Reconciling Sexual Offender Management Policy, Research, and Practice

Christopher Lobanov-Rostovsky and Andrew J. Harris

Why Do We Do What We Do?

The Disconnect Between Sex Offender Management Policy, Research, and Practice

The past two decades have witnessed a surge in legislative activity ostensibly intended to reduce the societal risk presented by known sexual offenders. Prompted in part by federal mandates, all 50 states have adopted systems calling for known sexual offenders to register with law enforcement and providing public access to much of this information. States and localities across the country have adopted stringent restrictions on where previously convicted sexual offenders may work or reside. Federal and state lawmakers have passed a range of sentencing reforms reducing judicial discretion, calling for lengthier sentences for those convicted of sexual offenses and expanding the use of lifetime electronic monitoring and supervision for an expanding group of individuals. These policies and others have been implemented in a manner that has called for an increasingly "widened net" that has often contravened existing evidence regarding the heterogeneity of the sex offender population in terms of behaviors, motivations, and risk.

Paradoxically, these policy developments have occurred amidst a robust expansion of the research enterprise related to risk assessment, treatment, and sex offender management. While significant knowledge gaps remain, researchers and practitioners in the field have developed a much better sense of how risk may be effectively assessed and mitigated among sexual offender populations. Emergent evidence-based strategies such as integrated models of supervision and treatment as well as circles of support and accountability—while under active use in some jurisdictions—have received nowhere near the level of resources and support that have been accorded to sex offender registration and notification (SORN), civil commitment, and related policy strategies, despite limited evidence attesting to the public safety efficacy of these latter approaches.

In this general context, the present chapter examines contemporary sex offender management policy and its historical, social, and political antecedents, with a particular focus on those factors that have contributed to the current state of affairs. In so doing, the chapter aims to inform more effective efforts by the research and practitioner communities to elevate the role of evidence in the design and implementation of effective public policies to reduce sexual violence in society.

The chapter includes five main sections—the first providing historical background describing the evolution of contemporary sex offender management policy, the second offering an overview of the data regarding the problem of sexual violence in American society, the third identifying and discussing the scope and key trends associated with current sex offender management policies, the fourth examining the major themes and patterns in current sex offender management policy and the challenges associated with bringing evidence into the sex offender management policy process, and the fifth providing a blueprint for action on the part of researchers and practitioners in the sex offender management field, with the goal of translating what is known about evidence-based *practice* into the realm of evidence-based *policy*.

Historical Context of Sex Offender Management Policy

> Images of the sex offender have changed dramatically and cyclically over time … In each era, the prevailing opinion was supported by what appeared at the time to be convincing objective research. One reality prevailed until it was succeeded by another (Jenkins, 1998).

C. Lobanov-Rostovsky (✉)
Colorado Division of Criminal Justice, Sex Offender Management Unit, Denver, CO, USA
e-mail: chris.lobanov-rostovsky@state.co.us

A.J. Harris
School of Criminology and Justice Studies, University of Massachusetts Lowell, Lowell, MA, USA
e-mail: andrew_harris@uml.edu

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As noted by social historian Jenkins (1998), social and legal responses to sexual offending prior to the late nineteenth century were based predominantly on Puritan era moral codes. The dawn of industrialization, however, brought with it a series of economic, social, political, scientific, and cultural developments that produced dramatic shifts in the way in which criminal sexual behavior is explained and addressed.

On the economic and political front, industrialization led to the rise of urban centers of commerce, coupled with significant demographic transformation. With immigrants flocking to American cities and African Americans migrating northward, the social and demographic landscape saw dramatic changes. A wave of progressive reform, prompted largely by this changing ethnic and social landscape, swept through the intellectual and political establishment. The rise of the Progressives, many of whom viewed growing urban immigrant communities as breeding grounds for vice and immorality, led to new views of criminal behavior as "social disease." As an extension of this view, sexual crime was typically attributed to the underclass, who were viewed as lacking in basic morality and intelligence.

Within the realm of science, several ideas emerged that would shape the manner in which sexual deviance and criminal behavior is viewed, including Darwin's theory of evolution, new paradigms for explaining disease transmission, and the birth of genetics and modern psychiatry. Drawing on the emerging scientific fields of genetics and psychiatry, the social engineering efforts of the time were based in presumed linkages between poverty, amorality, low intelligence, and criminal behavior—characteristics viewed as hereditary and potentially intractable in the lower classes.

Finally, the industrial era brought about a sea change in journalistic practices, setting in motion the birth of mass media. Paramount among these developments was the emergence of *yellow journalism*, a new brand of reporting that fed upon the public's appetite for scandal and vice and which publishers quickly recognized as a viable means of increasing circulation. Coupled with the advent of the telegraph, which facilitated the interregional transmission of information, the media was able to cover sensational stories of sex and violence from across the country and abroad.

By the turn of the twentieth century, amidst this changing social order, a shifting intellectual and scientific landscape, and the growing power of the media to galvanize public opinion and fuel public fears, lawmakers were faced with a pressing challenge to come up with explanations and solutions for the problem of sex offenders. The period produced two pieces of notable legislation, each asserting expanded government roles in managing individuals deemed as sexual threats. At the state level, the Briggs Act, passed by the Commonwealth of Massachusetts in 1911 and amended in 1921, provided for the preventive detention of "defective delinquent" offenders who were deemed as at risk to escalate their offenses if not incapacitated. The law was loosely constructed on the Commonwealth's recently enacted commitment laws for the insane, requiring the examination and concurrence of two psychiatrists. Unlike that process, however, the new system mixed criminal and civil elements, involving both prosecutors and criminal court judges. Although the law ostensibly encompassed a range of criminal subtypes, those with records of sexual-related activities were most likely to be covered. While the Briggs Act (1921) encountered a range of implementation problems due to its hybrid nature, it ultimately served as a model for the subsequent proliferation of sexual psychopath statutes across the United States in the mid-twentieth century—a series of laws that will be reviewed shortly.

The second key legislative milestone of the era, the Mann Act of 1910, represented the federal government's first foray into the realm of responding to sexually deviant behaviors. As extensively chronicled by Langum (1994), the Mann Act emerged from a confluence of political forces linked to the social transformations of the time, notably growing concerns among the entrenched white male establishment over the changing status of women and the societal effects of immigration and urbanization.

Propelled by media-fueled speculation that organized criminal rings were actively engaged in forcing girls into sexual servitude—a practice termed *white slavery*—the Mann Act was based on fears that prostitution was widespread, heavily organized, and the work of the underclass, particularly immigrants. Evoking the powers granted to Congress under the commerce clause of the Constitution, the Mann Act asserted federal authority to arrest and prosecute those who transported women over state lines for "immoral purposes." The act was signed into law in 1910 by President Taft, with the newly founded Federal Bureau of Investigation (FBI) charged with enforcement. Although the FBI was unable to uncover any significant evidence of the purported white slavery rings, a series of Supreme Court rulings in 1913 and 1917 (Athanasaw v. United States, 1913; Caminetti v. United States, 1917; Hoke v. United States, 1913) supported the application of the law to individuals deemed to be a threat to common morality. Langum's analysis delves further into the specific cases in which the Mann Act was applied throughout the twentieth century, including the prosecutions of African-American boxer Jack Johnson, actor and suspected communist sympathizer Charlie Chaplin, and rock musician Chuck Berry

While the political impetus behind the Mann Act of 1910 has been linked by some historians to xenophobia due to its initial targeting of immigrant and African-American populations, significant parallels may be seen between the Mann Act and current policy responses to sexual offending. The manner in which the problem was defined and framed in

public discourse, the passage of sweeping legislation based largely on media reports that alarm the public, the political hazards of resisting legislation that seeks to uphold prevailing moral codes, and the potential gap between the assumptions made by lawmakers and the actions of those charged with implementation all reflect themes that resonate with contemporary policies, as will be highlighted below.

