and U.S. territories, to implement a registration system.

Initially, SORN laws neither required nor prohibited inclusion for children or adolescents adjudicated of a sexual crime in juvenile or family court, and state laws varied widely. For example, many states required only adults convicted of sexual crimes (including children transferred to adult criminal court) to register, while other states required both adults and children to register (Human Rights Watch, 2013). However, as time passed, SORN laws developed for adults were subsequently applied to children and adolescents adjudicated or convicted of a sexual crime, often in the same manner and without consideration of the unique needs of children and adolescents. Today, federal statutes and the majority of state laws require children and adolescents, some as young as 9 years old (Human Rights Watch, 2013), to be subject to similar or identical SORN requirements as adults.

In June 2019, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) published the latest implementation overview. That review rated all 50 states, the District of Columbia, and five U.S. territories on each jurisdiction's implementation of SORNA across five broad categories. While only 22 jurisdictions met minimum standards in all five categories, the overall compliance rate for all 56 jurisdictions was 61% (172 out of 280). For more information about registration and community notification of adults, please see *The Registration & Community Notification of Adults Convicted of a Sexual Crime: Recommendations for Evidence-Based Reform*.

³ Note, the U.S. Department of Justice has subsequently modified this requirement through a series of supplemental guidelines.

OTHER RESTRICTIONS

As states and local jurisdictions in the U.S. have continued to expand the scope of their SORN systems, adjunct policies related to residence, education, and employment restrictions have been added to SORN laws. The most common example of these resulting adjunct policies are residence restrictions. These restrictions limit where a person who is registered may legally live, and typically prohibits people who are registered from living within 500 to 2,500 feet of schools, daycare centers, parks, and other places where children congregate. The first states to adopt residence restrictions were Delaware and Florida in 1995. Currently, 35 states and many local municipalities have residence restriction laws (Meloy et al., 2008). These adjunct SORN laws have increased the requirements people who are registered must address as they return to a community, and often create unnecessary barriers to community reintegration.

The United States' registration and notification laws were enacted in response to crimes against children that fall outside the norm of the typical sexual offense against a child, crimes that involved kidnapping, rape, murder, and/or mutilation. The visceral response to such acts has, in part, spurred many of the legislative actions throughout the U.S. and resulted in passage of laws based on the desire to act immediately rather than study the outcomes related to the proposed policy. While initially well-intentioned, SORN laws are based upon the myths that individuals who commit sexual crimes are "repetitive, compulsive, predatory and potentially violent abusers of young children" (Ackerman et al., 2011).

INTERNATIONAL APPLICATION OF REGISTRATION AND COMMUNITY NOTIFICATION

Internationally, registration is more common than community notification and, when community notification does occur, it is not as broad-based or publicly available as currently practiced in the United States. Rather, registration is more often a non-public law enforcement tool with no community notification components and, when community notification does occur, it is provided on a limited and/or case-by-case basis. For example, the United Kingdom (U.K.) introduced sex offender registration as part of its 2003 Sex Offender Act. Children over the age of 10 are typically required to register for half the period of adults convicted of a sexual crime in the U.K., but indeterminate registration is automatic for any child who is incarcerated for 30 months or more as a result of a sexual offense.

In many jurisdictions, registration is not applied retroactively as it is a part of the sentence for the crime while, in the U.S., it is civil rather than criminal and able to be applied retroactively. International SORN laws are also applied almost

exclusively to adults convicted of sexual crimes (e.g., Canada, France, India, and Netherlands) and, in some countries, these laws are applied only to adults convicted of sexual crimes involving children (e.g., Australia). As such, some international registries are identified as “child protection” registries rather than “sex offender” registries.

Most of the international registries also provide far less detailed information than the U.S. SORNA requirements. Furthermore, many countries do not have a sex offender or child protection registry (e.g., Denmark, Italy, Pakistan, Sweden, and Switzerland) and those that have a registry do not use registration in the same way as is practiced in the U.S., with some countries having a national registry (e.g., Australia, Canada, France, India, Jamaica, Kenya, Netherlands, New Zealand, Pitcairn Island, Republic of Ireland, South Africa, and the United Kingdom) while others have regional but not national registries (e.g., Australia). More importantly, besides the U.S. and the U.K., no other countries register children or adolescents. Additionally, no country other than the U.S. includes children and adolescents on publicly accessible registries.

FACTS ABOUT CHILDREN AND ADOLESCENTS ADJUDICATED OR CONVICTED OF A SEXUAL CRIME

There are many misconceptions about adults convicted of sexual crimes, which include the myths that all people who commit sexual crimes are at high risk to reoffend, are resistant to treatment efforts, and are relatively homogenous. Contrary to popular belief, adults convicted of sexual crimes recidivate at relatively low rates; indeed, just 18% of convicted adults were shown to reoffend with another sex crime over a cumulative period of 20 years, with significant reductions in recidivism risk potential the longer an individual remained sexual offense free in the community (Hanson et al., 2018). Additionally, they are typically responsive to treatment, and are a heterogeneous group in terms of variable levels of dangerousness to the community (Gannon et al., 2019; Hanson et al., 2009; Schmucker & Losel, 2015). These misconceptions about the sexual offending population are often regularly applied to children and adolescents adjudicated for a sexual crime as well. For example, the concept of “stranger danger,” the belief that children and adolescents offend primarily or predominantly against strangers, has been applied to children and adolescents adjudicated for a sexual crime (Fuselier et al., 2002; Quinn, et al., 2004; Rogers & Ferguson, 2011; Sahlstrom & Jeglic, 2008). Not only is this untrue with respect to adults convicted of sexual crimes, it is also untrue for children and adolescents. For example, most sexual abuse perpetrated against children (approximately 93%) in the U.S. was perpetrated by someone known to the victim (BJS, 2000) and in 88% of all sexual offenses against minors reported to police in Canada, the perpetrator was known to the victim (Cotter &

