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Gail Onderak
gail.onderak@go.winona.edu

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Current Sex Offender Laws: Are They Doing More Harm Than Good?

Gail M. Onderak

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CERTIFICATE OF APPROVAL

CAPSTONE PROJECT

Current Sex Offender Laws: Are They Doing More Harm Than Good?

This is to certify that the Capstone Project of

Gail M. Onderak

Has been approved by the faculty advisor and the CE 695 – Capstone Project

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Capstone Project Supervisor: Mary Fawcett
Name


 Signature

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Abstract

Public sentiment toward sex offenders is that of hatred, contempt, and fear. These attitudes have led to the creation of sex offender legislation that is exceptionally restrictive and punitive. While best practices and current treatment models call for minimization of risk and maximization of personal fulfillment in order to reduce recidivism, sex offender laws pose as obstacles to these goals. A review of the risk-need-responsivity (RNR) principles and the Good Lives Model (GLM) treatment approach highlights the contrast between intended outcomes of these methods and the challenges that sex offender notification and registration (SORN) and residency restrictions present when trying to achieve them. Strategies for support and advocacy are presented for counselors who work with the sex offender population.

Keywords: sex offender, sexual abuse, risk-need-responsivity, RNR, Good Lives Model, GLM, sex offender notification and registration, SORN, residency restrictions

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Current Sex Offender Laws: Are They Doing More Harm Than Good?

Horror and disgust are often the public's reaction to sexual offenses (King, 2019).

Persons who commit these offenses are the most despised and feared criminals in society (Meloy et al., 2013). They are perceived as “modern day monsters” and “sexual predators” (Berryessa & Lively, 2019; Pickett et al., 2013). As many community members believe sex offenders cannot be treated or cured, they assume recidivism is inevitable (Berryessa & Lively, 2019). In a study by Brown et al. (2008) on public attitudes regarding the reintegration of sex offenders into the community, one respondent stated, “The only sure way to control them is to keep them behind bars until they die” (p. 266).

Public fear of sex offenders and misconception surrounding sexual offenses have resulted in pressure on policy makers to enact extensively punitive legislation (Meloy et al., 2013). Sex offender laws are harsher than even those for murderers (Pickett et al., 2013). Current research in the field supports using the Risk-Need-Responsivity (RNR) principles as a framework for the treatment of individuals with problematic sexual behaviors (Association for the Treatment of Sexual Abusers [ATSA], 2016). And treatment programs which target not only risk reduction but also promotion of offender goals, such as the Good Lives Model (GLM), have proven effective in reducing recidivism in this population (Yates, 2013). However, sex offender registration and notification (SORN) and residency restriction laws seem to work in opposition to the principles and goals outlined in the RNR and GLM paradigms. Further, research demonstrates that these laws have not been effective in reducing recidivism and are very costly to enforce (Meloy et al., 2013; Tewksbury & Jennings, 2010; Weinberger, 2019). Counselors serving the sex offender population are called to equip their clients with the skills necessary to manage the adverse effects of current laws and are charged with advocating for reformed legislation (Levenson et al., 2007).

Review of Literature

Current Best Practices

Risk, Need, Responsivity

According to the U.S. Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART; 2017), treatment models that adhere to the RNR principles are effective in reducing recidivism in individuals with problematic sexual behavior. While these principles were initially aimed at impacting criminal justice sanctions, they have come to influence treatment models perhaps even more so than sanctions (Yates, 2013). The RNR paradigm focuses on the principles of risk, need, and responsivity.

The risk principle includes elements of predicting recidivism and matching the appropriate level of treatment with the offender (Andrews et al., 1990). To predict the probability of recidivism, practitioners use validated assessment tools that measure both static and dynamic risk factors (Newsome & Cullen, 2017). Static risk factors are those that cannot be modified through intervention, such as age, criminal history, and sexual history (Yates, 2013). Dynamic risk factors can be changed through intervention and include "a lack of positive social influences, intimacy deficits, problems with sexual self-regulation, [and] problems with general self-regulation" (Yates, 2013, p. 90). Once risk is assessed, treatment intensity should be matched to the level of offender risk (Looman & Abracen, 2013), with those at highest risk of recidivism receiving more intensive programming than those measuring a low level of risk (Newsome & Cullen, 2017).

The need principle dictates that treatment should target criminogenic needs of individuals, or those characteristics that correlate with reoffending in general and sexual offense recidivism in particular (ATSA, 2016). Andrews and Bonta (2017) have identified eight key

risk/need factors associated with the onset and maintenance of criminal behavior: (1) history of antisocial behavior, (2) antisocial personality pattern, (3) antisocial cognition and attitudes, (4) antisocial associates and isolation from prosocial individuals, (5) problematic circumstances of home, (6) problematic circumstances at school or work, (7) few if any positive leisure activities, and (8) substance abuse. Non-criminogenic needs, or needs with which there is no correlation to recidivism, should not be addressed in treatment (Looman & Abracen, 2013). Non-criminogenic needs can include self-esteem, empathy, and denial (Yates, 2013).