The Sexual Psychopath Era

The 1920s witnessed a relative diminution of interest on the issue of sexual offending, amidst law enforcement focus on prohibition and organized crime and a societal shift in sexual mores. Yet with the beginning of the depression in the 1930s, the country entered a new era in its attitudes toward sexual crime. Events such as the kidnapping and murder of the Lindbergh baby by immigrant Bruno Hauptman in 1930, followed by a reported "wave" of child abductions, the Leopold and Loeb murder of Bobby Frank, and the 1934 arrest and highly publicized trial of the notorious Albert Fish for the murder, sexual mutilation, and cannibalism of a 12-year-old girl all contributed to a growing concern over *stranger danger*, the sense that predatory psychopaths were lurking in the shadows and that public officials were doing little to stop them.

Building on the systems such as those delineated in the Briggs Act (1921) from a quarter century earlier, states, beginning with Michigan, began passing a series of statutes that became known as *sexual psychopath laws*, allowing states to commit those deemed as sexually dangerous to psychiatric facilities for *day-to-life* (i.e., indefinite) sentences, in some cases without any direct evidence of prior sexual offenses. In his seminal study of the proliferation of sexual psychopath legislation, criminologist Sutherland (1950) cited a series of conditions related to the passage of these laws. Notably, Sutherland cited the responses of the media, citizenry, and the political establishment to high-profile sexual crimes and noted the convergence of these concerns with the "solution" offered by the field of psychiatry and its attendant therapeutic ideal. In 1939, the US Supreme Court upheld the constitutionality of Minnesota's sexual psychopath statute, clearing the way for states to freely apply the laws as a means of preventive detention.

Shifting Views

From the postwar period through the mid-1960s, sexual psychopath laws proliferated, with 15 states adopting such laws by 1950 and 29 by 1960 (Group for the Advancement of Psychiatry, 1977). The expanded use of these laws, which also corresponded to a general surge in psychiatric institutional populations in the United States, produced a growing population of individuals held on day-to-life sentences and the preventive incapacitation of thousands of individuals deemed to be at risk of committing sexual offenses.

By the early 1960s, however, attitudes were poised for another shift, this time in favor of a more compassionate (and arguably more tolerant) perspective toward sexual deviance. Setting the stage for this shift were a number of general contextual developments on the intellectual, political, and cultural landscape. These included a rise in liberal thought within intellectual circles, which significantly challenged prevailing approaches toward criminal behavior; a burgeoning civil rights movement which, coupled with mounting pressures on state budgets from the exploding census in psychiatric facilities, led toward a massive push for deinstitutionalization; and significant changes in sexual norms and attitudes, particularly among the young—changes that found their further expression in the rise of the feminist and gay liberation movements by the late 1960s.

It is also during this period that the concept of rape becomes redefined, due in part to the ascendance of the feminist and victims' rights movements. No longer conceived as a strictly sexual crime, rape was reframed as an issue of male dominance and exertion of power (Brownmiller, 1975), with rape victims accorded additional protections in legal proceedings and investigations. Meanwhile, the convergence of a shifting legal landscape (e.g., *Specht v. Patternson*, 1967) and the diminished faith of the psychiatric establishment (Group for the Advancement of Psychiatry, 1977) led most sexual psychopath laws to be repealed or fall into disuse. (For a review of the factors contributing to the rise and fall of sexual psychopath statutes, see Brakel & Cavanaugh, 2000.)

Crime Control Era and the Birth of Modern Sex Offender Policy

In the mid-1970s, an influential study by Martinson (1974) challenged the philosophy of crime and punishment that had flourished through the 1960s. Martinson's conclusion that "nothing works" to reduce criminality prompted a fundamental shift in correctional philosophy, setting the stage for massive sentencing reform in the United States (Lipton, Martinson, & Wilks, 1975; Martinson, 1974). By the early 1980s, the nation had entered the *crime control era* in which legislatures gradually assumed increased power over sentencing decisions, which decreased the power of judges (via policies such as "mandatory minimums" and three strikes laws) and parole boards (via determinate sentencing and "truth in sentencing" statutes).

The emergent dominance of determinate sentencing, which essentially reduced the capacity of correctional authorities and parole boards to calibrate release decisions to

community risk, created demand for new policies that would allow for tighter controls over sex offenders following their release from prison. In this general context, Washington State's Community Protection Act of 1990 ushered in the contemporary era of sex offender policies, both through its introduction of a new type of sex offender registration and notification (SORN) statute and its resurrection of civil commitment. Regarding the former, although other states had previously adopted sex offender registration systems for the use of law enforcement, Washington's law was the first to provide for the release of registration information to the general public. As for the latter, Washington's new "sexually violent predator" civil commitment law represented a retooled return to the general approach that had characterized the earlier generation of sexual psychopath laws, sparking similar legislation in 21 states and, ultimately, the passage of a federal civil commitment statute in 2006.

Amidst a subsequent surge in state-based legislation, the US Congress stepped into the fray with the passage of the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act (Wetterling Act), which established sex offender registration laws as a nationwide imperative. A string of subsequent amendments to the Wetterling Act, including the 1996 passage of the federal Megan's Law, which mandated community notification, incrementally expanded the scope and reach of the nation's SORN systems, firmly establishing the federal government as a driving force behind state-based sex offender management policies. This legislative sequence culminated with the 2006 passage of the Adam Walsh Child Protection and Safety Act (AWA), perhaps the most sweeping piece of sex offender legislation in US history. The AWA addressed an array of issues, including immigration law reform, expanded enforcement of internet crimes against children, enhanced sentencing provisions for certain crime types, and the establishment of a new federal sex offender civil commitment statute. While each of these provisions has attracted some measure of legal and policy attention, its most prominent feature was the 2006 Sex Offender Registration and Notification Act (SORNA), which repealed the Wetterling Act provisions and substantially expanded the federal government's scope of control over the nation's registration and notification systems with the ostensible aim of establishing greater consistency.

Placing the History into Context

The statement from Jenkins (1998) presented at the beginning of the chapter demonstrates how the progression of history raises a fundamental question for consideration: When policy responses to sexual offending are discussed, is there an "absolute truth," or is everything contingent on social, political, and cultural context? One answer—certainly one that policymakers would most *like* to believe—is tied to the notion of scientific and intellectual progress. Specifically, it might be concluded that policy responses to sexual offending have improved over time as more has been learned through empirical investigation—that is, we are more enlightened today than we were in the past, leading to more sensible and rational policies. Alternatively, a more cynical perspective might hold that our attitudes and beliefs toward sex offending are driven first and foremost by idiosyncratic views of factors such as family, gender roles, and social order and that our policies are no more informed today than they were 50 or 100 years ago. In the context of this general question, we turn now to a review of the evidence surrounding sexual violence in today's society and to a consideration of how extensively this evidence is reflected in chosen policy responses to sexual offending.

The Problem of Sexual Violence: The Evidence

As Sutherland (1950) observed over a half a century ago, much contemporary sex offender policy has unfolded amidst unprecedented citizen mobilization efforts, often generated in the wake of tragic events surrounding children. Victim names such as Adam Walsh, Polly Klaas, Jacob Wetterling, Megan Kanka, and Jimmy Ryce have routinely been attached to legislative efforts to stem the tide of sexual-related violence, adding to the emotional weight and perceived correctness of the policies.