Beaupre, 2014). With respect to children and adolescents adjudicated for a sexual offense, just 2.5% committed an act against a stranger victim in the U.S. as victims were most commonly composed of family members (25.0%) and acquaintances (63.2%) (Finkelhor, et al., 2009).

The World Health Organization (WHO) defines adolescence as 10 to 19 years of age, and further denotes “children” as 0-17 years of age as set forth in the UN Convention on the Rights of the Child (World Health Organization, 2020). Despite this classification, U.S. juvenile and criminal justice law often cap “juveniles” at age 17, and often refer to “children” as those 11 and younger. It is also important to differentiate between adolescents and children who have engaged in harmful sexual behavior. Despite some jurisdictions adjudicating children as young as 8 for a sexual crime and requiring these children to register as a “sexual offender,” just as adolescents are not “mini adults,” children under the age of 12 are not “mini adolescents.” Children under the age of 12 are best described as engaging in problematic sexual behavior, rather than “sexually abusive behavior,” due to their young age, developmental level, and the continual changes that occur throughout childhood. Children may develop problematic sexual behaviors for a variety of reasons, which include sexual reactivity (i.e., acting out sexually due to a known history of sexual abuse), abusive and/or neglectful environments, exposure to sexualized adults or media, and family violence. Many children and adolescents are also not educated about issues such as consent, physical/emotional/sexual boundaries, and healthy outlets for emerging sexual interests, all factors related to harmful or illegal behavior. For additional information specific to children who engage in problematic sexual behaviors, please see ATSA’s *Report of the Task Force on Children with Sexual Behavior Problems*.

Just as young children differ from adolescents, adolescents who engage in sexually abusive behaviour differ significantly from adults convicted of sexually abusive behavior due to a number of developmental, and particularly neurodevelopmental, factors. Functional Magnetic Resonance Imaging (fMRI) neurological studies have identified several key processes in the reorganization of the adolescent brain that are associated with changes in behavior that occur during adolescence (Gogtay & Thompson, 2010; Lenroot & Giedd, 2006). This and other research has documented that adolescents’ diminished ability to manage their emotions, control impulses, solve problems, and react appropriately to the influence of others is in large part a reflection of adolescent brain development of two processes: (a) a socioemotional system that controls impulses, emotional arousal, and the influence of interpersonal relationships; and (b) a cognitive control system that involves deliberative thinking, foresight, impulse control, problem solving and mature judgment (Conklin et al., 2007; Crone & van der Molen, 2004; Hooper et al., 2004; Luna et al., 2001; Steinberg, 2007, 2010).

Research has demonstrated that, with the onset of puberty, the areas of the adolescent brain that respond to rewards and generate emotions and impulses become more sensitive to the relevant neurotransmitters (Sisk & Foster, 2004; Reynolds et.al., 2017; Rothman et al., 2012). This results in an increase in the intensity of emotions and impulses and the reward value of satisfying those impulses. At the same time, the centers of the brain associated with modulating emotions and control of impulses mature more slowly, resulting in a gap between the neurologically based activation of impulses and the neurologically based ability to maturely control and moderate those impulses (Casey et al., 2008; Steinberg, 2010; Steinberg et al., 2008). The limited ability of an adolescent to modulate emotions, self-monitor behavior, and control reasoning is mirrored by incomplete brain development in the pre-frontal areas combined with greater intensity in emotions and impulses, including those related to sexual behavior (Bufkin & Luttrell, 2005; Casey et al., 2008).

Further, studies have consistently shown that adolescents engage in greater risk-taking in the presence of peers (Albert et al., 2013; Gardner & Steinberg, 2005; Grosbras et. al., 2007; Monahan et al., 2009; Steinberg & Monahan, 2007). This is not solely the result of direct peer pressure, but has been consistently shown to occur even when the youth is alone but believes a peer is present (Smith et al., 2018; Widman et al., 2016). Peer influence produces attitudes more supportive of precocious and impetuous sexual behavior, and more risky and impulsive sexual behavior through two mechanisms. First, peer norms that encourage precocious or aggressive sexual activity directly foster those behaviors and attitudes in young people (Brechwald & Prinstein, 2011; Widman et al., 2016). Second, the perception of the presence of a peer intensifies the reward value of sexual activity by increasing activation of the reward centers of the adolescent brain (Smith et al., 2018; van Hoorn et al., 2018). Thus, adolescents experience stronger sexual impulses and a weaker ability to modulate and rationally analyze those impulses than do adults. Additionally, the impression that other youth are engaging in sexual activity, or the perception of the presence of a peer, increases the reward value of sexual activity and produces more impetuous risk-taking. All of these effects appear to be related to neurodevelopmental processes that occur in the adolescent brain.

