



Prosecution and Registration of Youth with Problematic or Illegal Sexual Behaviors

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Introduction

There are currently more than 200,000 people who are listed for life on sex offender registries for acts they committed when they were children (Juvenile Law Center, 2023). Their offenses often include acts such as simulating intercourse with similar-age siblings or peers, sexual exploration with younger children, or consensual sexual contact with another youth.

There are many widely documented negative and life-long consequences for youth placed on sex offender registries that can seriously affect their social, physical, and cognitive development and their mental health. These youth are trapped in a broad net that was cast thirty years ago, when less was known about the extremely low recidivism rate of youth who act out sexually, and during a period when the United States was politically tough on crime.

Annual costs to governments for managing youthful offenders are estimated to “range from \$10 million to \$100 million per year” (Belzer, 2015, p.6). This is a

relatively small portion of the total costs – social costs increase this number by at least ten-fold. (Belzer, 2015, p. 6) Further, direct costs passed on to youth and their families range from hundreds to thousands of dollars per year and may lead to incarceration of the youth when impoverished families cannot meet these obligations (Human Rights Watch, 2013). The international advocacy organization Human Rights Watch claims that under human rights law, youth should be treated in ways that are appropriate for their age and capacity for rehabilitation, and that respect their rights to family unity, to education, and to be protected from violence (Human Rights Watch, 2013). Registration and notification do just the opposite.

Policy History

Nearly a century ago, sex offender registries were created as a tool to help law enforcement identify potential suspects when a sex crime occurred. After the tragic and highly publicized murders of two children, Adam Walsh, and Megan Kanka, by sex offenders in the 1990s, many

states created sexual offender registries and made community notification and publication of information from these registries the norm.

In July 2006, President George W. Bush signed the Adam Walsh Child Protection and Safety Act into federal law, mandating that all states create and maintain sexual offender registries. The federal Adam Walsh Act has seven major components, referred to as Titles. Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA), listed a comprehensive set of minimum standards to regulate sex offender registration and notification. These were to be implemented in each state by July 27, 2009. A state's failure to substantially comply with the law could result in a 10% reduction in funding to that state under the Byrne Justice Assistance Grant.

A key provision of the Adam Walsh Act required that, by 2011, youth be included in registration and community notification activities. Youth who committed an offense after their 14th birthday, and who were "adjudicated delinquent for a crime comparable to or more severe than aggravated sexual abuse, as defined in federal law" (Sexual Abuse Act of 1986), were to be included on the registry (Caldwell et al., 2008).

SORNA not only mandated including youth on registries, but the law also made this information accessible and highly visible to both law enforcement officers and to members of the general public by including youth on a National Sex Offender Registry and a public website. This meant that local communities publicly notified local residents or other interested groups of the identities and addresses of sex offenders in their communities. The stated motivations for this practice were to help law enforcement officers supervise and apprehend sex offenders who might re-offend, and to help local citizens protect themselves by monitoring and avoiding offenders living in their neighborhoods or communities.

This federal mandate coincided with an increase in youth crime at the same time that some of the key provisions of the juvenile justice system, developed in the 1950's and 1960's, were being rescinded. Together, this set the stage for youth with problematic sexual behaviors to be swept up in the same net as violent sex offenders.



Current Science

The Efficacy of Sex Offender Registries

In spite of the widespread popularity of sexual offender registries among many policy makers, politicians, and law enforcement officers, there is no solid evidence that these registries have achieved their intended effect of reducing re-offending by sex-offenders of any age. A landmark study completed by Sandler et al. (2008) used a time series analysis of sexual offense arrest rates in New York before and after implementation of SORNA. The study results showed that "over 95% of sexual offense arrests were committed by first-time offenders, casting doubt on the ability of laws that target repeat offenders to meaningfully reduce sexual offending" (Sandler, 2008, p. 284). Multiple additional studies confirmed this finding (see, for example, Sandler et al., 2017; Letourneau et al., 2010; Caldwell and Dickinson, 2009).