These catalyst events, which generally involve abductions and murders of white, middle-class children, undoubtedly reflect significant tragedies calling for appropriate policy responses. However, within the broader context of sexual violence, these events are generally atypical in terms of the nature of these crimes, the perpetrators, and the victims. National data suggest that approximately 115 stereotypical stranger abductions of children occur each year (Sedlak, Finkelhor, Hammer, & Schultz, 2002). In contrast, national crime statistics suggest that an estimated 203,830 rapes and sexual assaults of individuals 12 and older occur each year (Rand, 2009), while police make approximately 22,584 arrests each year for forcible rape (Uniform Crime Report (UCR), 2009). Among reported sexual offenses, data from the National Crime Victimization Survey (NCVS) suggest that African Americans and those listing two or more races have a sexual victimization rate of 1.9 per 1,000, compared to the rate for those listed as white at .6 per 1,000 and other races at .9 per 1,000 (Rand, 2009). In terms of the age of victims, it appears that adolescents are more at risk to experience sexual victimization than adults, as the 2008 NCVS describes a rate of 3.8 per 1,000 for 12- to 19-year-olds, 2.8 per 1,000 for 20- to 34-year-olds, and 1.2 per 1,000 for those older than 35 (Rand, 2009).

Victimization survey data also suggest that the "stranger danger" scenarios that tend to drive much public policy surrounding sexual offending tend to be the exception rather than the rule. According to 2009 NCVS data, 79 % of the sexual assaults against males were by friends or acquaintances, while 21 % were by intimate partners, with no sexual assaults on males reported by strangers (Rand, 2009). For females, 63 % of sexual assaults were by non-strangers, including 42 % by friends or acquaintances, 18 % by intimate partners, and 3 % by relatives, while 32 % were by strangers (5 % relationship unknown) (Rand, 2009).

It is also noteworthy that rates of sexual assault appear to have decreased over the past 20 years. Uniform Crime Report (UCR, 2009) statistics indicate a 6.4 % decrease in forcible rape from 2004 to 2008, with the 2008 figure being the lowest in 20 years. NCVS data also indicates a downward trend in sexual assault over the period from 1999 through 2008, with an overall decrease of 53 % (Rand, 2009). Finally, the rate of substantiated child sexual assault cases also decreased by 53 % from 1992 to 2006 (Finkelhor & Jones, 2008).

In sum, sexual assault in the United States is a multifaceted problem, striking males and females as well as individuals of all ages and ethnicities in multiple different circumstances. There do, however, appear to be certain characteristics of individuals and situations subject to higher rates of sexual victimization. Moreover, as we will see shortly, this empirically grounded distribution of risk within the population does not always comport with those circumstances that tend to influence the public policy process.

Applying the Evidence in a Policy Framework

If there is one message that has emerged from recent research advances, it is that, in addressing the management of sex offenders, few approaches lend themselves to simple answers. Sex offenders are an extremely diverse population with a wide range of motivations, victim preferences, and behaviors. Victims of sexual assault, and the settings in which sexual victimization occurs, similarly reflect wide variability. The current policy approaches—even those that seem like "no-brainers"—all carry implicit risks and unintended consequences.

Yet in the arena of public opinion (and in turn in our political responses to fears of sexual offending), we tend to deal in moral and practical absolutes. The popular sentiment is quite simple: Individuals who commit sexually motivated crimes should be held responsible for their behaviors and the consequences of their actions. As a result, most Americans believe that the criminal justice system should employ whatever means necessary to isolate sexual offenders from society and diminish their opportunity to recommit their offenses. Americans expect law enforcement to do anything it can to identify the perpetrators of such crimes and bring them to justice; after all, there are few things more terrorizing to a community than an unsolved murder or disappearance of a child and the associated idea that a sex-crazed murderer is at large. Americans expect the justice system to include measures such as harsh prison sentences; full disclosure to the community of who sex offenders are and where they live; stringent restrictions on employment, residence, and daily activities; and, in certain cases, indefinite (perhaps lifelong) commitment to secure mental health facilities. Finally, citizens expect results in terms of preventing sexual victimization, leading the justice system to attempt to target any individuals who might be at any risk of committing such offenses, often regardless of the broader consequences.

Certainly, few would disagree on the merits of these goals: effective investigation of sex crimes, dependable justice strategies to punish and prevent re-offense, and viable means of prevention. Yet the manner in which we pursue these goals, with the attendant assumptions about the nature of sexual offenses, its perpetrators, and its victims, must in the end comport with the evidence around what works, despite the recognition that the public may continue to support popular policies regardless of their effectiveness. As result, policymakers must consider and be willing to address public sentiment for policies such as the ones listed below as part of policy development. In the following section, we discuss a series of policy strategies that have emerged as dominant elements to contemporary sex offender management practice, evaluating each in accordance with available evidence.

Sex Offender Registration and Notification

Over the past two decades, amidst public demand for expanded social control over those who have sexually offended, SORN policies have emerged as prominent and ubiquitous elements of the nation's public safety infrastructure. Laws requiring sexual criminals and others to register with law enforcement began with California in 1947. The registry at the time was maintained strictly as a law enforcement tool and was not publicly accessible. It is unclear what impact the law had on sex offender management, but a suspect in the kidnapping of a 9-year-old girl in 1940 was reportedly identified using the registry ("Kidnap," 1940). By 1990, 12 states had established sex offender registries, while contemporary SORN policies gained particular traction in the early 1990s as several more states passed legislation calling for expanded use of registration and asserting the public's access to certain registered sex offender information.

In 1994, the US Congress entered the picture with the passage of the Wetterling Act, requiring that all states develop systems of tracking convicted sexual offenders in

the community. The Wetterling Act was originally designed as a law enforcement tool to create a database of convicted sex offenders for use when conducting an ongoing sexual offense investigation, a goal that was uniformly supported by law enforcement agencies. Over the ensuing decade, the scope of this general mandate was broadened significantly through a sequence of amendments, including Megan's Law (1996), which required states to make certain registration data publicly available. In 2006, federal involvement in SORN-related issues reached a new level with the passage of the AWA, which repealed the Wetterling provisions and replaced them with a new, and significantly more prescriptive, set of requirements.

Partially in response to federal actions, SORN systems now operate in all 50 states, the District of Columbia, and US territories, with jurisdictions reporting over 700,000 individuals contained in their registries (National Center for Missing and Exploited Children (NCMEC), 2010). While laws calling for the relative emphasis of these varying strategies have varied from state to state, the practice of SORN has emerged as a universal element of state-based sex offender management policies. Under SORN, individuals convicted of—or in some cases adjudicated delinquent for—designated sexual crimes are required to register their whereabouts with law enforcement authorities and to regularly verify their information. Further, state laws provide that registration information be made available on publicly accessible Internet sites, allowing citizens an easily accessible mechanism to check for the presence of sexual offenders in their neighborhoods.

The initial federal guidelines related to the implementation of Wetterling's and Megan's Laws granted a fair degree of latitude to the states in implementing SORN laws. For instance, states could determine procedures for assessing risk, categorizing offenders, choosing which sex offenders would be subject to the release of information, and disseminating registry information to concerned citizens.

The resulting variation among states, along with expanded federal focus on developing a national public sex offender registry, led to the 2006 passage of the AWA. In repealing the Wetterling Act's SORN provisions and replacing them with a new set of requirements, Congress set forth a series of new mandated standards for states and other jurisdictions to follow. Among its provisions, the AWA set forth an offense-based categorization system; required all registered sexual offenders to be listed on state and national registry websites; expanded the scope of sexual offenders who must register, including mandated inclusion of certain juveniles adjudicated delinquent for specified sexual offenses; set forth specific requirements for duration of registration and frequency of reporting; and required the retroactive registration of certain classes of individuals. The United States Department of Justice has issued Supplemental Guidelines for AWA that make inclusion of juveniles optional for jurisdictions, but these Guidelines have not as yet been finalized.