The responsivity principle establishes both general and specific components of effective treatment delivery (Newsome & Cullen, 2017). Cognitive behavioral therapy (CBT) has been acknowledged as one of the most effective treatment approaches for criminal offenders; therefore, in general CBT should be utilized as an intervention strategy to change behavior and reduce recidivism (Andrews & Bonta, 2017). Concurrently, individual characteristics of the offender must be specifically considered as well. “Language, culture, personality style, intelligence, anxiety levels, learning styles, and cognitive abilities” must be accounted for to assure maximum treatment effectiveness (Yates, 2013, p. 90). Practitioners working with sex offenders need to be cognizant of and responsive to these unique factors.

Good Lives Model

According to a 2009 survey conducted in North America by the Safer Society Foundation, approximately one-third of United States sexual abuser treatment programs listed the GLM as one of their top three therapeutic models, and over one-half of Canadian adult programs identified the GLM in their top three (McGrath et al., 2010). The GLM is a strength-based approach founded on the belief that individuals who sexually offend are like most people; they are seeking psychological well-being (SMART, 2017). However, rather than focus

exclusively on risk prevention, the GLM strives to reduce the probability of reoffending by supplying individuals with the “skills, attitudes and resources needed to lead a prosocial, fulfilling life” (SMART, 2017, p. 169).

Ward and Gannon (2006), two of the developers of the GLM, have reviewed psychological, biological, and anthropological research and identified what they have termed primary goods. Primary goods are activities, experiences, and situations that all individuals seek and that increase one’s sense of fulfillment and happiness (Barnao et al., 2016). Primary goods include: (1) life (including healthy living and functioning); (2) knowledge; (3) excellence in work and play; (4) agency (i.e., autonomy and self-directedness); (5) inner peace (i.e., freedom from emotional turmoil and stress); (6) friendship (including intimate, romantic, and family relationships); (7) community; (8) spirituality (in the broad sense of finding meaning and purpose in life); (9) happiness; and (10) creativity (Barnao et al., 2016; Ward & Gannon, 2006). According to the GLM, individuals are intrinsically motivated to seek out all of the primary goods; however, a person’s values and priorities in life influence the importance an individual attributes to each of the primary goods.

The GLM asserts individuals will resort to inappropriate or socially unacceptable methods to obtain the primary goods when other more adaptive ways are not available (Barnao et al., 2016). Therefore, offending behavior is an effort to obtain primary goods within the confines of internal capabilities (i.e., skills, attitudes, beliefs) and external conditions (i.e., lack of opportunities or resources; Barnao et al., 2016; Ward & Gannon, 2006). “These individual and environmental barriers to the attainment of primary goods constitute criminogenic needs” as identified in the RNR model (Barnao et al., 2016, p. 290).

Sex Offender Laws

Sex Offender Registration and Notification

According to DiBennardo (2018), convicted adult sex offenders are required to publicly register in all 50 U.S. states, and 37 states require juvenile sex offenders to register. While SORN laws differ from state to state, they all mandate that those convicted of certain sex offenses register with law enforcement for a fixed amount of time (Meloy et al., 2013). Individuals must provide identifying information, such as name, a photograph, address, race, age, height, weight, hair color, eye color, and convicted offenses to local authorities to be listed on publicly accessible resources (Tewksbury & Jennings, 2010). In most areas, there is additional notification to community members that a sex offender resides or plans to reside in a certain area (Meloy et al., 2013).

When registering in Minnesota for example, a sex offender must provide: a primary address; all secondary addresses; the address of all property owned, leased, or rented in Minnesota; the addresses of all places of employment; the address for any schools in which the person is enrolled; and identifying information for all vehicles owned or regularly driven (Diebel, 2012). If any of the above information changes, the offender is required to notify his or her corrections agent at least five days before the change is to take effect. In addition, if an offender is admitted to a health care facility, the offender must notify the facility upon admission that he or she is a registered predatory offender as well as update the corrections agent of admission. The facility is then sent a fact sheet which contains the name, physical description, offenses, and profile of likely victims of the offender; with the exception of hospitals, the facility is required to distribute the fact sheet to all facility residents.

