

Sex Offender Management Practices in the United States

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Abstract

This article compares and contrasts the policies within the various states of the United States regarding the treatment, management and supervision of individuals who have committed sexual offenses. Differences in sentencing and residence restrictions are highlighted. In addition, the role of high-profile cases for triggering new restrictive statutes is discussed. The use of civil commitment statutes, which indeterminately detain and treat high risk sexual offenders at the end of their prison sentences, is also reviewed. Finally, recent US efforts to provide support for both offenders and those at risk to sexually offend are also described.

Keywords: United States, Sexual Offenders, memorial laws, residence restrictions, civil commitment

Introduction

It is the fourth largest country in the world, but at times the United States can appear more like fifty small countries rather than one large union. Individual states can often seem very different from each other. For example, there are few similarities in climate, topography or politics between Florida and Wyoming. Even states who are side-by-side and of similar size, (such as New Hampshire and Vermont), can vary in many ways, particularly politically. New Hampshire has historically been very conservative, while Vermont has consistently been very liberal, with an independent Senator with socialist leanings. Like the politics, laws between the states can often vary, although with some important issues the Federal Government will demand uniformity, penalizing states that do not conform by withholding certain federal funding.

The states can also vary significantly in their approaches to the management of sexual offenders. For example, Florida has not only maximum sentences for crimes, but also mandatory minimum sentences. A Floridian convicted of Lewd and Lascivious Behavior faces a mandatory minimum sentence of 7 years, and a possible maximum sentence of 15 years in prison, and if convicted of rape, would face a mandatory minimum sentence of 9 years, and a potential maximum sentence of life imprisonment. Several states have so-called "three-strikes" policies, in which courts can impose life sentences to offenders who have committed three serious crimes, including sexual crimes. Over half of the states use GPS tracking of sexual offenders who are on probation or parole, and a handful of states require lifetime supervision of sexual offenders. However, there are also many similarities among the states, beginning with an overall attitude of tremendous fear toward sexual offenders that is reflected in public policy. While there has been some slight shift in recent years toward an interest in prevention, the majority of states continue to operate from a basis of fear, as can be seen in their approaches to community notification, registration, treatment and risk management.

"Memorial Laws" Requiring Registration/Notification/Residence Restrictions

Many laws regarding sexual offenders throughout the United States are the result of an emotional reaction to high profile crimes. These "memorial laws," usually named after children who were kidnapped, sexually assaulted, and murdered by strangers, have led to stricter penalties and various restrictions of freedom for sexual offenders once released. While the passing of such laws may be popular with voters, the effectiveness of such laws in making communities safer is quite questionable. Unfortunately, surveys suggest that members of the public are in favor of keeping the restrictions, even when research suggests that the laws do not lead to decreased recidivism and provide barriers to successful reintegration (Brannon et al, 2007).

One of the most well-known memorial laws is the Jacob Wetterling Act, which was named after an eleven-year-old boy who was kidnapped while riding his bike home from a convenience store in Minnesota. His mother worked with Congress to pass the act in 1994 which required states to create sex offender "registries" of those convicted of sexual offenses. Offenders are required to register their home and work addresses with the police for a specified period of time, depending on the jurisdiction and risk level of the offender. Most also must provide fingerprints, a photograph and in some jurisdictions, DNA samples. States refusing to comply would have to forfeit 10% of federal funds from the Omnibus Crime Control and Safe Streets Act of 1968 (Terry & Ackerman, 2009). One particularly controversial aspect of registration is that the Wetterling Act requires all states to register juvenile sex offenders fourteen years or older who offense (or attempted offense) is comparable to (or more severe than) aggravated sexual abuse. Opponents believe this is inappropriate, given that the recidivism rate for juvenile offenders is so much lower than adult offenders, and given that the intent of the juvenile justice system is on rehabilitation rather than punishment (Caldwell, 2010; Reitzel & Carbonell, 2006).

Another well-known memorial law is "Megan's law," which was enacted in 1996 after seven-year-old Megan Kanka was killed by a recidivist sex offender living across the street from her in New Jersey. Her parents claimed the registries begun by the Jacob Wetterling Act were not sufficient to keep children safe and the called for community notification. As with the registry laws, all sexual offenders are assessed to determine whether they represent a low, medium or high risk for reoffending. Depending on their risk level, varying efforts at community notification follow. For low-risk offenders, usually only the local police are notified, but higher levels of risk could lead to community notification meetings which are open to the public. All fifty states had enacted laws regarding community notification by the end of 1997 (Terry, 2015).