In total, the AWA represented a significant assertion of federal authority over state-based SORN systems, prompting a good measure of concern among states, particularly those that had invested considerably in developing systems that contravened the new federal mandates. As of mid-2010, only a limited number of states and other covered jurisdictions had achieved compliance with the AWA mandates.

Prominent among states' concerns was the contention that the federally mandated systems of classification failed to adequately distinguish between registered offenders who presented significant threats to public safety and those who presented less of a risk (California Sex Offender Management Board, 2009). Indeed, research has supported the notion that transitioning to the AWA-mandated classification system places a significant majority of registrants into the highest category of offenders, while contravening evidence suggests that the highest risk of sexual re-offense is concentrated among a much smaller group of offenders (Harris, Lobanov-Rostovsky, & Levenson, 2010).

The Research

Research to date has been somewhat inconclusive in its assessment of the public safety benefits and reduced sexual recidivism associated with expanded SORN systems. A number of states, including Iowa, New Jersey, Washington, and Wisconsin have examined the impact of implementing SORN on sex offenders within their state. The results of several studies found no significant decrease in recidivism between registered and non-registered sex offenders (Adkins, Huff, & Stageberg, 2000; Schram & Milloy, 1995; Zevitz, 2006; Zgoba, Witt, Dalessandro, & Veysey, 2008), or a potential increase in the rate of sexual recidivism for those classified at the lowest level based on the AWA as compared to those classified at higher levels (Freeman & Sandler, 2009). Consistent with this, a series of studies examining rates of sexual assault both pre- and post-SORN showed no significant reduction in the rate of sex crimes post-SORN (Sandler, Freeman, & Socia, 2008; Walker, Maddan, Vasquez, VanHouten, & Ervin-McLarty, 2005). Further, there is no research to suggest that SORN is an effective intervention for juveniles—a population that has increasingly been subjected to state-based registration requirements (Letourneau & Armstrong, 2008).

Conversely, some studies have indicated a significant decrease in sexual recidivism for sex offenders subject to SORN, although the cause of the reduction could not be fixed on the SORN policy (Barnoski, 2005; Duwe & Donnay, 2008). Along these lines, there are some indications that registration may have certain selective effects: Registration has been found to be correlated with a reduction in the frequency of sex offenses against non-stranger victims, and notification

was found to deter sex crimes for first-time sex offenders but increased recidivism for registered sex offenders based upon disincentives for law-abiding behavior provided by notification (Prescott & Rockoff, 2008).

Finally, studies have questioned the effectiveness of the sex offender registry based upon concerns for inaccuracies in the information provided. For example, a state of New York audit found that one-fourth of the records did not match driver's license information (New York State Comptroller, 2006), and a state of Vermont audit found that about three-fourths of the records had critical or significant errors (Salmon, 2010). As a result, some policymakers have called for increased consistency, oversight, and enforcement of the sex offender registry (NCMEC, 2007), while others have suggested current sex offender management policies lead to the unintended consequence of sex offenders absconding from the registry (Iowa County Attorney's Association, 2006).

Residence Restrictions

Another prominent trend in sex offender management is to pass restrictions on where sex offenders can reside. Currently, approximately 60 % of states have laws restricting sex offenders from living near such places as schools, daycare centers, parks, and bus stops (Council of State Governments (CSG), 2007). This management strategy is based on the assumption that sex offenders will seek out stranger child victims in places children frequent near the sex offender's residence. These strategies have also been used by jurisdictions to ostensibly remove sex offenders from their jurisdiction, pushing them into outlying, more rural jurisdictions where less sex offender management services may be available.

The Research

When state and local jurisdictions began passing sex offender residence restrictions in the late 1990s, there was no research to suggest that such a sex offender management strategy would effectively reduce sexual recidivism and provide for enhanced community safety. Since then, a number of studies have failed to demonstrate reduction in sexual recidivism from a residence restriction policy (Colorado Department of Public Safety, 2004; Duwe, Donnay, & Tewksbury, 2008; Zandbergen, Levenson, & Hart, 2010). Such research has typically taken the approach of retrospectively reviewing those sex offenders who have sexually recidivated in terms of whether they live near a place a child might frequent, or to compare them to those who have not sexually recidivated in terms of residence location.

One study in particular, completed by the Minnesota Department of Corrections, consisted of a file review of 224 recidivist sex offenders and found that 85 % of the sex offenses took place in a residential setting (as compared to a public place where children congregate) (Duwe et al., 2008). The study further found that 113 of the recidivist sex offenders accessed the victim through an intermediary, who was typically an adult, and 79 % knew the victim prior to the sex offense. Finally, of the 35 % ($n=79$) of recidivist sex offenders who made direct contact with a victim, 16 made such contact with a child victim within 1 mile of their residence. However, per the researchers, none were near parks, schools, or other prohibited areas where children congregate, leading to the conclusion that none of the sexual offenses would have been deterred by residence restrictions (Duwe et al., 2008).

In addition to research on the lack of public safety benefit of residence restrictions, there has been some evidence to support the notion that residence restrictions may in fact undermine public safety by leading registered sex offenders to become homeless, go "underground," and fail to register. Both California and Iowa reported increased numbers of homeless and/or absconding registrants following implementation of a residence restriction law (Levenson & D'Amora, 2007; Thompson, 2007).

Therefore, residence restrictions have not been shown to effectively reduce sexual recidivism and enhance community safety. However, even jurisdictions that recognize the negative impact of such a policy often have difficulty in repealing such a law (e.g., Iowa County Attorney's Association, 2006).

GPS Tracking

Electronic monitoring, of which Global Positioning Systems (GPS) is one type, has been used with criminal offenders, including sexual offenders, since New Mexico began using such technology in 1984. By 1990, it was estimated that 60,000 criminal offenders in 36 states were supervised under electronic monitoring (Rondinelle, 1997). In its current incarnation, GPS information on the whereabouts of sex offenders is provided for supervision officers. Six states have passed mandatory lifetime GPS laws, including California's Jessica's Law in 2005 (Nieto & Jung, 2006), and approximately three-fourths of all states use GPS with some sex offenders (Turner & Jannetta, 2007).

The Research

Prior to the passage of mandatory GPS laws, the research was mixed in terms of their effectiveness in reducing sexual recidivism. It has been suggested that use of GPS in the absence of a rehabilitative component would not lead to any expected behavior change (e.g., reducing sexual recidivism) (Aos, Phipps, Barnoski, & Lieb, 2001; Gendreau, Goggin, Cullen, & Andrews, 2000). Since that time, much of the research generated on GPS has been completed by states that have implemented such a policy.

Multiple states, including California, Florida, New Jersey, and Tennessee, have completed studies of GPS effectiveness. The results of such studies have been mixed, in that New Jersey reported a low rate of sexual and nonsexual recidivism and parole violations for those on GPS but offered no comparison group data (New Jersey State Parole Board, 2007). Florida also reported reduced felony recidivism and technical violations for those on GPS compared to those who were not, although it was conceded that 70 % of those on GPS were lower-level property and drug offenders (Office of Program Policy Analysis & Government Accountability (OPPAGA), 2005). On the other hand, California and Tennessee found no significant reductions in recidivism or violations for sexual offenders on GPS compared to those who were not (Tennessee Board of Probation and Parole, 2007; Turner & Jannetta, 2007).