The significant developmental changes that occur during adolescence are linked to the low rate of sexual recidivism for adolescents adjudicated for a sexual crime. While there is a tendency for the public to assume that adolescents adjudicated for sexual crimes are unresponsive to treatment and at increased risk for recidivism (Sparks, 2018), research indicates that, once detected, the vast majority of children and adolescents adjudicated for a sexual crime do not continue to engage in these behaviors. Sexual recidivism estimates for adolescents have been reported in scores of studies conducted over decades of research. A recent large scale meta-analytic study reviewed 106 data sets involving 33,783 adolescents who had been adjudicated for a sexual offense. The weighted mean detected sexual recidivism

rate was 4.92% for all studies, and 2.75% for studies conducted since 2000 (Caldwell, 2016). This study additionally documented a 73% decline in adolescent sexual recidivism over the past 30 years. However, similar to adults convicted of sexual crimes, while *sexual* offense recidivism rates for adolescents are low, recidivism rates for *non-sexual* recidivism are higher, ranging from 22% to 49% (Caldwell, 2016; Reitzel & Carbonell, 2006; Worling et al., 2010). Even across a 20-year prospective follow-up study with a clinical sample, sexual recidivism rates remained low, with the lowest recidivism rates identified for youth who participated in specialized treatment (9% in treated compared to 21% untreated; Worling et al., 2010).

There are also notable differences and limitations with regards to the use of empirically based risk assessment instruments for adolescents adjudicated for a sexual crime when compared to adult males convicted of sexual crimes. This is due to the low base rate for sexual recidivism in conjunction with the numerous developmental and environmental factors present for youth. While there are evidence-informed, structured risk assessment tools that have been developed to assess the risk and needs of adolescents adjudicated for a sexual crime, it should be recognized that there are limitations to the current risk assessment tools that are available. Research provides preliminary support that existing instruments predict recidivism with better-than-chance accuracy (Viljoen et al., 2012; Worling et al., 2012). However, research on the accuracy and validity of these instruments remains inconsistent, suggesting that existing instruments do not sufficiently meet the requirements on which to base public policy or inform important court decisions. Existing research has not identified any risk assessment instruments that reliably predict sexual recidivism in adolescents convicted of a sexual crime (Caldwell, 2016). Additionally, due to the difficulty of accurately estimating risk for sexual recidivism in adolescents, there has been a recent shift away from an exclusive focus on risk assessment, and toward the presence and/or absence of protective factors associated with desistance as a more effective method to meaningfully understand risk factors and treatment needs for adolescents adjudicated for sexual crimes (Worling, 2017).

Adolescents adjudicated for sexual crimes are also a heterogeneous group as they vary widely in their histories, skills, and psychosocial functioning despite commonalities not only with one another, but also with adolescents who engage in non-sexual criminal behavior. However, as a collective they nevertheless represent a distinct group in comparison to adolescents adjudicated for non-sexual types of offenses. A meta-analysis of 59 studies found that, relative to non-sexually delinquent adolescents, sexually delinquent adolescents had higher rates of sexual abuse victimization, exposure to sexual violence, exposure to non-sexual abuse or neglect victimization, social isolation, early exposure to sex or pornography, atypical sexual interests, anxiety, and low self-esteem (Seto & Lalumiere, 2010). The fact that social isolation, anxiety, and low self-esteem have been found to be significant

variables should inform our expectations of the impact of contemporary policy interventions (Daverson & Knight, 2007; Miner et al., 2010). For example, to the extent that broadly applied legal policies inhibit or impair normal social and academic endeavors and development, these policies might exacerbate risk factors for non-sexual or sexual recidivism.

In addition to the issues listed above, adolescents adjudicated for sexual crimes also have a higher prevalence of autism spectrum disorders, as well as lower IQ and other neurological deficits when compared to adolescents who have been adjudicated for non-sexual crimes (Mulder et al., 2012). Elevated levels of depression, anger, anxiety, social isolation, disruptive behaviors, rape myth endorsement, psychopathic traits, and sexual arousal are also commonly present in adolescents adjudicated for sexual crimes, as are decreased emotional regulation skills, social skills, number of romantic relationships, body satisfaction, and openness concerning sexuality (Burton et al., 2011; Cale et al., 2015; Huang, 2016; Jones et al., 2017; Mulder et al., 2012; O'Brien et al., 2016; Seto & Lalumiere, 2010; Tidefors et al., 2011). There is also some indication that their criminal histories are not necessarily distinct from their non-sexual offending counterparts (McCuish et al., 2016).