In 2006, an even more comprehensive law was enacted regarding sex offenders in the United States. The Adam Walsh Child Protection and Safety Act (AWA) was named after a six-year-old boy who was abducted from a shopping mall and killed. It enhanced sanctions for failure to register, extended the supervision time for sex offenders, and led to some residence restrictions, prohibiting sexual offenders from living within a certain distance of various areas where children congregate. Although these residence restrictions are intended to protect the public, there is no clear evidence that they have any effect on recidivism. And, many worry that it actually could contribute to offenders' failure on release due to shame and isolation experienced by them, the potential for vigilantism, and the difficulty finding housing and jobs. In one study of both offenders' perceptions and the public's perception of community protection policies, results suggested that sex offenders experienced more vigilantism (including physical violence) than was reported, due to their shame and reluctance to draw further attention to themselves (Brannon et al., 2007).

One extreme case of the negative effects of residence restrictions occurred in Miami, Florida. Miami's ordinance prohibiting sexual offenders from living in proximity to schools, churches, parks, swimming pools and public school bus stops essentially put the entire city off limits. A large group of sexual offenders, being unable to find anywhere else to live, set up tents under the Julia Tuttle Causeway Bridge. Initially those offenders lived without clean water, showers and consistent electricity, and the make-shift camp reeked from garbage and human waste. Their probation officers were aware of the situation and even allowed the offenders to register their address as being under that bridge. This, in the opinion of some legal scholars, amounted to Cruel and Unusual Punishment, as prohibited by the Eighth Amendment of the Constitution (Saylor, 2010). While the "tent city" under the bridge no longer exists, sexual offenders in Florida continue to have difficulty locating housing given the residence restrictions.

A Georgia case also illustrates some very concerning aspects to residence restrictions. In *Mann v. Georgia Department of Corrections*, a sex offender was living in a home he purchased and working at a nearby restaurant. He appeared to be successfully adjusting to his return to the community. Then a daycare opened up near his home and his job, and his probation officer informed him that he was required to move to a different location and find a different job. The offender argued that this amounted to taking of his property without proper justification, since he would be forced to pay closing costs, realtor commissions and other fees. This case was important because it showed how members of the public could have been free to open up daycare centers near every registered sex offender to force them to move, but Mann did win the case. The Georgia Supreme Court found that the statute was unconstitutional since it did permit regulatory taking of his property without just and adequate compensation.

Civil Commitment

Involuntary civil commitment has long been used in the United States to incapacitate and treat mentally ill individuals who present a danger to themselves or others. In the 1980s many states used similar statutes but applied them specifically to sexual offenders. These "Mentally Disordered Sex Offender Statutes" allowed some high risk sexual offenders to be treated in a secure treatment center in lieu of their prison sentence. A new wave of such statutes started to appear in the early 1990s; however, this time they allowed for the commitment of individuals after they had completed their prison sentence instead of in lieu of a prison sentence. And, with this new version of the laws, the sexual offenders are indeterminately committed until they can prove that they have lowered their risk for reoffending. Twenty states now have these laws, which are usually called "Sexually Violent Predator (SVP)" laws. They began in response to a few sexual offenders who were nearing the end of their prison sentence and reported that they knew they would soon reoffend if they were released, and the laws intended to select only those of the highest risk for reoffending. However, the twenty states vary as far as the evidence allowed at these hearings, the burden of proof, whether or not there is a jury trial, and their review process. Approximately half of the states require proof to be beyond any reasonable doubt, while the other half require only clear and convincing evidence. Three states require the use of psychological instruments during the SVP proceedings, either as a screening method for consideration for civil commitment, or during the assessment to determine whether the individual has a mental abnormality that makes them likely to engage in future violence. Most participating states use the Static-99 plus an assessment of dynamic risk factors. However, the majority of states allow a diagnosis of Antisocial Personality Disorder to qualify as the mental abnormality, which some believe goes beyond traditional notions of civil commitment (DeMatteo et al., 2015).

Because of those many differences, many believe that a majority of the twenty states have ended up casting the net a bit wide, involuntarily committing many who may not actually be high risk for

reoffending. For example, the State of Minnesota has committed over 600 individuals, the highest number of civilly committed sex offenders per capita (Duwe, 2013). As in other states, this appeared partly in response to a high-profile case, as the referrals for possible civil commitment as an SVP were six times greater after the murder of Dru Sjodin. And, in Duwe's 2013 study, he estimated that the civil commitment process likely only lowered the sexual re-offense rate from 3.2 to 2.8 percent, and that two-thirds of those civilly committed likely could have been safely released to the community instead of committed.

The twenty states also vary greatly in their release rates from the SVP treatment programs, with some programs having released hundreds of offenders and other programs' release numbers remaining in the single digits. Those that appear to have few to no releases have faced court scrutiny, since a program with no path to release raises questions about the constitutionality of the programs (See Van Orden v. Schafer & Karsjens et al., v. Jesson et al.) It is likely due to the high cost of civil commitment, and the questionable efficacy in identifying which sex offenders are truly high risk to reoffend, that no additional state has sought to pass a Sexually Violent Predator law in the last decade.