In addition, several of the studies noted significant implementation issues for use of GPS, including lack of staffing resources, the need to use the technology more discriminately, signal problems, and equipment malfunctions (Tennessee Board of Probation and Parole, 2007; Turner & Jannetta, 2007).

In summary, while GPS may ultimately be shown to effectively reduce and deter recidivism for certain sexual offenders, the current research support for this policy is mixed, and it has been observed that GPS, where utilized, should be one component of an overall management strategy that includes rehabilitative services.

Civil Commitment

In the early 1990s, a series of states, beginning with Washington, passed legislation providing for the involuntary and indefinite civil commitment of a limited group of individuals designated as sexually violent predators (SVP). Following Washington's lead, a succession of states moved to adopt similar laws, with 20 states establishing civil commitment policies as of 2010 and many others considering their passage (Fitch & Hammen, 2004). Other states with currently active SVP civil commitment laws are, Kansas, Minnesota, Wisconsin, Iowa, New Jersey, California, Texas (outpatient only), Arizona, Illinois, North Dakota, Missouri, Florida, Massachusetts, South Carolina, Pennsylvania ("aging out" juveniles only), Virginia, New York, New Hampshire, and Nebraska. While the majority of these states adopted civil commitment legislation during the 1990s, interest in the laws experienced a resurgence beginning in 2006, as reflected by California's expansion of civil commitment criteria pursuant to Proposition 83, the passage of new civil commitment laws in New York and New Hampshire, and the congressional passage of a federal civil commitment statute under provisions of the AWA.

Typically applied following completion of a criminal sentence, SVP civil commitment permits the state to retain custody of individuals found by a judge or jury to present a risk of future harmful sexual conduct by virtue of a mental abnormality or personality disorder. Following commitment, states remand individuals to the custody of mental health authorities, or in some cases correctional agencies, which ostensibly provide treatment for the condition that makes the individual likely to engage in acts of sexual violence. In most states, commitments are for an indeterminate period, with mental health authorities retaining custody until the individual is determined to no longer pose a threat to society. As of mid-2007, over 4,500 individuals had been committed under state SVP statutes (Gookin, 2007).

Since their inception, civil commitment policies have engendered significant controversy. Proponents of the laws have maintained that civil commitment represents a necessary "stopgap" measure to protect society from a small but dangerous group of individuals who continue to pose a threat to society following completion of their formal criminal sanctions. Criticism of the policies has emerged primarily within two sectors: the legal establishment, where debate has focused on constitutional concerns related both to civil commitment's fundamental premises and to its application, and the mental health community, where many have cited concern over the limitations of treatment and risk assessment technology. Mental health professionals and advocates have also expressed concerns regarding the "co-opting" of the psychiatric profession to fulfill a criminal justice function, misappropriation of public mental health resources, and the effects of the laws on compounding stigmatization of individuals with serious mental illness (Mental Health America, 2006). Further, some have questioned the policies' long-range sustainability considering their significant and mounting costs (Harris, 2006; LaFond, 1998). However, it has also been noted that the willingness of states to continue to devote resources for this sex offender management strategy, which in many cases was initiated during a period of economic growth, has continued even in times of economic uncertainty (Harris, 2006).

Three US Supreme Court rulings since 1997 have validated the use of civil commitment within the states (*Kansas v. Crane*, 2002; *Kansas v. Hendricks*, 1997; *Seling v. Young*, 2001), and a fourth ruling in 2010 supported the federal government's civil commitment authority (*U.S. v. Comstock*, 2010). Given this legal validation, it appears that civil commitment remains a stable element of the nation's sex offender management landscape.

The Research

As an incapacitative strategy ostensibly focused on the most high-risk offenders, civil commitment carries inherent public safety benefits. Assuming that the policies are appropriately

targeting those individuals who are likely to present the greatest risk of re-offense, these individuals' removal from society should intuitively lead to reduced rates of sexual victimization. As an empirical matter, however, it remains difficult to quantify and validate such claims. Any assumptions regarding the individual-level public safety effects of civil commitment (i.e., the extent to which the commitment of a particular individual prevented future sexual crime) are by nature speculative and conjectural, and—particularly given civil commitment's focus on a relatively miniscule proportion of offenders—it is highly problematic to attribute any aggregate shifts in sexual crime to the policies. To date, no experimental or quasi-experimental studies have been undertaken evaluating the relative public safety effectiveness of civil commitment against alternative means of managing high-risk offenders.

On another level, an arguably more relevant series of empirically testable premises relates to the relative effectiveness of civil commitment compared to alternative and less costly means of managing high-risk sexual offenders. In this regard, it is particularly notable that the Supreme Court's validation of civil commitment is predicated on the assumption that the purpose of commitment is therapeutic rather than punitive in nature—a finding that mandates the provision of a treatment-conducive environment. Paradoxically, those subjected to civil commitment tend to be those most highly resistant to treatment, resulting in very few releases from custody and, in turn, a costly and incrementally growing population.

Lifetime Supervision/Indeterminate Sentences/Mandatory Minimum Sentences

As an alternative to civil commitment, many states have instead passed laws that require longer criminal sanctions for sex offenders, including lifetime supervision (e.g., Colorado, Minnesota, and Washington) or mandatory minimum sentences (e.g., California and Florida), and these are frequently part of Jessica's Laws. As many as half of all states have passed mandatory minimum laws that may require 25-year minimum sentences for certain first-time felony sex offenses against children (Center for Sex Offender Management (CSOM), 2008). It should be noted that sex offenders receive longer sentences than any other violent criminal offender, and they serve more time in prison (Durose & Langan, 2007).

However, based on implementing such laws, the criminal justice system has seen adjustments taking place to avoid such sentences through plea arrangements. As an example, sex offenders who take their case to trial and who may be convicted of a mandatory minimum charge receive twice as long of sentences as those who accept a plea bargain to a lesser charge (Durose & Langan, 2007). Such sentences also may place increased pressure on victims to either not report in the first place or recant once reported. Finally, such policies have significant impact for incarceration costs (CSOM, 2008).

The Research

Thus far, there is limited research to suggest that longer prison sentences reduce recidivism, and research has noted that strictly punitive measures do not lead to behavior change (Gendreau et al., 2000). What is most likely true is that removing sex offenders from the community eliminates their likelihood of offending while so incarcerated, which clearly has a community safety benefit.

Although research support for treatment effectiveness has been somewhat mixed (see, e.g., Furby, Weinrott, & Blackshaw, 1989; Marques, Wiederanders, Day, Nelson, & van Ommeren, 2005), research on offenders receiving treatment while incarcerated indicates that incarceration leads to reduced sexual recidivism and reduced outcomes (Lowden et al., 2003; McGrath, Cumming, Livingston, & Hoke, 2003). Further, research suggests that the longer a sexual offender is in prison-based treatment, and presumably incarcerated, the better the outcome (Lowden et al., 2003). Therefore, there does appear to be some research to suggest that incarceration, perhaps in conjunction with treatment, may lead to reduced sexual recidivism.

In summary, research is ongoing related to existing sex offender management policies in use today, and the results have been mixed. It appears essential that research on these policies continues and strategies that are proven effective in the reduction of sexual recidivism be emphasized.

Contemporary Policies: Major Patterns and Themes

The primary goals of sex offender management policy and legislation may be characterized as incapacitation of the offender, retribution/punishment of the offender, deterrence of future offending by the offender and non-identified offenders alike, and rehabilitation (CSOM, 2008). As noted by the preceding reviews, however, evidence surrounding currently dominant policy responses—responses such as SORN, residence restrictions, expanded GPS tracking, and civil commitment—has been quite mixed and inconclusive regarding the achievement of these goals. This, in turn, raises two primary questions: (1) why do we have the policies that we do? and (2) what are some promising alternatives? These two questions form the foundation for the remainder of this chapter.

