

**Protecting Society or Fooling Ourselves?
Research-Based Insights on Sex Offender Policy in the United States**

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*“There is always a well-known solution to every human problem—
neat, plausible, and wrong.” – H. L. Mencken*

Since the early 1990s, there has been increased concern within the United States regarding incidents of sexual offending. According to Janus (2003), such concern has resulted in a new wave of laws and policies that are “regulatory” (aimed at preventing future behavior), rather than criminal. Indeed the “get tough on crime” attitude seems to be popular among many citizens and politicians, and some emerging laws and policies perhaps reflect a sober determination to get particularly tough on those charged with sexual crimes. Our primary purpose here is to voice concerns on key aspects of this development from a broad social science perspective that is strongly anchored in behavioral science research. We hope our summary of the relevant literature cited herein is potentially helpful to a wide audience, including diverse professionals involved in legal and correctional issues, policy-makers, inmates, and concerned citizens.

Popular Myths of Sexual Offending and the Implementation of Harsher Policies

Quinn, Forsythe, and Mullen-Quinn (2004) published a review on the origins and results of sexual offender myths that are rampant within American society. Indeed, a common belief, even within some clinical circles, is that all sexual offenders are predators and many if not most cannot be treated successfully. Such a view ignores at worst, and minimizes at best, the immense heterogeneity of offenders, including their motivations, risk factors, strengths, resources and commitments; and it also overlooks the vast diversity of societal sexual norms that have been violated (see Quinn, et al., 2004). Neuilly and Zgoba (2006) reported that although sexual offenses against children have not increased dramatically over the past several years, what has increased significantly is the use of the term “sexual predator.” Sensationalized media accounts of the most horrific cases of sexual violence, 24 hour per day news reporting, and widespread misunderstanding of the complexities of sexual motivations and behaviors all contribute to the current panic of violent sexual offending. Given that the creation of stricter laws is not subsequent to new empirical or theoretical knowledge of sexual violence (Janus, 2003), the question of whether mandatory sexual offender reporting requirements (Megan’s Law) is little more than overgeneralization and emotional reasoning in response to a truly horrific tragedy, is, perhaps a legitimate one.

Similar criticisms may apply toward emerging sentencing laws (Jessica’s Law), where people convicted of a sexual crime against children (without also committing murder) may face life in prison or the death penalty. Some states are considering making child sexual abuse a capital offense based on the reasoning that child molesters kill souls. Such legislation passed in Louisiana and Oklahoma (Gibeaut, 2007), but the first such case of capital punishment was struck down by the U.S. Supreme Court upon appeal (Kennedy v. State of Louisiana). Critics have pointed out that such legislation may lead to some offenders with little to lose going ahead and killing their victims thus eliminating witnesses, and it also may discourage victims and their

family members from reporting sex crimes committed by those close to them (Gibeaut, 2007). If so, severe child sexual violence potentially may increase, rather than decrease, along with adding complications in effectively resolving these issues.

In addition to these criticisms, clinicians also should be disturbed at assumptions behind capital punishment for sex crimes and resulting implications for standards of (in)justice. The primary assumption is that through acts of child molestation, victims' lives are not only altered, but *completely* lost. According to this logic, by default, this assumes that childhood victims cannot be helped; victims are incapable of working through abuse and always remain disempowered; support from family, friends, and community has no significant affect on victims' lives; and future life experiences of victims are essentially rendered invalid and meaningless. While acknowledging the destructive impact that sexual victimization brings to children's lives, don't we also believe in and support the resiliency of victims, families and communities? Professionals in all helping disciplines should be alarmed at legislation that appears to be based on a simplistic view of justice with little consideration of the many valuable contributions of family, friends, and community members who work in various capacities with victims and offenders. Can victims effectively be helped? Can a victim of childhood sexual abuse ever experience happiness again? Can she or he ever live a meaningful life after sexual abuse has occurred? Or, after sexual violence has been inflicted, do victims' lives abruptly halt to constant meaninglessness that justly warrants the very real termination of another human life? We do not intend to downplay harmful consequences of sexual violence to victims, yet we believe the answers to the above questions should be fairly obvious to most reasonable people. The implications of advocating for capital punishment for sexual molesters are substantial and unjust. It is true that sexual violence, especially towards children, is tragic and deserves our full attention and significant resources to both address and prevent it. However, an extreme policy response to any crime also demands our full attention and critical analysis of assumptions and rationale behind it.

Self Efficacy in Behavioral Change: What is its Role for Treated Sex Offenders?

In their recent review of the scholarly literature on sexual offender treatment, Marshall, Marshall, and Serran (2007) wrote that although there is debate on the appropriate research design to evaluate treatment effectiveness, when the existing research is considered, they "believe the evidence indicates that sex offenders can be effectively treated" (p. 176). Promising new approaches to sexual offender treatment currently are being developed, including those rooted in a positive perspective that utilizes offenders' existing strengths and resources (e.g., Good Lives Model, Ward & Stewart, 2003; Ward & Marshall, 2004).