Residency Restrictions

Currently, 35 states in the U.S. have residency restrictions for sex offenders, and numerous other states allow local municipalities to enforce their own residency restrictions (Rozek, 2018). These laws prohibit sex offenders from living around areas where children congregate, such as schools, day cares, or parks (Huebner et al., 2014; Rydberg et al., 2014). The distance offenders must live from specified places varies; however, the radius is typically from 1,000 to 2,500 feet (Levenson et al., 2007). The rationale for these laws is to increase the distance between the offender and potential victims which presumably decreases the chance of a possible reoffense (Weinberger, 2019). Some states and municipalities limit these laws to those individuals who are assessed to be at highest risk of reoffending, while others enforce them on anyone convicted of a sex offense (Weinberger, 2019). And in some local governments, it is a crime for landlords to even rent to sex offenders (Levenson et al., 2007).

Implications of Laws on Sex Offenders

As outlined previously, the RNR principles and GLM treatment program identify factors that affect the probability of recidivism. Among these factors are items related to belonging in the community, secure employment, stable housing, strong relationships, and reduction of stress. Baker et al. (2019) maintain individuals who have access to these items are more likely to integrate into society successfully and less likely to recidivate. However, current sex offender legislation such as SORN and residency restrictions, while intended to protect the public, may not only be ineffective but might actually defeat the purpose of what they are trying to achieve (Weinberger, 2019).

SORN laws result in feelings of vulnerability and stigmatization for sex offenders; these feelings inhibit offenders from engaging in prosocial activities, employment, and educational pursuits (Tewksbury & Zgoba, 2009). While best treatment practices promote reentry and

reintegration into the community, these laws impede that process and produce a greater likelihood of recidivism. SORN laws increase stress for offenders and have also led to vigilantism against some individuals (Meloy et al., 2013). In an analysis of eight individual surveys studying SORN's effects on sexual offenders who are subject to it, Lasher and McGrath (2012) found 8% of sex offenders reported physical assault or injury, 14% reported property damage, 20% reported being threatened or harassed, 30% reported job loss, 19% reported loss of housing, 16% reported a family member or roommate being harassed, and 40-60% reported negative psychological consequences. In one case, an offender was shot and killed by someone who looked up his name and residence information in the state's registry (Meloy et al., 2013).

Not only do SORN laws obstruct successful reentry into the community, but residency restrictions thwart this process as well. According to Zandbergen and Hart (2006), persons with a prior conviction for sex offense were limited to only 5% of available housing options within urban residential areas. Further, those registered as sex offenders were more likely to live in socially disorganized and undesirable communities (Mustaine & Tewksbury, 2011). Rydberg et al. (2014) posit that residency restrictions produce housing instability, transience, and homelessness which lead to a disruption in social bonds that would facilitate healthy reentry into society. Levenson and Hern (2007, as cited in Baker et al., 2019) demonstrated the compounded effects of residence restrictions and how they result in limited "access to stable housing, employment opportunities, social services, and social support" (p. 5). Thus, while treatment goals promote community, employment, housing, relationships, and peace of mind, current sex offender laws pose obstacles to achieving these goals.

Effectiveness of Laws

Given current sex offender laws seem to work against therapeutic parameters for desistance, it is not surprising statistics demonstrate sex offender legislation is ineffective. Research has proven SORN laws have minimal if any positive impact on recidivism (Tewksbury & Jennings, 2010). And residence restrictions have not been shown to have a substantiated correlation to reduction in recidivism for sex offenders (Huebner et al., 2014). Tewksbury and Jennings (2010) believe that at best these policies are questionable to maintain and at worst are a needless consumption of resources.

SORN laws have been created under the general assumption that “sexual offenders are highly likely to recidivate, that SORN laws provide the community with increased information about sexual offenders, and that sexual offenders are thus deterred by the registration requirement” (Bouffard & Askew, 2017, para. 9). However, Bouffard and Askew (2017) found that after review of multiple studies on the effectiveness of SORN laws, these laws do not deter offenders from recidivating. In one study of 17,000 offenders in New York state, SORN laws had the opposite effect; those for whom community notification was mandatory recidivated twice as quickly than those not subject to community notification (Tewksbury & Jennings, 2010). As well, Zgoba et al. (2008) analyzed the impacts of SORN legislation in New Jersey, reviewing the trend of sex offenses in counties and the state as a whole over a 21-year period. Their overall conclusion was that SORN laws demonstrated no effect on sexual offenses.

Much like SORN laws, residency restrictions are based on false assumptions. Residency restrictions for sex offenders assume offenders choose to live close to potential victims and that distance between the offender and possible victim will decrease the likelihood of recidivism (Huebner et al., 2014). However, research indicates adults and children are much more likely to be victimized by friends or family rather than a stranger down the street (King, 2019).