Unintended Consequences of Registration for Youth

Research has documented that youth on sex offender registries face multiple and lifelong negative consequences from registration and public notification. These experiences, including harassment and unfair treatment, create significant emotional distress for youth, including an increased risk of suicide (Letourneau et al., 2018), disruptions in their education, and limitations on their ability to attend college outside of their home state. Families may be required to segregate youthful “offenders” from siblings and other family members, increasing a youth’s feelings of isolation, relationship disruption, and emotional stress (Harris et al., 2016). Some studies have shown that youth on registries are at higher risk of being approached by an adult for sex (see, for example, Letourneau et al., 2010). In some cases, this risk is elevated by the requirement that youth appear at a designated public building for mandatory periodic re-registration, thus putting youth in the direct company of convicted adult sex offenders.

Moreover, there is widespread agreement among researchers that the weight of evidence to date from both individual studies and synthesis research suggests that therapeutic interventions for youth who sexually offend can, and do work (Pryzblysky, 2015). Yet, registration, rather than treatment, appears to be the usual intervention for youth who exhibit problematic sexual behaviors.

In short, current literature confirms that sex offender registration and public notification for youth have a high cost, both economically and for youth development and well-being.

Recidivism in Youth with Problematic Sexual Behavior

Multiple studies have confirmed that youth with problematic sexual behaviors have a very low rate of recidivism. In fact, the rate of recidivism is lower for problematic sexual behaviors than for many other types of juvenile offenses (see, for example, Borduin et al., 2009). Moreover, sex offender treatment appears to be more successful with adolescents than it is with adult



offenders (Kim et al., 2015). In their review of multiple meta-analyses on the effects of sex offender treatment, Kim and colleagues also concluded that community-based treatments have a larger effect in reducing recidivism when compared to institutionally based treatments. The findings reported in Bourdin et al. (2009) highly support this conclusion.

Community based treatment is even more important when we consider a finding from a meta-analysis that reviewed interventions for children with sexual behavior problems, because the primary agent of change for youth sexual behavioral problems appears to be the youth’s parent or caregiver, who is engaged and involved in the treatment process (Armand et al., 2008). But in practice, certain provisions of registration and notification laws make it impractical, if not impossible, for youth to access community-based treatment, creating yet another unintended negative consequence of registration.

Confounding Policy Issues

Wide Variations Among States

After reviewing the legal frameworks for mandatory youth registration and notification across several jurisdictions, we found a significant degree of variation in both the substance of the laws and in their application. Registration can be temporary, or it can remain in effect for a lifetime. Some jurisdictions have elected to refrain entirely from implementing SORNA legislation for youth. Others have created a registration framework that relies on data from a risk assessment and an assessment of the severity of a youth’s offence to inform decisions. There is also considerable variation in judicial approaches to questions about the constitutionality of SORNA requirements for youth. In some states and jurisdictions, the legal statutes governing youth registration and



notification have not been updated to reflect changes made by subsequent Supreme Court decisions. In other jurisdictions, both the policies governing the discretionary criteria for registration and how these are applied in individual cases are opaque. This lack of transparency creates a high degree of uncertainty for youth, and it may hinder efforts by youth and their advocates to understand and protect the youth's rights.

Sex Offender Registries as 'Crime Control Theater'

The widespread popularity of community registration and notification laws – especially in light of a lack of evidence that they prevent reoffending – clearly qualifies as “crime control theater.” Hammond et al. (2010) explain crime control theatre as enacting laws in response to perceived criminal threats and generating broad based support for these laws as a legitimate means to address the perceived threat. These laws are attractive because they appeal to what Hammond et al. call “mythic narratives” (p. 548). In the case of youth with sexual behavioral problems, the narrative is “saving an innocent child from a predator” (Hammond et al., 2010, p. 545). Other examples of crime control theatre have included “Just Say No” and the “War on Drugs” for drug abuse prevention (see, for example, Hartnett, 1995); DARE (see for example, Wyson et al., 2010); Scared Straight programs (see, for example, Petrosino et al., 2013 and

Klenowski et al., 2010); and Safe Haven laws to protect newborns (Hammond et al., 2010). All were popular solutions to real or perceived problems, offered without any evidence of efficacy, and none achieved their intended results. Crime control theater appeals to the public, often touching on highly emotional issues, and they often become very popular, so it is very difficult for elected officials to rescind these laws and programs once they have been implemented.