Treatment

When it comes to the management of sexual offenders, the area of most consistency throughout the United States would likely be the sex offender treatment offered within the prison systems. Most states do offer treatment in at least one of their facilities, and most offer varying levels of treatment based on the level of risk presented (West, Hromas, & Wenger, 2000; Gordon & Hover, 1998). Risk is most often assessed using the Static-99 plus consideration for dynamic risk factors. There appears to be a unified effort to incorporate research and adhere to practice standards, as evidenced by the 24 State Chapters of the Association for the Treatment of Sexual Abusers (ATSA), and consistently high attendance at the annual ATSA Research and Treatment Conferences. While ATSA is now an international organization, it began as a small group of treatment providers in Oregon. Since that time, it has grown to include approximately 3,000 members and represents more than twenty countries. ATSA sets practice standards, offers a code of ethics for practitioners, produces a highly ranked, peer-reviewed journal, provides continuing education classes, hosts the world's largest annual research and educational conference focused on issues related to the treatment and management of people who sexually offend, and contributes to the development of sound public policy (See ATSA.com).

The Center for Sex Offender Management (CSOM) also tries to provide some unification in the treatment and supervision offered to sexual offenders in the United States. CSOM is a national clearinghouse and technical assistance center that offers specialized training, synthesizes and disseminates research in an information exchange, and provides technical assistance on a variety of issues related to the management of sexual offenders (See www.CSOM.org).

Support for Offenders

In addition to the varied functions of ATSA, there are a few other American organizations that offer support for individuals who sexually offend. Stop It Now! Is a non-profit multi-service organization founded by a survivor of childhood sexual abuse. One of their services is to offer help to individuals who are concerned about their sexual thoughts and urges. Stop It Now! Organized treatment providers who were willing to volunteer their services to allow individuals to talk anonymously about their concerning thoughts/urges, and to learn about options for treatment.

"Virtuous Pedophiles" is another organization that began in the United States, although it reaches many countries. It is an Internet-based support group for individuals who struggle with sexual attraction toward minors, but who are committed not to act on those urges. The goal of "Virtuous Pedophiles" is to reduce the stigma attached to pedophilia by educating the public that many individuals with pedophilia do not act on the urges and suffer from being hated for an attraction they did not choose. This organization notes that their "highest priority is to help pedophiles never abuse children (see <https://www.virped.org/>).

The United States is also making some efforts to follow the lead offered by Canada regarding the establishment of Circles of Support and Accountability (COSA), in which released offenders are provided with social support consisting of one primary volunteer and between 3-5 other community volunteers who meet with the offender on a daily basis to make up the 'inner circle', and an 'outer circle' of community-based professionals who volunteer their time to support the work of the inner circle (Wilson et al., 2007). For example, in Minnesota, the Department of Corrections and a nonprofit organization called 'Amicus' both piloted a small-scale application of the COSA model. However, unlike Canada, where the volunteers usually come from faith-based communities, the COSA volunteers in Minnesota usually were students recruited from colleges or universities (Duwe, 2012). A study of the effect of this model in Minnesota revealed that the COSA participants had lower rates of recidivism, with the reconviction rate for the COSA participants being nearly half that of the control group. Overall, the preliminary findings suggested that this model could be successful in the United States (Duwe, 2012).

Summary and Conclusions

The individual states within the United States can vary greatly in their approach to the treatment and management of sexual offenders. For example, in Florida there is lifetime registration, extremely strict residency rules, registration for many juvenile offenders and civil commitment with no gradual transition or supervised release. While on the same coast, the State of Vermont has registration that is not public, no registration for juveniles, residency restrictions that stop once the offender is off probation, and no civil commitment. Despite those variations, there are also many similarities between the states, usually with regard to what is often viewed as increasingly punitive measures to deal with sex offenders (Duwe, 2012). For example, the "memorial laws," which are named after child victims of sexual offenders, usually call for increased restrictions for offenders. And, at times states are informed that they must enact similar laws or risk losing certain federal funding. One example of a practice that many Americans view as negative is the practice of some states of publishing on a website the name, address and photo of juveniles who are viewed as having committed sexual offenses, without regard to the severity of the offense or a determination if the behavior is better viewed as abuse-reactive behavior rather than 'sexual offending'.

There are also, however, positive efforts being made in the United States regarding the assessment, treatment and management of sexual offenders. For example, ATSA, which originated and is still based in the United States, offers practice standards, ethical guidelines, and training to treatment providers, and also provides a valuable research and treatment conference each year. CSOM also attempts to offer resources, such as training and access to research, to those providing treatment to offenders or supervising them in the community. And, Stop it Now! reaches out to those struggling with urges to commit sexual offenses. In addition, there are efforts throughout the United States to follow the lead of Canada with regard to incorporating research results regarding dynamic risk factors, and through replicating the apparent success of the Circles of Support and Accountability model. It is hoped that further efforts will be made to unify the states' approaches to sexual offenders, so that every state is research-informed in their laws, practices and policies.

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