

Sexual Offender Registries: Public Safety or Scarlet Letter?

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Abstract

Sexual offender legislation has been based on “moral panics” stemming from sensationalized cases (i.e. Wetterling, Kanka, and Klaas). The variety of sex offenders that are treated with blanket punishment is causing collateral consequences which actually create more risk to the public. By comparing the Idaho Sexual Offender Registry with the Idaho Department of Justice Database, this study determined what offenses were being committed after placement on the registry. My research identifies a collateral consequence of unsafe driving conditions. It found that there was a 113% increase of moving traffic related charges and 94% increase of non-moving violations such as driving without privileges, unregistered vehicles, and no insurance and moving violations. These findings were unexpected, but supported by other data nationwide. Possible factors contributing to this are caused by residency restrictions causing offenders to avoid detection by not keeping current on licensure for vehicles. Future research should delve into this dynamic to understand why this trend is occurring.

Introduction

History abounds with examples of legislation designed to protect the public from sex offenders. Much of this legislation is based on sensational cases that paint all sex offenders with one broad brush as habitual and untreatable. When this happens it pushes sex offenders to the fringes of society where they do not participate in institutions put in place to protect the public. They are also forced to live in clusters in areas that have the least resources to manage them. This is not an isolated phenomenon. It is common in virtually all areas of the country.

There is a large variety of offenses that are representative of sexual offenders on the registry the range is public urination to kidnapping for the purpose of committing a sexual crime, and attempted murder during the commission of a sexual crime. One complication of the registry is that all offenders are placed in one registry with little distinction between offenses. Many people that utilize the registry to see where sexual offenders are living in their communities rarely look at offenses and whether that person could be a potential danger or is someone with a nuisance type of offense. This is due to the reporting of extreme sexual cases in the media. Society hears the words sexual offender and immediately thinks of the Joseph Duncans that make up less than 1% of the sex offender population. These are the cases we hear the most about because these are the ones that start moral panics that create new legislation that heaps more and more reparations on offenders trying to reintegrate into society. The large variety of offenses is overlooked and we forget about the ones that have what are nuisance charges than predatory sexual offending. There are also many sexual offenses that are considered to be victimless offenses. When they are all put into one public registry for anyone to access not only are they affected by the collateral consequences that this brings about so are family members that are often victims of the offender. It is also how the institutions incorporate the registry, and the way the registry as an institution is presented as a tool of protection that creates these problems. Society does not like to look at the collateral consequences this causes. They are not allowed to live in homeless shelters and in many of the areas in the community that are too close to protected businesses for them to reside.

This study looks at the crimes that are disproportionately committed after placement on the registry. I found that in Idaho there is a 113% increase in traffic violations and a 94% increase in non-moving violations. Often sex offenders that are not registering for the registry are also not renewing licenses and automobile registration and licensing. There are obvious reasons that this is a matter of public safety. Driving without the protection of these institutions are obvious reasons to cite. The less obvious problem arises with the reasons that sexual offenders are choosing to not participate in them that is the more dangerous problem. This pushes many offenders into an underground existence and begins a criminal underground population that is harder not easier to monitor them. They

are in turn driven to more crimes endangering the public. They are not given access to treatment or resources to move forward in their lives.

This study looks at the history of society trying to reconcile the need for justice to be served and, the need for public safety. Throughout history societies have had laws in place to protect children from sexual abuse. Society has also attempted many methods of trying to control sexual behaviors. The sex offender registry is just another one of those methods, with some positive and some negative results. It does give many people the illusion of public safety and a way to monitor many sex offenders. The results of this study opens up new issues by showing us that most sex offenders only are charged one time for a sexual offense, but are much more likely to be charged for a traffic offense if stopped by a police officer.

The Idaho data shows that besides traffic offenses other offenses did not raise at high levels and some actually went down after placement on the registry. In this case it could be argued that maybe the registry is indeed working. The traffic offenses that registered sex offenders are being charged with actually endanger the public, as well as creating an underground movement that many more sex offenders are participating in. It is also forcing sex offenders to live in clusters around the United States, in areas with the least amount of resources to monitor them. The results of this study indeed support the phenomenon happening around the country.