Additionally, recent research has shown that, consistent with psychotherapy for other populations, treatment process and therapeutic alliance (human relationship) issues are critical to sex offender treatment success (i.e., Drapeau, 2005; Marshall, 2005; Marshall, Fernandez, et al., 2003). However, clinical experience shows that many sexual offenders seem to have substantial difficulty upon re-entering the community. Specifically, therapeutic messages based on rationale and scientific evidence that behavior, including sexual offending behavior, can be changed, are challenged by widespread accepted myths and recent policy realities that say otherwise. Put more basically, just how important is it that sex offenders receive consistent messages concerning their self-efficacy (to live crime-free)—the belief that successful personal behavioral change can

actually occur? Indeed, what role does self-efficacy play in sexual offender rehabilitation and, particularly, the re-entry process?

Self-efficacy and/or a closely related construct (i.e., “competence,” “confidence,” “perceived behavioral control,”) is essential to the predictive validity of numerous contemporary social-cognitive theories and models used by scientists to account for behavioral change, including Social Cognitive Theory (Bandura, 1991), Theory of Planned Behavior (TPB; Azjen, 2002), Transtheoretical Model (TTM; Prochaska & Velicer, 1997), and Self Determination Theory (SDT; Ryan & Deci, 2000). From an SDT perspective, we would expect that for many low-risk sexual offenders who are already motivated to live crime-free, treatment overprescription and strict management policies would reduce existing motivation and possibly increase risk due to excessive regulation by the legal system itself. Sadly, it would not surprise us if sex offender recidivism rates (as measured over several years) are found to increase in the future due to current policies.

To broadly summarize, scientists know that any behavioral change is often difficult for individuals, including relatively common healthful lifestyle changes such as starting and maintaining an exercise program, eating more nutritiously, quitting smoking or using condoms. Achieving success with such changes requires support and the nurturing of self efficacy. Despite the widely demonstrated necessity of increasing self-efficacy in order to change a variety of behaviors, sexual offenders are continually confronted with policy messages upon re-entry that seem to undermine their much needed self-efficacy. Policies rooted in research rather than fear—and designed to increase offenders’ self efficacy concerning their abilities to manage risks and live crime free—would likely have significant beneficial effects in reducing both future violence and high offender management costs. Our general messages toward sex offenders should be akin to “We believe that you are capable of changing for the better and we will support you in your efforts to avoid reoffense,” rather than “no matter what, you will never change and you are not welcome in our neighborhood/community.”

Conclusion

We do not yet fully know the effects of harsher laws and policies for sex offenders, although various concerns about such legislation and its potential effects have been voiced herein and elsewhere (Cohen & Jeglic, 2007; Fitch, 2003; Palermo, 2005, 2007; Sullivan, 2006). Nevertheless, research is beginning to emerge showing that recent punitive sex offender policies do not seem to have the intended effect. For example, researchers analyzed the offense patterns of sex offenders living in Minnesota and found that legislation restricting offenders from living within a certain distance from places where children congregate (i.e., parks, schools, daycare centers) were ineffective in preventing recidivism (Duwe, Donnay, & Tewksbury, 2008). On the other hand, mandatory sex offender registration and notification laws are likely to increase threats, harassment and potential violence toward families and innocent children of sex offenders (Levenson & Tewksbury, 2009). Once again, this detrimental effect likely increases, rather than decreases, risk for reoffense. Palermo and Farkas (2001) have cautioned that overextended sexually violent predator laws have psychological effects not only on offenders, but also members of society generally, particularly families with small children (i.e., promoting anxiety and fear). When the general body of relevant research and evidence are considered, we may reasonably predict that policies rooted in what might constitute a moral panic—instead of

behavioral research and scholarship—are likely to be burdensome, costly, and unethical with little effectiveness in reducing most forms of sexual violence.

Toward Solutions: What can we do?

Unfortunately, challenging the status quo, particularly on matters dealing with sexual offending, can be misperceived by some as unconscious support for offending. Perhaps the first step in addressing this issue is to make it perfectly clear that we are fully against sexual violence and victimization. We do not tolerate sexual violence. It is a major social problem, and it scars the lives of many people. At this most basic level we can be in collective agreement. The important questions then become: How do we *best* address sexual violence that has occurred, and how do we *best* prevent future violence from occurring. We believe that following behavioral research and promoting understanding and compassion are far better options than ignoring important scholarship, reinforcing unchallenged myths and facilitating demonization.

It has been suggested that experts become more involved in informing and helping develop public policy (Berliner, 2003; Harshbarger, 2003; Robinson, 2003). Unfortunately, academics often are rewarded for imparting knowledge to fellow peers within professional journals, whereas the career benefits associated with educating policy-makers and the general public may be far less valued within the university setting. We believe the voices of academics are important, but so are the voices of various professionals, victims, offenders, families, and citizenry. We should look for and utilize multiple opportunities to educate a variety of audiences on the myths and realities of sexual offenders and the various issues related to their management, once again emphasizing the common community goals of how to best protect society, repair harm, and reduce victimization.

Perhaps most importantly, we believe open, positive discussion and liberal education regarding sexuality in general should be encouraged. Indeed, the issue of how to manage sexual offenders and effectively prevent sexual violence occurs within broader cultural discourses regarding human sexuality more generally. Many common discourses are negative toward understanding sexuality and may involve shame. Sadly, in much of American society open and honest discussion about sexuality remains awkward at best, and is usually discouraged or forbidden. We believe that educated and thoughtful people, including youth, who are empowered concerning sexuality and the ability to discuss it, are less likely to become victims of sexual violence. Furthermore, open discussion based on acceptance, respect and compassion for all people may lead to the identification of creative ways for people to meet a broader range of specific sexual needs, thus further reducing incidents of sexual abuse violence.

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