Additionally, while there has been some concern regarding the continuity of sexual offending among adolescents adjudicated for sexual crimes, research has indicated that continuation of sexual offending into adulthood by these youths is unlikely to occur (Lussier et al., 2012; Taylor, 2003). In assessing the histories of sexual offending for adolescents, Lussier et al. (2012) noted that their offending trajectories followed one of two patterns, adolescent-limited or high-rate slow desisters⁴. The adolescent-limited category, which encompassed 89.6% of the juveniles, was characterized by a peak in offenses around the age of 14 followed by a sharp decrease, with considerably low (2%) recidivism rates in adulthood. The high-rate slow desisters category, which encompassed 10.4% of the juveniles, was characterized by earlier onset of sexually offending which peaked around the age of 12 and was followed by a much slower decrease, with considerably higher (60%) recidivism rates in adulthood. Factors that appeared to differentiate the high-rate slow desisters from the adolescent-limited group were evidence of deviant sexual interests; sexual preoccupation/compulsivity; poor perspective-taking; adult/child pornography use; and traits associated with psychopathy (i.e. superficial charm and grandiosity; Lussier et al., 2012). With respect to criminal trajectories more generally, both Cale et al. (2016) and McCuish et al. (2016) found that there were four distinct categories of offending behaviors. In particular, McCuish et al. (2016) found that the prevalence of children and adolescents adjudicated of sexual crimes in each category did not differ from the prevalence of children and adolescents adjudicated for non-sexual crimes, suggesting that both groups may have similar

⁴ **Desistance:** Process of discontinuing and demonstrating long-term abstinence from criminal behavior.

offending patterns (McCuish et al., 2016). These results also align with findings from the Pathways to Desistance study (Steinberg et al., 2015), which noted that almost all adolescents acquitted of crimes (including sexual) desisted from crime as they matured.

Furthermore, despite efforts to distinguish the small percentage of adolescents who are at an increased risk for sexual recidivism from the majority of adolescents who desist from crime, the existing research has not identified any stable, offense-based risk factors that reliably predict sexual recidivism in adolescents adjudicated of a sexual crime (Caldwell, 2016). These difficulties in differentiation are additionally reflected by federal and state standards which typically fail to distinguish between adolescents who will reoffend and those who will not (Batastini et al, 2011; Caldwell et al, 2008; Caldwell & Dickinson, 2009).

IMPACTS TO LEGAL CHARGES AND SENTENCING OUTCOMES

The implementation of punitive policies, such as registration and community notification, applied to children and adolescents who have been adjudicated for sexual offenses has also been associated with a 41% decrease in sexual offense charges being forwarded by prosecutors and an increase in plea bargains for non-sexual offenses (Letourneau et al., 2013; Letourneau et al., 2009). As a result of non-sexual charges being applied, there is a risk that adolescents may not qualify for specialized treatment programs in their jurisdiction that are available only to those adjudicated for a sexual offense. These effects have also been shown to occur for adolescents charged with a sexual crime that result in a non-sexual adjudication, with similar negative outcomes regarding ineligibility for treatment programs and similar services (Letourneau et al., 2009; Letourneau et al., 2013; Letourneau et al., 2010a; Calley, 2008).

At the other end of the spectrum, there is also the possibility that adolescents charged for sexual crimes may be tried and convicted as an adult. Waiver laws accommodating such requests or requiring a waiver of some children to adult court are present in 45 states in the U.S. (Griffin et al., 2011). However, trying children as adults does not appear to be an effective deterrent to further offending (Hansen & Waddell, 2014; Letourneau et al., 2010a). It additionally disregards the research on developmental factors and the low recidivism risk potential for children and adolescents adjudicated for a sexual crime.

RESEARCH ON THE IMPACTS OF REGISTRATION AND COMMUNITY NOTIFICATION

As noted previously, the primary goals of SORN laws are to prevent sexual abuse, protect society and monitor individuals within the community who were adjudicated or convicted of sexual crimes. The majority of studies conducted to date have demonstrated that registration and notification laws have done little to reduce sexual recidivism or prevent sexual abuse whether applied to youths or to adults who have been convicted of a sexual crime (Ackerman et al., 2011b; Bouffard & Askew, 2019; Letourneau et al., 2010b; Letourneau & Armstrong, 2008; Levenson & Zgoba, 2015; Levenson et al., 2016; Sandler et al., 2008; Sandler et al., 2017; Vasquez et al., 2008; Veysey et al., 2008; Zgoba et al., 2010). As is true of adults convicted of a sexual offense, children and adolescents adjudicated or convicted of harmful sexual behavior are a heterogeneous group who cross all socioeconomic, ethnic, gender, educational, and cultural lines. While a small percentage of adult registrants may present significant risk to communities, once caught, the majority of individuals – child, adolescent, or adult – sanctioned for a sexual crime desist from sexually abusive behavior, thus dispelling the myth that such individuals are compulsive, repeat offenders.

There are also numerous unintended consequences of registration and notification as practiced within the U.S. that create barriers for successful community reintegration. For adult registrants and their families, this includes difficulties obtaining employment and housing, as well as experiencing threats, harassment and/or property damage (Farkas & Miller, 2007; Levenson & Cotter, 2005; Levenson et al., 2007; Mercado et al., 2008; Tewksbury, 2005; Zevitz & Farkas, 2000; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009). These collateral consequences are regularly experienced by not only the registrant, but the registrant's family (e.g., spouse, children).