Challenges in Promoting Legal Changes

Advocates specializing in youth with problematic sexual behaviors recommend several strategies to promote changes in state registration laws or policy. The primary obstacle is that candidates for public office typically do not want to appear to be “soft on crime” or responsible for allowing or enabling sexual offending. Advocates recommend engaging public officials who have the authority to make needed law changes, but only if these officials would not be risking public censure during a contested election campaign. Another strategy is to identify an advocate in the executive branch of government who holds technical policy making authority, and who has a protected position, or an elected official in their final term of office.

California offers an example of the political challenges that can occur when trying to modify registration and notification law. California's SB 384 (California Legislative Information) was a very carefully researched and crafted bill developed collaboratively by clinicians, researchers, and law enforcement officials to address issues of youth registration. The group created tiers of potential offense levels and corresponding registration and notification requirements, so the requirements for each youth would be determined by an empirically supported probability of that youth reoffending. The bill had wide interdisciplinary and cross-system support, including from prosecutors and victim advocacy groups. Still, the bill was greatly diluted in response to political pressure initiated by one legislator in particular, who undermined the effort in what observers and advocates viewed as “crime control theater” to enhance her status with her constituency as a “protector of children.”

Because there will always be some risk of re-offense (since no predictive algorithm can claim 100% accuracy), elected officials are often loathe to risk sponsoring any legislative change that could ultimately be linked to a child being harmed. This concern is magnified when the potential crime is sexual in nature. While sexual imagery and messaging are widespread in our current culture, discussing personal sexual acts remains taboo, and even more so if a child is involved. This undermines community capacity for a rational and transparent dialogue about sexual offender registries and the lack of evidence to support them.

Current Issues for Study and Advocacy

Realistic Reframing of Sexual Abuse Prevention as a Public Health Issue

The language we use to refer to these youth makes a difference in society's level of support for them. Research suggests that the label of "sex offender" promotes public support for policies that restrict or contain people who have perpetrated sexual crimes. When the "juvenile sex offender" label was tested against the more accurate and less inflammatory term, "minor youth who have committed crimes of a sexual behavior," the "juvenile sexual offender" label had a particularly powerful effect in enhancing public support for policies that subjected these youth to registration and public Internet notification (Harris and Scotia, 2016). The juvenile sexual offender label also increases the public's perception that these youth have a propensity to reoffend, including as adults. To address this problem, the federally funded National Center on the Sexual Behavior of Youth promotes use of the term, "youth with problematic sexual behaviors," or PSBs.

Safe, Effective Early Intervention

Several youth advocates and advocacy organizations have been working on early intervention. One leader is the Moore Center for the Prevention of Child Sexual Abuse. This group has worked to reframe child sexual abuse as a public health issue and, in collaboration with

others, is developing tools for prevention, early identification, and early intervention. The National Plan for the Prevention of Child Sexual Abuse and Exploitation (2022), developed by The National Coalition to Prevent Child Sexual Abuse and Exploitation, also calls for early identification and intervention with youth showing signs of problematic sexual behavior – a call that is supported by The Juvenile Law Center, Human Rights Watch, The Moore Center, and others.