How Does Sex Offender Management Policy Happen?

The development of sex offender management policy and legislation seems to have repeatedly followed a similar pattern throughout modern history. Observing the proliferation of sexual psychopath laws in the early 1950s, criminologist Sutherland identified the major factors associated with these policies: a high-profile case or cases possibly involving a kidnapping, sexual assault, and murder of a child, which pressures officials to act. This high-profile case or cases typically leads to a public backlash, media exposure, and desire for a policy response. Thereafter, this public reaction often leads to the formation of a committee to study the issue and make recommendations for legislative action (Sample & Kadleck, 2008; Sutherland, 1950). An example of the triggering mechanism for such a policy implementation process is the aforementioned Washington Community Protection Act of 1990, which occurred in response to several high-profile cases (Sample & Kadleck, 2008).

In addition, much of the public fear about sexual offenders may be based upon misperceptions about the problem of sexual violence. Many members of the public, as well as the media and policymakers, are not aware of the evidence regarding sexual violence and, therefore, call for action in ways based upon these misperceptions (e.g., most victims are sexually abused by known offenders, but much of the policy is geared toward stranger danger) (CSOM, 2008; Sutherland, 1950).

Why does this happen? Research has demonstrated that the public is more likely to respond to an individual victim than to cumulative victimization statistics (Small, Loewenstein, & Slovic, 2007). When presented with the case of an individual victim, the emotional response and desire to help tend to be high. However, when presented with summary statistical information about victims or even when statistical information is presented with the case of an individual victim, both the emotional response and desire to help diminish. Small et al. (2007) concluded that deliberative thought decreases the sympathetic response for identifiable victims.

So what is the problem with this style of policy formation? Small et al. (2007) concluded that, while it may be more effective to develop a policy based upon connecting with the public's emotions, it may not lead to the most efficient use of resources to focus on one individual victim rather than developing policies and using resources for all victims. The development of sex offender management policy is often advanced based on an identifiable victim and the desire by the public to somehow respond to this specific tragedy, rather than the problem of sexual violence as a whole. Again, the conclusion of Small et al. (2007) is telling: "Insight, in this situation, seems to breed callousness" (p. 151).

It is also important to note that most legislators reported obtaining their information from the media even when that information was a summary of an agency report or research study. Therefore, and in summary, it has been observed that sex offender management policy development appears to be based on policymaker perception, public perception and concern, and the media (Sample & Kadleck, 2008).

Stranger Danger and Disproportionate Influence of High-Profile Events

Despite the fact that the vast majority of victims know the sexual offender prior to the sexual offense, the predominant driving force behind sex offender management policy appears to be the extreme, stranger sex crimes, which lead to public outcry, media sensationalism, and policymaker and legislator desire for action. Based on this decision-making framework, it makes sense that most of the implemented policies are designed to prevent stranger sexual assaults. SORN, residence restrictions, and special license plates and driver's licenses, among other policies, are all geared toward protecting the public from stranger sex offenders (CSG, 2010). The federal government's current sex offender management policy, emphasizing SORN systems, certainly seems to be directed toward this type of sexual offender, as have many state and local policies. What is less clear, however, is how best to address the issue of the non-stranger sex offender and provide for public safety from a sex offender who is already known to the victim but may as yet not have been identified as such by the criminal justice system. Public education campaigns, including those as part of community notification efforts, may help, but these push up against policies aimed at potential stranger sex offenders and also exacerbate public denial that such a problem can occur within their own family.

Expanded Role of State Legislatures

Over the past two decades, sex offender management public policy and legislation have experienced unprecedented growth. There has also been the re-fostering of historical policies including sex offender registration, which was originally enacted in California in 1947, and sexual psychopath laws under the guise of civil commitment laws (Sample & Kadleck, 2008). Sex offender management public policy continues to be popular, reaching number five on the priority list facing state legislators (NCSL, 2007). Similarly, public opinion polls also demonstrate that sex offender management should be a chief legislative priority (Levenson, Brannon, Fortney, & Baker, 2007; Mears, Mancini, Gertz, & Bratton, 2008).

During 2007–2008 state legislative sessions across the United States, 1,500 bills related to sex offenders were considered, with 275 being enacted into law. It should be noted that this number is even more significant given that six states had no legislative session during the studied period of time. The most typical type of legislation observed at the state level was related to the state implementation of the federal AWA, including adding juveniles to the sex offender registry. In addition, other state laws included a prohibition on plea bargains and good time, lifetime supervision, use of GPS, residence restrictions, civil commitment, prohibition of erectile dysfunction drugs, specialized license plates and driver's licenses, and the death penalty for certain sex offenders (CSG, 2010).

Expanded Federal Role

The current sex offender management policy development style that is in favor appears to be a top-down approach (Logan, 2008). There have been significant changes in the area of sex offender management public policy over the past 15 years, particularly related to the federal government becoming increasingly involved in the management of sexual offenders. Through such legislation as the Wetterling Act, Megan's Law, and the AWA, the federal government has directed states to monitor, via registration and notification, identified high-risk sex offenders and has pushed for increasing consistency of and control over state policy. The latter evolution was based on the belief that inconsistency across jurisdictions and a patchwork of weak laws allowed sex offenders to avoid accountability (Logan, 2008).

The federal government has also become increasingly involved in areas formerly left to states, including the mandate of the AWA to civilly commit sex offenders within the federal system and federal enforcement of failure-to-register criminal violations. In this way, the federal government is taking an increasingly active role in the development and implementation of sex offender management policy.

By contrast, other countries, such as Canada, have taken a different approach to sex offender management public policy, with much of the impetus for such policy coming from the provincial level, with the Canadian government taking a more deliberative and cautious approach (Petrunik, 2003). This approach has also been observed in other countries including the United Kingdom, which thus far has resisted efforts to implement a broad-based notification law.

One-Size-Fits-All Models

Another significant challenge currently facing sex offender management policy is the proliferation of one-size-fits-all models. Sex offender SORN policy has by intention and design become increasingly prescriptive in a desire to increase consistency and continuity. As a result, SORN policy has become a more one-size-fits-all model. In addition, many of the policies being implemented (e.g., residence restrictions, GPS, and mandatory minimums) are being applied on the basis of an offense or all sex offenses, and there is little distinction in the policies based upon the type of offender (adult vs. juvenile, high risk vs. low risk, etc.). Sex offender management policies are increasingly treating sex offenders as a homogenous group despite research that suggests otherwise. Frequently the argument for such a one-size-fits-all policy is based on the concern that risk assessment cannot adequately distinguish higher- from lower-risk sex offenders. Therefore, it is better to be more inclusive in a policy to ensure that those sex offenders who are truly high risk will be managed under the policy. The problem with a one-size-fits-all policy is that research suggests that lower offender risk can be exacerbated by applying higher-intensity interventions to lower-risk offenders (Andrews & Bonta, 2003; Aos et al., 2001).

In sum, a one-size-fits-all sex offender management policy is designed to ensure consistency and continuity across jurisdictions as well as to ensure that all higher-risk sex offenders are managed under the policy. However, the problem with such a strategy is that a one-size-fits-all strategy fails to account for the heterogeneity of sexual offenders and overmanages some sexual offenders unnecessarily. Overly inclusive policies consume public resources and unnecessarily disrupt the stability of lower-risk sex offenders and thereby actually increase their risk (Levenson & D'Amora, 2007). There are also significant implications for net widening in terms of the management of sexual offenders.