For adolescents, Comartin et al. (2010) found social, emotional, and psychological consequences of registration. Children and adolescents required to register experienced more stress, shame, stigma, isolation, loss of friendships, and hopelessness (Mercado et al., 2008), all factors which are associated with increased risk for recidivism in adults convicted of sexual crimes (Ackerman & Sacks, 2012; Hanson & Morton-Bourgon, 2005; Levenson, 2007; Levenson & D'Amora, 2007; Ostrowsky & Messner, 2005; Worling & Langstrom, 2006). Sex offender registration was found to be positively correlated to increased severity of depression and suicidal ideation in the adult life of juvenile registrants, regardless of whether registration status was private or public (Denniston, 2016). A recent study (Letourneau et al., 2018) evaluating the consequences of registration on adolescents also revealed that, compared to unregistered adolescents who were in treatment for problematic sexual behavior, registered adolescents were four times as likely to report having attempted suicide in the past 30 days; five times as likely to report

having been approached by an adult for sex in the past year; and twice as likely to report having been sexually victimized (or the victim of a sexual assault) in the past year. Essentially, the registration and notification of adolescents actually increased the risk for these youth to be victimized and sexually abused by others rather than preventing sexual abuse.

Such findings have also been replicated internationally. In a UK study, Hackett et al. (2015) found that stigmatization, social isolation, violence and physical attacks were commonly reported features of the community response to young people who had sexually offended and their families. The overwhelming level of negative community reactions experienced by youth was described by the authors as “akin to a shotgun...with the impact spreading in unpredictable ways across systems” (Hackett et al., 2015; pg. 251). As such, the authors urged extreme caution against the inclusion of children and adolescents in public policies that replicate the U.S. style of community notification measures.

Negative impacts to the mental health of children and adolescents required to register have also overwhelmingly been identified by treatment providers (Harris et al., 2015). Adverse consequences related to harassment and unfair treatment by others, problems in school, lifestyle instability, and risk of reoffending were noted (Harris et al., 2015). Further, reducing access to prosocial activities for these youth has the unintended consequences of weakening the protective factors that prevent reoffending (Tewksbury & Zgoba, 2010).

In addition to the collateral consequences to family members of adult and adolescent registrants mentioned above, there are added concerns for parents and caregivers regarding the safety of their child or adolescent required to register. Parents often experience fear and paranoia over concerns for their child’s public safety, their vulnerability to future false allegations because of their registrant status, unintended mistakes that could have legal consequences to their child as they attempt to abide by complex registration requirements, information about their child being publicly disseminated, and about how ingrained the label might become in their child (Comartin et al., 2010). This often leads to a sense of powerlessness and hopelessness by parents due to their inability to protect their children from these negative consequences, as well as, for some, a prevailing feeling that no matter how many good things their child did, they were not allowed to be proud of them because their offense overrode everything (Comartin et al., 2010). Family members also often suffered the loss of friendships, and even family relationships, when others were embarrassed to associate with them, ostracized them, or if conflicts occurred from misunderstandings about the “sex offender” label or the offense behavior (Comartin et al., 2010). Additionally, public registration and notification essentially results in the “registration” of the parents, family, neighborhood and school as those addresses are often listed on the public registry as well.

As young adults, children and adolescents required to register into adulthood were also found to have significantly more difficulty than older registrants when securing housing, while residence restrictions also made it more likely they were unable to live with supportive family members (Levenson & Hern, 2007). This poses obstacles for children and adolescents required to register as they mature into adulthood and seek to obtain education and secure employment (Comartin et al., 2010; Prescott, 2010). Lack of housing, food, and other basic needs are also associated with increased risk for recidivism (Levenson & Hern, 2007) and, when individuals required to register are unable to find employment, the financial hardship was felt by the whole family as they tried to support the registrant's basic needs in their adult life (Comartin et al., 2010; Levenson & Tewksbury, 2009).

From a law enforcement perspective, SORN laws were viewed as necessary for the monitoring and tracking of registrants in the U.S. and beneficial to law enforcement for criminal investigation purposes. However, law enforcement personnel appeared to be less confident in the public use of this information due to concerns about the public misunderstanding or misinterpreting the currently available registry information (Harris et al., 2016). International research mirrors this perspective on public access to registration information, indicating law enforcement valued the information provided by the adult registry in their respective countries, but they were against the public dissemination of that information due to the unintended consequences, such as those outlined above (see McCartan, 2018; O'Sullivan et al., 2016). Similarly, law enforcement within the U.S. has expressed concerns regarding residence restrictions and similar adjunct laws due to the negative impact on the ability for law enforcement to effectively track, monitor, and provide community supervision of individuals adjudicated or convicted of sexual crimes (Harris et al., 2016). Residence restrictions, as well as some SORN laws, have additionally been subjected to numerous legal and constitutional challenges in the U.S. due to concerns regarding violation of due process, retroactive application, and similar issues (SMART, 2018). See Appendix A for more information on legal challenges within the U.S.

RESIDENCE RESTRICTIONS

As noted above, most states and local jurisdictions in the U.S. have continued to expand the scope of their SORN systems through adjunct policies related to residence, education and employment restrictions. The most common examples are residence restrictions, which have exacerbated many of the unintended negative consequences of registration and community notification. Residence restrictions have been widely used in various forms throughout the U.S. and typically prohibit individuals required to register from residing within 500 to 2,500 feet of schools, parks, playgrounds, day-care centers, bus stops, and other places where children

congregate. This affects not only adults required to register, but also the families of children and adolescents required to register if the child lives at home.