Specially designed variations of both Cognitive Behavioral Therapy (CBT) and Multi-systemic Therapy (MST) have been tested with this population of youth. The effectiveness of these interventions is well documented in the published literature that includes results from randomized controlled trials (see Bourdin et al., 2009; Carpentier et al., 2006; Silovsky et al. 2018a; St. Amand et al., 2008). Specialized community-based interventions have also been shown to have long-term effects on helping youth and further reducing risk of recidivism (see Przybylski, 2015; Retizel and Carbonell, 2006; Seabloom et al., 2003). Estimates of the cost for the most effective community-based treatments are less than \$5000 per youth (Dopp, et al., 2020). However, the call for treatment and early intervention cannot be heeded if the draconian threat of registration and notification hangs over youth and their families.

Trying Youth with Problematic Sexual Behaviors as Adults

Advocates from some states claim to have prevented youth registration at all by ensuring that no youth convicted in juvenile court for problematic sexual behavior is placed on a registry. However, there is

considerable suspicion among advocates that many of these youth are referred to adult criminal court for trial, and they end up on registries in spite of juvenile court practices to prevent this outcome. Because of the opacity of the data on youth tried as adults, it is impossible to know how many youth end up on registries after being tried as adults. The lack of available data makes it impossible to measure our collective success in preventing assignment of youth to potentially lifelong registration and public notification. This is an issue that requires immediate further study.



Calls to Action

There are concrete steps that advocates can take to promote just and evidenced-based responses to youth with problematic sexual behaviors. They include the following:

- Professionals should replace the term ‘juvenile sex offender’ with ‘youth with problematic sexual behaviors’ and advocate for peers and colleagues to do likewise. This action is supported by the conclusive findings of three decades of research documenting that these youth are highly amenable to community and family-based treatment, and that they are unlikely to reoffend, particularly when given supportive treatment. Once this is more widely understood, a discussion of the serious harms caused by registration can follow.
- Professionals should learn about policies in their own state affecting youth with problematic sexual behaviors. A good foundation is a [report by The Juvenile Law Center](#) (see Pickett et al. 2020 in references for URL). Advocates should ask colleagues working in juvenile justice about their state’s policies

for waiving these and other youth to be tried as adults, and whether there is a means of identifying and counting those cases.

- Professionals and advocates should access the research findings on youth with problematic sexual behaviors and use it to educate others about the lack of effectiveness of registration and notification, and the ensuing serious harms for youth. University educators can incorporate this topic into classes in law, ethics, and any of the social sciences or clinical practice disciplines. This can also be an important topic for social media content and editorials.
- Use and share the resources offered by The National Center on the Sexual Behavior of Youth (NCSBY), which is part of the Center on Child Abuse and Neglect (CCAN) in the Department of Pediatrics of the University of Oklahoma Health Sciences. It is funded to develop resources and training material for professions from multiple disciplines (probation, mental health, medicine, education, child welfare, law, law enforcement, and the judiciary) addressing youth with problematic or illegal sexual behavior, as well as providing resources to help guide public policy, which can be found at <https://www.ncsby.org/content/public-policy-0>
- Engage state legislators and legislative think tanks, such as The National Council of State Legislators, in discussions about youth with problematic sexual behaviors and the negative cost benefit ratio of relying on sex offender registries for youth, as well as the difficulty of getting an accurate count of the number of impacted youth and families (including youth tried as adults), given the current inadequate systems for collecting and managing data.
- Advocates should work within their communities to move the investment of public funds from registries and enforcement to supporting professionals to deliver evidence-based interventions. Implementing the Adam Walsh Act of 2006 was conservatively estimated to cost \$300,000,000 per year in direct costs (Sandler et al. 2008), and social costs can increase that by 10-fold with little social benefit (Belzer 2015). Evidence-based community treatment is estimated to cost less than \$5,000 per child (Dopp, et al., 2020).

Effective interventions can help to promote healthy development, safety, and well-being for these youth, their families, and their communities.

Endnote

Legal publications often substitute the term ‘juvenile’ for youth and add the term illegal to describe the sexual behaviors in question. We use the term ‘youth with problematic sexual behavior’ throughout this brief, given the cited research findings on the impact of terminology on public perception and the damage caused by misperceptions of dangerousness.

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