Background

Society has struggled with how to mesh public safety with punishment of sex offenders. One issue that comes up is the way sex offenders are all treated as a homogeneous type of criminal. In actuality, sex offenders are a heterogeneous group of criminals that commit a variety of offenses. Pedophiles are one such type of offender (meaning “lover of children”). Most pedophiles are male, usually called child molesters and many do not have previous criminal histories. There have been many studies that address pedophilia in the United States and other countries. “A study in 1973 showed that 24% of adolescents will be abused before their eighteenth birthday. Another study done in 1985 found that 50% of young women between eighteen and thirty-six had been sexually abused before their eighteenth birthday” (Holmes, 2009). Most pedophiles show a lack of empathy for their victims, and fear intimacy. Other types of offenses all come with different issues, and some are more likely to rehabilitate than others.

Moral panics create public outcry for more legislation and penalties aimed at punishing all sexual offenders instead of rehabilitation. The chance of rehabilitation relies on a few factors: (1) the closeness of relationship between victim and offender. (2) Length of time the offender has been offending. (3) The degree of violence perpetrated on victim. If a person is close to the victim relationally they are more likely to rehabilitate. An offender who has been offending for a long duration of time will be more resistant to change. An offender who inflicts a lot of violence in the act of sexually abusing a child they are far less likely to change.

There are several other types of sexual crimes that get people put on sexual offender registries; some are more serious than others, and some are considered little more than nuisance behaviors. Nuisance sexual crimes in Holmes and Holmes (2009) include: prostitution, frottage, exhibitionism, peeping, bestiality, and scatophilia. These are the behaviors that there are considered more victimless than direct contact offenses and are the least dangerous but can be considered crimes that can require that you register as a sexual offender. Another offense where the victim is more difficult to identify is child pornography which is sexually explicit pictures, videos or other media of minors under the age of eighteen. Many people who engage in sexual activities with children under eighteen claim to have possessed or viewed child pornography before they engaged in sexual acts with children. There are people that feel that all pornography should be outlawed and others who feel that it is a safe alternative to offending. These are acts that cause problems for the family of the offender, the offender and at times the victim. The registry also causes collateral damage that society often fails to take into account. Sexual offenders and the registry have been the topic of much research.

There have been many studies that show that the main problems that arise from placement on the registry are securing employment and housing. These two factors have been studied in regards to the effect they have on offenders and families. Society does not look at the consequences caused by the registry and placing more penalties and restrictions on offenders. There are several articles written about specific collateral consequences that have occurred as a result of placement on the registry. Difficulty finding housing and jobs are just two consequences that face most sexual offenders. The more insidious and damaging consequence is the effect that this placement has on family members of registered sex offenders. Spouses, parents, siblings and children are often blamed and bullied for the offenses they had little or nothing to do with.

Another consequence is a phenomenon that was discovered in Colorado is “shared living arrangements, where one sex offender lives with others while receiving treatment and other services. When this was discovered

legislation was passed that not more than one sex offender could be housed in a residence,” (Rodriguez and Dethlefsen, 2009). Tewksbury studied both female and male offenders in Kentucky, Florida and Indiana and “report that social stigmatization, loss of relationships, incidents of harassment, as well as difficulties securing housing and maintaining and finding employment were experienced either by a majority, or a significant minority, of sex offenders,” (Tewksbury & Lees, 2006).

Other collateral consequences that few people in society take into account are the effect on the family when someone is placed on the registry. A study published in 2009 delves into the effects on families. The study looked at common problems for sex offenders such as housing and employment. Family members were affected by residency restrictions at a lower level and not required to move. Employment issues created financial hardships for other family members as well. “Almost half, however, reported being threatened or harassed by neighbors, 27% had their property damaged, and 7% said they were physically assaulted by someone as a result of notification,” (Levonson & Tewksbury, 2009). The adverse effects were greater on family members who lived with the Registered Sexual Offender than those who did not. Children of RSO suffered on many more levels, they were taunted at school by other children. They were singled out for special attention from teachers and other staff members. Many sex offender children were not allowed at friends’ homes and vice versa. Parents who were sex offenders were unable to attend events of their children because of restrictions of the registry. “The psychosocial impact on the children as it was reported by their non offending parent. The children of RSOs are reported to most often exhibit anger (80%), depression (77%), anxiety (73%), feeling left out by their peers (65%), and fear (63%). More than one in eight (13%) of the children of RSOs were reported to exhibit suicidal tendencies,” (Levonson & Tewksbury, 2009).