Zandbergen et al. (2010) analyzed the residences of 330 sex offenders in Florida. Those who lived near schools or daycares did not reoffend more frequently than those who lived farther away. And in analysis of 224 sex offenders in Minnesota who recidivated, results suggest none of the offenses would have been prevented by residence restrictions (Levenson et al., 2007). As demonstrated above, residency restrictions often limit housing options and can create housing instability. Ryberg et al. (2014) discovered each address change made by an offender parolee actually increased the probability of rearrest by 25 percent.

While research indicates current sex offender laws are ineffective, states and communities continue to expend valuable money and resources to create and enforce these laws (Weinberger, 2019). Costs of the implementation and maintenance of sex offender laws include system development, classification, enforcement personnel, judicial and correctional costs, and legal costs (Harris & Lobanov-Rostovsky, 2010). The Congressional Budget Office estimated the cost of implementation of original SORN laws to be \$1.2 billion, with maintenance of these laws costing hundreds of millions more (Vaughn, 2016). Tewksbury and Jennings (2010) believe that costs associated with maintaining SORN policies have significant economic implications with virtually no reduction in sex offender recidivism. And the National Association for Rational Sex Offense Laws (NARSOL; n.d.) believes sex offender registries are “ineffective, wasteful, and contradictory to rehabilitation and public safety” (Our Goals section).

Implications for Counselors Working with Sex Offenders

As mental health professionals working with sex offenders, counselors are called to support clients under current legislation while also advocating for reform. Counselors must be aware of the ramifications that accompany sex offender laws and prepare clients to manage the collateral consequences. Counselors have an opportunity to educate policy makers on the

empirical evidence surrounding laws and propose legislation that might reduce recidivism thus protecting the public.

SORN and residency restriction laws generate social and psychological consequences. Levenson et al. (2007) contend negative environmental conditions caused by legislation affect dynamic risk factors and “should be an integral part of ongoing assessment, management, and service planning” (p. 6). Baker et al. (2019) suggest identifying barriers to integration early on when offenders may be reentering the community. Educating sex offenders regarding the obstacles and adverse reactions they may face in the community may also be beneficial (Huebner et al., 2014). Tewksbury and Jennings (2010) recommend counselors aid offenders in creating support networks to help regulate ensuing transience, instability, and stress. Counselors can prepare clients with the skills and resources necessary to manage factors that will test their coping abilities and could increase their risk of reoffense.

In addition to supporting offenders in their reentry, counselors can provide law makers with empirical evidence to guide them in designing legislation that will promote successful community integration therefore maximizing the potential for community safety (Levenson et al., 2007). Exploring improvements to sex offender management may lead to the expansion, development, or reallocation of resources to support the unique transition of sex offenders (Huebner et al., 2014). Counselors can become involved with organizations, such as NARSOL, that advocate for sex offenders. NARSOL’s (n.d.) vision is to free society “from public shaming, dehumanizing registries, discrimination, and unconstitutional laws” (Our Vision section). Through these venues, counselors can assist in replacing laws based on fear with those grounded in facts and reason.

Conclusion

The goal of sex offender legislation is to protect individuals from sexual abuse. This goal is without fault; however, its methods and efficacy require scrutiny. Experts in the field of sex offender treatment have demonstrated the need for approaches that target the risk, needs, and responsivity of an offender while also promoting personal fulfillment through prosocial means. SORN laws and residency restrictions may increase an offender's risk and inhibit an offender's ability to reintegrate into society successfully. Evidence has shown these laws do little to protect the public and, in some cases, increase rates of recidivism. As professionals working with sex offenders, counselors are in a unique position to support offenders while also advocating for legislative reform. Tewksbury and Jennings (2010) underscore the necessity of reform when they assert "individuals who experience high levels of stress, coupled together with isolation, unemployment, housing difficulties (or homelessness), and strained familiar and social relationships, are a much greater potential public safety risk than individuals with strong support systems and community integration" (p. 580). Therefore, if the goal of sex offender legislation is truly to protect individuals from sexual abuse, then reform of these laws is imperative.

Author's Note

I first want to acknowledge the pain and suffering sexual abuse inflicts on its victims; the resulting consequences affect these individuals throughout their lives. Survivors of sexual abuse demonstrate a strength and resilience no human should have to display. I regret that any person should have to experience the trauma that accompanies sexual abuse.

In the same breath, those that commit sexual abuse are also people. They are striving to fulfill the same basic human needs we all are. This fulfillment comes more easily to some, while others resort to maladaptive methods due to unfortunate life circumstances. More often than not, those who sexually abuse have their own history of trauma. As the saying goes, "Hurt people hurt people." As a society, we can only hope to heal the hurting through love and compassion.

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