The basis for residence restrictions is the mistaken assumption that, if a person required to register is prohibited from living near children, then that person's access to potential victims is reduced and sexual abuse will be prevented. However, these restrictions are often "one size fits all," based on the myth of "stranger danger," and the assumption that all individuals required to register, adult and juvenile, have sexually abused children and/or present imminent risk to children. To date, the research has provided no evidence to support that the residential proximity to places where children congregate, such as schools or parks, leads to increased recidivism risk. Several studies have shown that the physical distance between the residence of an adult convicted of a sexual crime and schools or day cares was not associated in any way with sexual recidivism (Duwe et al., 2008; Nobles et al., 2012; Zandbergen et al., 2010). Rather, social proximity to children is much more relevant than geographic proximity. While no research has yet been conducted on the outcomes of residence restrictions with children and adolescents required to register, it is important to note that the majority of sexual abuse involving children is perpetrated by someone known to the victim (Finkelhor et al., 2009; Snyder, 2000). Hence, it is not surprising that residence restrictions have done little to prevent sexual abuse.

The unintended consequences of residence restrictions experienced by adults required to register are also present and, in many ways, intensified for children and adolescents required to register due to their reliance on caregivers, educational needs, and the importance of positive social, recreational, cultural and similar activities with peers. Education and prosocial socialization are integral for the healthy development of all children, and removing access to these opportunities for children and adolescents required to register actually inhibits the protective aspects provided by these experiences and opportunities.

LEGAL CHALLENGES

SORN laws in the United States have also come under numerous legal challenges, particularly since the enactment of the Adam Walsh Act in 2006. Similar legal challenges do not exist in other countries due to the differences in application, procedure and use of registration internationally. Challenges to SORN statutes have occurred at both the federal and state levels in the U.S., and are typically focused on violations of the following constitutional and legal tenets – freedom of speech, retroactive application of law, cruel and unusual punishment, and equal protection and due process. In all of these areas, the law is evolving. Please see

Appendix A for a more comprehensive overview of the legal challenges to these laws within the United States.

CONCLUSIONS AND RECOMMENDATIONS

While SORN laws for adults convicted of sexual offenses exist in several countries, only in the U.S. are these laws applied to children and adolescents. The available evidence does not support the effectiveness of SORN laws as applied to children and adolescents while also demonstrating that these laws may actually be counterproductive to the prevention of sexual abuse. Specifically, SORN laws as implemented and applied to children and adolescents within the U.S.:

- Fail to deter sexual reoffending by children and adolescents required to register who, as a group, already have low rates of sexual recidivism;
- Fail to prevent first-time sexual offending by children and adolescents;
- Fail as a risk assessment method to predict sexual recidivism by children and adolescents required to register; and
- Are linked with long-term detrimental outcomes for children and adolescents, including (but not limited to) increased suicide attempts, increased sexual victimization, and increased likelihood of being approached by adults for sex.

Additionally, an often-overlooked unintended consequence of SORN laws is the false sense of security provided to the public as these laws focus only on those adjudicated or convicted of a sexual crime. Research on adults convicted of sexual crimes revealed that 95% of prosecuted sexual crimes were committed by first-time offenders (Sandler et al., 2008), raising questions regarding the ability of SORN laws to meaningfully reduce sexual offending. The enforcement of these laws also diverts time, effort, funding, and resources away from the primary prevention of sexual abuse and evidence-based methods of preventing sexual reoffense by children and adolescents, such as specialized treatment.

Some states, such as Oregon⁵, have recognized the ineffectiveness and harm caused by registration and community notification of children and adolescents adjudicated for sexual crimes and have taken steps towards meaningful reform. While ATSA applauds these state-level efforts, they are not enough and more needs to be done. It is time for legislators to discontinue harmful policies such as the registration and notification of children and adolescents adjudicated for a sexual crime, and instead incorporate what the research has clearly shown are the evidence-based

⁵ <https://www.oregonlaws.org/ors/163A.025>

interventions effective at reducing sexual recidivism and for the primary prevention of sexual abuse.

In looking at what *does* work to prevent sexual abuse and appropriately address sexually abusive behavior committed by children and adolescents, access to and participation in evidence-based, holistic approaches that are individualized according to youth and family risk factors, intervention needs, and learning style are key. This includes interventions that address risk factors, maximize protective factors, and focus on family stability and increasing ties to the community to promote a healthy, prosocial lifestyle.

Based upon current knowledge and research, ATSA offers the following recommendations:

- End policies that subject children or adolescents to sex offender registration and notification requirements and related residence, education, and employment restrictions;
- Implement primary prevention interventions, for example [Shifting Boundaries](#), [Safe Dates](#) and [Coaching Boys into Men](#);
- Offer specialized treatment programs grounded within developmentally appropriate, research informed practices that incorporate trauma-informed practices and adhere to the principles of risk, need, and responsivity⁶;
- Offer sexual education programs that address consent, healthy sexuality, and boundaries offered in an age-appropriate manner throughout childhood development;
- Offer treatment and other interventions that are sensitive to and address the adverse childhood conditions often experienced by at-risk youth (Adverse Childhood Experiences);
- A focus on protective factors that increase emotional, behavioral, and educational stability; and
- Engage family members and community support persons in an effort to maximize success in programs and promote stability and prosocial behaviors.