Sex Offender Management Cost Considerations

It should be noted that the federal government has embarked on a sex offender management policy of increasing expansion and rigor in the requirements for sex offenders. The Wetterling Act and Megan's Law were focused on a certain types of offenders, whereas the AWA generally has similar requirements of all sex offenders in terms of registration and notification. It should be noted that studies have demonstrated a net-widening effect of the AWA, where the vast majority of sex offenders are now classified in the highest risk category rather than a more evenly distributed bell curve or majority in the lower-risk category (Harris et al., 2010). This inversion effect has led to the enhanced management requirements for a larger number of registered sex offenders at a significant unfunded mandate to state and local jurisdictions.

In terms of cost considerations, it has been estimated that 10–20 % of all prisoners currently are incarcerated for a sex offense (Velazquez, 2008). In sum, the number of sex offenders in prison has grown from 19,900 in 1986 to 43,500 in 1991 and 60,700 in 1997, an increase of 39 % from 1991 to 1997 (Finkelhor & Jones, 2004). More recently, it has been estimated that there were 110,000 sex offenders in prison in 1999, 142,000 in 2002, and 150,000 in 2004 (Daly, 2008). At an estimated prison cost in 2001 of $22,650 per inmate (Velazquez, 2008), this means the cost of incarcerating sex offenders has grown from $451 million in 1986 (using the 2001 per inmate cost) to $3.4 billion in 2004 (Velazquez, 2008).

There is also a significant administrative cost associated with the management of more than 700,000 registered sex offenders. Much of this cost is borne by local communities and law enforcement in terms of registration and address verification functions. In addition, there is considerable cost to the criminal justice system of locating and prosecuting the estimated 100,000 noncompliant registrants (NCMEC, 2007). Finally, the cost of implementing the AWA has been estimated as being $1.5 billion over 5 years (Sandler et al., 2008).

In addition, many states have implemented Global Positioning Systems (GPS) for sex offenders at an estimated cost of $10–14 per day for each offender as well as the need for increased staffing to track down noncompliant offenders. In terms of cost parameters, prior to passage, California's Jessica's Law was estimated to be applicable to 9,650 sex offenders on parole at a cost of $88.4 million per year (Nieto & Jung, 2006), while Florida's cost from 2003 to 2004 was $2.4 million for 1,706 offenders (OPPAGA, 2005).

In terms of civil commitment, the cost is significantly higher than for incarcerating a sex offender in a correctional facility, averaging $97,000 per sex offender per year. Therefore, it has been estimated that civil commitment programs cost states approximately $454.7 million annually (Gookin, 2007).

Costs are also a consideration in expanding sentencing alternatives such as mandatory minimums and indeterminate sentences, as the costs of incarceration skyrocket in a period of significant government budget shortfalls. While the federal government can pass increasingly expansive policies regardless of bottom-line cost, given that the federal government can run a deficit and has more significant fiscal implications for state and local jurisdictions, states may be subject to balanced budget requirements each fiscal year. As a result, state legislators may be faced with opposing a sex offender management policy for budgetary considerations. However, oftentimes policymakers focus more on the cost to society of failing to effectively manage sexual offenders rather than the bottom-line costs of a given policy.

Promoting Evidence-Based Policy

There are significant challenges in adequately identifying the effectiveness of a sex offender management policy due to the low base rate for sexual recidivism (making statistically significant findings between those subject to the policy and those not subject to the policy extremely difficult), the significant underreporting of sex crimes leading to uncertainty about the comprehensiveness of the research (e.g., NCVS from Rand (2009) data suggests that only 41.4 % of sexual assaults are reported to the police), and the need for long-term follow-up to truly determine effectiveness in a climate where immediacy is the expectation (Levenson & D'Amora, 2007).

For example, sexual recidivism rates are reported to be relatively low for identified sex offenders (see, e.g., Hanson, Bourgon, Helmus, & Hodgson, 2009; Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005; Harris & Hanson, 2004; Langan, Schmitt, & Durose, 2003). Does this mean that sex offender management policies are effective in reducing recidivism for known and identified sex offenders and for the rate of sex crimes in general? Or is it indicative of difficulties in detecting sexual offending behavior for identified sex offenders? The answer is uncertain given the difficulties with criminal justice policy research, since it is conducted in the real world, not a variable-controlled laboratory setting. It is exceedingly difficult to isolate variables and determine whether an individual variable, say a certain policy, has led to a statistically significant change in outcome. Therefore, it is difficult to state that a certain policy has significantly affected the rate of sex crimes or sexual recidivism to the exclusion of any other policy. So what do we know about promoting evidence-based policy?

Advances in Risk Assessment

The advances in risk assessment and the use of actuarial risk assessment methods such as the Static-99 have been proven effective in the discrimination of the levels of risk for sex offenders. Therefore, sex offender management policy using risk assessment to determine an individualized intervention would appear to be a promising evidence-based strategy for sex offender management. Many researchers, practitioners, and policymakers focus on the importance of risk assessment in the management of sex offenders. Despite the AWA moving away from risk assessment to an offense-based classification system, many states have implemented registration and notification schema based on risk (e.g., Minnesota and Washington). Thus, an effective sex offender management strategy, based on evidence, may be to classify sex offenders into discrete risk categories and design management strategies based upon the level of risk.

The challenge for sex offender risk assessment is that risk prediction is an inexact science. The public and policymakers have an expectation of accurate classification of sex offenders, and inevitably an offender classified as low risk will recidivate. This reality must also be addressed by practitioners and researchers via public and policymaker education to prevent backlash against risk assessment.

Evidence on Treatment Effectiveness

There is an increasing body of research to suggest specialized sex offender treatment is an evidence-based and promising practice. Historically, sex offender treatment has been subject to challenges by both practitioners and policymakers. Early studies questioned the effectiveness of sex offender treatment in reducing sex offender recidivism and enhancing community safety (Furby et al., 1989; Marques et al., 2005). More recently, there have been a number of research studies demonstrating the effectiveness of cognitive-behavioral treatment (Aos, Miller, & Drake, 2005; Losel & Schmucker, 2005) and treatment based on the risk, need, and responsivity principle (Andrews & Bonta, 2003) for sex offenders (Hanson et al., 2009). Further, treatment in conjunction with collaborative multidisciplinary supervision and polygraph monitoring has been shown to have utility in managing sex offenders (Aytes, Olsen, Zakrajsek, Murray, & Ireson, 2001; Lowden et al., 2003). At this point, it appears as if the evidence on treatment supports the use of treatment as one option in the effective management of sexual offenders.

Circles of Support and Accountability

Another promising practice for sex offender management and reintegration is the circles of support and accountability (COSA) model. Developed in Canada 15 years ago, this program combines accountability with community support by identifying volunteers who will provide assistance to a sexual offender during community reintegration. This COSA group around the sex offender provides resource assistance in terms of housing and jobs, while holding offenders accountable for their behavior. The COSA model is a promising practice, transforming community concern and the desire to do something into tangible assistance, support, and monitoring for the sex offender. This model has been replicated across Canada, in the United States, and in the United Kingdom.

Research suggests that the COSA model is an effective strategy for high-risk sexual offenders in that those who participated in an initial pilot program had a 70 % reduction in sexual recidivism as compared to a group of sexual offenders who did not participate in the COSA program (Wilson, Picheca, & Prinzo, 2005). Additionally, a follow-up independent Canadian sample had an 83 % reduction in sexual recidivism over a nearly 3-year period (Wilson, Cortoni, & McWhinnie, 2009).

Sex Offender Management Policy Boards

One possible mechanism to facilitate policy development is the use of state-level sex offender management policy boards to address policy and practice. The origin of such an approach was the development of the Texas Council on Sex Offender Treatment in 1982, and to date more than half of states have some type of sex offender management policy group (Lobanov-Rostovsky, 2007). The goal of such groups is to standardize sex offender management strategies and practices, make recommendations for key sex offender management policies, and oversee the delivery of sex offender management services. Such groups, typically made up of key stakeholders and experts in the field, may be a mechanism to develop evidence-based sex offender management policies and offset the traditional mechanisms of sex offender management policy development (extreme cases, public perception, media, and policymaker reaction).

One example of a sex offender management policy group affecting sex offender management strategies is the way in which the Kansas Sex Offender Policy Board and the Colorado Sex Offender Management Board both independently addressed the issue of residence restrictions by reviewing the evidence and doing research, respectively. Such an approach led to both states not passing residence restrictions at the state level.

While there is no current research to suggest the effectiveness of the management policy board in advancing evidence-based sex offender management policy, it does appear to be an effective mechanism to advance such policy and practice and avoid making hasty and politically expedient recommendations.

Recommendations for Promoting Evidence-Based Policy

The field of sex offender management continues to evolve. Over the past 30 years, there have been an increasing quantity and quality of studies that have identified the problem of sexual violence and methods to address the problem, and it is essential that policies be informed by this research (CSOM, 2008). Mechanisms to achieve this outcome include legislative briefings and forums, the development of sex offender management boards and policy groups, state use of research institutions like the Washington Institute for Public Policy, and collaborative teams advocating for evidence-based

policy and practice. The benefits of such efforts would be internal confidence in sex offender management policies, explanatory power to stakeholders, accountability for the policy, and appropriate use of resources (CSOM, 2008).

It has been further suggested that risk-based policies, such as longer sentences for those at higher risk with alternative sentences for those who are lower risk; use of intensive interventions such as intensive and lifetime supervision and GPS for high-risk sex offenders; a continuum of programs with different levels of intensity based on risk; and use of risk to determine the extent of registration and notification (CSOM, 2008) are an effective strategy for sex offender management policy that provides for the most intensive interventions for the most dangerous sex offenders (Levenson & D'Amora, 2007). It should be noted that the goals for sex offender management policy are now nearly a century old but continue to be dogged by questions about the effectiveness of treatment, cost parameters, questionable effectiveness of changing offender behavior, and the need for adequate risk prediction (Bowman, 1953). There does appear to be a strong argument about the need for research as an equal partner in sex offender management policy.

In summary, an ideal sex offender management policy development process would include such features as research based, informed risk-distinguishing policies, and collaboration between practice, research, and policy.

Moving Toward a New Paradigm of Sex Offender Management Public Policy

While the overarching goal is the development of evidence-based sex offender management policy, the inherent challenges may suggest that an interim step is necessary to achieve this outcome. Sex offender management policy appears to be suffering from a chicken and egg problem in that there is insufficient research on which to develop a policy and the expedited nature of policy development often fails to account for research to verify the policy's effectiveness. However, given the way in which sex offender management public policy has historically been developed, it may not be realistic to wait for the necessary research before implementing a policy.

As an alternative, it has been suggested that evidence-generating policies allow policymakers to treat policy changes as experimental and expected outcomes as hypotheses. The goal is to implement a policy to generate specific evidence about its effect, which appears to be a more honest approach by acknowledging the current lack of an unambiguous evidence base. In sex offender management public policy, as with much criminal justice, there appears to be a preference for innovation over studying, and this policy process would allow for study as innovation occurs. In order to compare a policy's effectiveness, the use of staggered implementation over time and place, sunset provisions, and gathering pre-implementation data for comparison purposes may allow for research on an expedited policy (Liberman, 2009).

In terms of the disadvantages of evidence-generating policy development, there may be a slight delay in implementation due to the need to identify and collect comparison, pre-implementation data, but the end result could be to have useful data on policy effectiveness. This is also a far more objective strategy, however, than hurriedly implementing a policy and then casting about for a comparison group (Liberman, 2009), perhaps using the one most advantageous to the policy development (a weak comparison for those in favor of the policy or a strong comparison group for those opposed).

If sex offender management public policy is going to move to an evidence-generating policy, the following considerations are needed. First, the key desired outcomes to be measured must be identified. Second, the potential unintended consequences must be identified. Third, feasible methodological approaches to overcoming unintended consequences must be identified. And finally, available data on the policy outcome must be identified. This work must be done in advance of the policy debate, not during, as by then it is too late. Evidence-generating policies can counter policies that are pushed too fast, are relatively uninformed, and are even faddish, in response to crises (Liberman, 2009).

Influencing Research, Policy, and Practice

To develop evidence-based sex offender management policy, it is essential to collect evidence about what works and provide this information to policymakers. Collaboration between researchers and practitioners can help bridge the gap between available information and informed policy. On the one hand, practitioners typically lack the skill necessary to do quality research, which is where research professionals can be of benefit. On the other hand, researchers need access to data and can benefit from collaborating with practitioners. If the two groups collaborate, sex offender management policies can be evaluated and adjusted accordingly.

In this regard, technology can play a role in helping researchers and practitioners to collect data. An advantage of top-down policies is the ability to provide uniform interventions and policies, and therefore, data will be analyzable across jurisdictions. One of the frequent complaints from practitioners is the lack of time to do research and the added business cost of doing so. If research-friendly data collection systems can be developed and shared, this will assist practitioners in collecting data for researchers to analyze. There needs to be expectations to do research as part of practice,

but there should be incentives and support from the policy system to do so.

Given the importance of research to analyze the effectiveness of sex offender management public policy, federal grant funding must include provisions for research. There should be an expectation for data collection, with all grant initiatives and specific federal grants geared toward research. All policies should be evidence-generating, and the federal government should stipulate as such in its grant funding strategies by supporting the innovative application of pilot projects.

Finally, it is important to provide policymakers, the public, and the media with an accurate picture of the problem of sexual violence (e.g., research suggests most victims know the offender prior to the offense), noting the significant underreporting of sex crimes and the issues related to evidence-generating policies. To this end, collaboration between research, policy, and practice is essential to the development of effective sex offender management policy and practice. This requires a shift from the current paradigm where those who challenge existing or proposed policies and call for evidence-based policies are viewed as anti-victim and pro-offender. Proactive advocacy for sex offender management strategies such as containment, which includes specialized treatment and supervision, circles of support and accountability, and risk assessment speak to the ability to have solutions rather than merely objecting to bad policy.

Summary

The field of sex offender management public policy, practice, and research needs to make some adjustments to effectively enhance community safety. Policies and practice need to be flexible and individualized, not a one-size-fits-all model. Implementation of evidence-based and evidence-generating policies requires a change in approach to policy development. The current principles of risk, need, and responsivity assist in conceptualizing this approach and need to be applied to policy development as well. It is possible for practitioners and researchers to make a positive contribution to sex offender management policy. Ultimately, the most effective strategy may be a series of sex offender management policies such as the ones identified earlier in this chapter (e.g., specialized sex offender treatment and supervision, actuarial risk assessment, circles of support and accountability, and the like), rather than one overarching strategy to address the myriad of sex offenders and a diverse and varied problem. As Patty Wetterling observed, "there is no silver bullet" to solve the problem of sexual violence (Human Rights Watch, 2007), and sex offender management policies need to take into account the heterogeneity of sexual offenders and develop a variety of evidence-based management strategies.

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