⁶ **Risk Principle:** intensity of services should be determined by the risk level of the individual

Need Principle: interventions should focus on criminogenic factors associated with recidivism risk

Responsivity Principle: interventions should be provided in a manner that incorporates the person's individual characteristics such as learning style, level of motivation, and other individual factors that may impact delivery of services

Evidence-based assessment, treatment, management, and policy strategies enhance community safety, reduce sexual recidivism, and prevent sexual abuse. However, too often the data surrounding public policy interventions are discounted or ignored, especially when the conclusions of the research do not support the views of policy-makers and their constituents. Although SORN laws were created to protect the public from potentially dangerous offenders, given the research and all that is known about the negative effects of such policies, it is now time to protect children and adolescents from these harmful policy decisions. As evidenced by the research, SORN laws as currently applied to children and adolescents in the U.S. are not evidenced-based, have not been shown to enhance community safety, have not been shown to prevent sexual abuse, and are associated with numerous unintended harmful consequences. It is the position of ATSA that Sex Offender Registration and Notification laws are not appropriate for children and adolescents adjudicated or convicted of sexually abusive behavior, and the application of such practices should be eliminated. Efforts should focus on evidence-based interventions that will prevent re-offense, facilitate healthier lives for these youth, and result in healthier and safer communities.

APPENDIX

LEGAL CHALLENGES AND RULINGS RELATED TO SORN LAWS

Challenges to registration statutes in the United States at both the federal and state levels typically have focused on violations of the following constitutional and legal tenets – freedom of speech, retroactive application of law, cruel and unusual punishment, and equal protection and due process. In all of these areas, the law is evolving. A sampling of recent cases in each of these areas follows.

- ***Freedom of speech:*** The First Amendment to the U.S. Constitution prevents the government from abridging individuals’ right to exercise freedom of speech, freedom of peaceable assembly, and freedom of religious practice.

Recent rulings show support for protecting the free speech of registrants.

- In 2012 (*Doe v. Nebraska*), the U.S. District Court in Nebraska found that preventing registrants from using social networking websites, instant messaging services, and chat rooms violated the First Amendment, and that requiring registrants to provide internet identifiers also violated the First Amendment.
 - In 2017 (*Packingham v. North Carolina*), the U.S. Supreme Court found that North Carolina’s law prohibiting registered sex offenders from accessing social media sites where minors are permitted violated the First Amendment.
 - In 2018 (*Doe v. Marshall*), the U.S. District Court in Alabama ruled that Alabama’s sex offender registration law violated the First Amendment by branding state-issued ID cards with “CRIMINAL SEX OFFENDER” and imposing extensive internet-use reporting requirements.
- ***Ex post facto:*** An ex post facto law retroactively applies new laws to actions that were committed before the law took effect. Ex post facto laws are expressly forbidden by the U.S. Constitution. Ex post facto challenges to the use of sex offender registries have occurred and continue to occur in states where individuals who were not originally required to register were later required to register due to a law change that retroactively applied to the original crime, and where adjunct laws have been imposed.

Rulings on cases involving ex post facto challenges have been mixed, but more recent decisions have found that retroactive application of sex offender registration laws is an ex post facto violation.

- In 2003 (*Smith v. Doe*), the U.S. Supreme Court upheld Alaska’s sex offender registration statute, ruling that sex offender registration laws were civil laws, not punitive measures, and therefore were not unconstitutional ex post facto violations.
- However, in 2008 (*Doe v. State of Alaska*), the Alaska Supreme Court ruled that Alaska’s Sex Offender Registration Act violated the ex post facto clause of the state's constitution, and ruled that the registration requirement does not apply to persons who committed their crimes before the act became effective.
- Missouri’s courts issued a series of conflicting rulings in 2006, 2007, 2009, and 2010 on whether individuals were required to register if they pled guilty to a registrable offense before the state’s sex offender registration law took effect. As of the 2010 ruling, individuals who pled guilty to a sex offense that occurred prior to the enactment of Missouri’s registration law are not required to register.
- In 2012 (*In re C.P.*), the Ohio Supreme Court ruled that the state’s version of the Adam Walsh Act was punitive, rather than a civil regulatory measure, and barred retroactive application of the law to individuals whose crimes predated the law's effective date.
- In 2013 (*Doe v. Department of Public Safety and Correctional Services*), the Maryland Court of Appeals ruled that the state could not require the registration of people who committed their crimes before the registry database was established.
- In 2016 (*Does #1-6 v. Snyder*), the U.S. Sixth Circuit Court of Appeals ruled that the actual effects of SORA are punitive with respect to its retroactive application. Therefore, retroactive application of changes to Michigan’s SORA in 2006 (implementing residency restrictions), and in 2011 (implementing SORNA) were unconstitutional and must cease. The court opined that: “A regulatory regime that severely restricts where people can live, work, and “loiter,” that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska’s first-generation registry law. SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to

school zone restrictions, they may not even live. It directly regulates where registrants may go in their daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their information.” (Does #1-6 v. Snyder, 2016)

- In 2017 (Commonwealth v. Muniz), the Pennsylvania Supreme Court ruled that Pennsylvania’s retroactive application of SORNA penalties violated the ex post facto provisions of both the U.S. and Pennsylvania constitutions and additionally violated Pennsylvania’s constitutionally protected freedom of reputation.
- ***Cruel and unusual punishment***: The Eighth Amendment to the U.S. Constitution states that no one shall be subjected to cruel and unusual punishment. The four principles used to determine if a punishment is cruel and unusual are whether the punishment 1) is degrading to human dignity, 2) is inflicted in an arbitrary fashion, 3) is clearly rejected throughout society, and 4) is unnecessary. Arguments against registries claim that placing someone on a registry is, in fact, cruel and unusual punishment, because the public’s access to registries results in registrants and their families being subjected to verbal and physical harassment, loss of housing and jobs, and other penalties.

Rulings in this area of law are mixed and still too few in number to show any kind of trend.

- In 2018 (In re C.K.), the New Jersey Supreme Court found that requiring juveniles to register as sex offenders for life was unconstitutional.
- In 2019 (People v. Interest of T.B.), the Colorado Court of Appeals remanded the case for further proceedings to determine whether lifetime registration for juveniles is unconstitutional.
- In 2019 (Doe v. Idaho Sex Offender Registry), the 9th U.S. Circuit Court rejected a lawsuit challenging the Idaho Sex Offender Registry Act as being cruel and unusual punishment and a violation of due process, and upheld the law as valid and constitutional.
- As of 2020 (In re G.M.C.), a case is making its way through the court system regarding the involuntary waiver of a juvenile to adult court for committing a sexual offense. The lawsuit challenges New Jersey’s requirement that juveniles older than 14 must register under Megan’s Law for at least 15 years after being adjudicated as delinquent. The lawsuit states that being registered triggers more than 600 federal,

state, and local consequences and creates a “minefield of collateral effects” for the person.

- ***Equal protection and due process:*** The Fourteenth Amendment to the U.S. Constitution provides that no state shall deprive any person of life, liberty, or property without due process of law. Due process requires that governments must respect all of a person’s constitutional rights when investigating them, charging them, or sentencing them for a crime. A violation of due process occurs when a government does not follow this requirement and a person is harmed as a result. Arguments against registries claim that placing someone on a registry deprives that person of liberty and/or property without due process.

Rulings in this area of law have supported most challenges to sex offender registries.

- In 2001 (*State v. Bani*), the Hawaii Supreme Court ruled that Hawaii's sex offender registration statute violated the due process clause of the state’s constitution. The court determined that the law authorized public notification of the potential registrant’s status as a convicted sex offender without notice, an opportunity to be heard, or any preliminary determination of whether and to what extent a potential registrant actually represented a danger to society.
- In 2003 (*Connecticut Department of Public Safety v. Doe*), the U.S. Supreme Court ruled that Connecticut’s sex offender registration statute did not violate procedural due process. It left open, however, the question of whether Connecticut’s law violates substantive due process principles.
- In 2014 (*In re J.B., L.A.D., D.E., K.O.H., A.M., J.T., and D.T.*), the Pennsylvania Supreme Court ruled that the state's sex offender registry for juvenile offenders was unconstitutional and that the state, by making an irrefutable presumption about adults’ behavior based on crimes they committed as teens, violated their constitutional right to due process.
- In 2017 (*Millard et al. v. Rankin*), the U.S. District Court in Colorado found that the state’s registration and notification system violated both the Eighth and Fourteenth Amendments of the U.S. Constitution.
- In 2018 (*People v. Temelkoski*), the Michigan Supreme Court ruled that retroactive application of a sex offender registration statute to a man who pleaded guilty to a sex offense under a state diversionary statute violated his right to due process under the state and federal constitutions.

ADDITIONAL CHALLENGES

In 2019, the Liberty and Justice Coalition (an organization whose goal is improving public safety by reforming sex offender laws) notified sheriffs throughout New Mexico that it will file a tort claim against any county sheriff's department that violates the New Mexico Sex Offender Notification and Registration Act by imposing additional requirements on registrants beyond those allowed and specified within the statute. Examples of additional requirements cited by the Coalition include requiring registrants to provide advance notice and an itinerary of travel outside the state, requiring registrants to make contact with the sheriff's office more frequently than required by statute, providing more information to employers about their convictions than required by statute, and restricting participation in holiday activities. As this effort proceeds, organizations in other states may choose to follow a similar process for challenging local enforcement variations of state and federal registration laws.

SUMMARY OF LEGAL CHALLENGES

Since states' laws and their application of the federal Sex Offender Registration and Notification Act (SORNA) vary, challenges to registration laws generally must take place on a state-by-state basis. This limits the application of court decisions to residents of one jurisdiction or to plaintiffs in narrow circumstances. Changing laws throughout the U.S. through legal challenges will necessarily require years of casework and a multitude of rulings.

During the past decade, however, some trends have emerged. Rulings on challenges to sex offender registration laws appear to be moving toward increased support for registrants' free speech rights and toward banning retroactive placement of individuals on registries. Rulings on challenges to registries based on cruel and unusual punishment, equal protection, and due process do not yet show a clear trend.

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