The main motivation for the sex offender registry is public safety. As Mustaine et al. find: “treating the large variety of sexual offenders as habitual violent criminals actually has a negative overall impact on public safety. This directly contradicts the stated intentions of the sex offender legislation,” (Mustaine, A Tewksbury, & A Stengel, 2006). The popular media portray all sex offenders as violent sexual predators. The largest body of research shows that sex offenders recidivate at a substantially lower rate than the average criminal offender. In a study done “in 2003 by the Justice Department of 10,000 male sex offenders they found that sex offenders had a 25% lower rate than other criminal offenders”(Radford, 2008). Serial sex offenders are the ones found most likely to reoffend are rarely released from prison. Several studies that were looked at showed similar findings. A study done in 2006 states that “there is a widespread misperception that people who commit sexual crimes do it again and again, however research directly contradicts showing that they are relatively low running in the 3-13% range and among the lowest of all crimes” (Lotke & Hoelter, 2008). In a thirteen year study that was completed in Idaho showed relatively low rates of recidivism.

In Rhode Island a task force headed a sweep looking for registered sex offenders they found several sex offenders that were not compliant with the registry as well as driving without privileges (Malinowski, 2010). In Tulsa, Oklahoma registered sex offenders are not allowed to live in ninety percent of the city. Even though there has been a drop in the number of RSOs that live in the city it is not necessarily mean that fewer offenders are living there just that they are not registering. “While well-intended, the changes to Oklahoma’s Sex Offender Registration Act have made it very difficult for offenders to find places to live legally.” They come down here and give us their address where they want to live, and we say, “That is restricted; you can’t live there,” Stansill said. “They may come back two or three times, and sometimes they never show back up” (Marshall, 2007). Many states are finding that stops done randomly to cars in certain areas have identified many non-compliant sex offenders, many driving without privileges and insurance. One reason that these are important to public safety is because it shows a lack of regard for other motorists on the road as well as other laws in place for public safety.

My study looks at the ways the registry in Idaho contributes collateral consequences for registered sex offenders. It shows the way in which traffic offenses are increased and threatens public safety. It also looks at recidivism of sex offenders in Idaho and the rate at which they reoffend. The surprising find of this study is the increase in traffic offenses both moving and non-moving. I also look at possible explanations as to why registered sex offenders are declining to participate in these established institutions.

Data and Methods

The data that were used for this study were collected from the Idaho sexual offenders’ registry and the Idaho courts repository web sites. This was done by first collecting data from the sexual offender registry. I then went into the Idaho court systems database and compiled a list of offenses before and after a registered sex offender was put on the registry. I analyzed the data that had been collected by comparing offenses before and after placement on the registry. I then looked at possible causal effects for the types of offenses that were showing and considering how this impacts public safety. Other research indicates that for this population, “The rate for any

reconviction was 13.6%, while of the 447 cases studied a reconviction of sexual abuse was no more than 9.2%”(Patrick & Marsh, 2008). This study is most closely related to this study because the data for both came from Idaho data. The offenders studied in our study had a 7.17% rate for further sexual offenses. This is a low recidivism rate for someone who has been charged with a crime in our society. Recidivism for the majority of crimes is between thirteen and fifteen percent. People charged with violent crimes tend to recidivate at a rate of between twenty and twenty-five percent. Sex offenders that have an element of physical violence attached to their offense tend to have a similar recidivistic rate as other violent criminals. This is an example of why not all sex offenders should be treated as a homogeneous group but tested to see which ones with the best chance for rehabilitation.

The design of the registry in Idaho where all the offenders are placed in one registry regardless of degree or classification of the offense makes identify nuisance offenses from more severe crimes. The highest rate of offense is in the category of lewd conduct with a minor child. However this can be a broad range of acts from sexual contact with a child under the age of sixteen, or any act that is “appealing to or gratifying the lust or passions or sexual desires of such person, such minor child, or third party,” (Idaho State Police Bureau of Criminal Identification, 2008). This is similar to the next most common offense committed in Idaho sexual abuse of a child under sixteen years of age. This also covers a broad range of offenses which include: “Solicit a minor child under the age of sixteen (16) years to participate in a sexual act; cause or have sexual contact with minor child; make any photographic or electronic recording of minor child; or induce, cause or permit a minor child to witness an act of sexual conduct,” (Idaho State Police Bureau of Criminal Identification, 2008).

Rape charges include any penetration of the penis no matter how slight to a female under age of sixteen or forcible penetration of any female. These are the three top charges in Idaho which as can be seen cover a broad range of charges with differing degrees which can be from nuisance crimes up to violent sexual crimes. These crimes make up 80% of the charges in Idaho, many of these charges are first time offenses to offenders. Once placed on the registry the charges offenders are charged with are traffic violations with a huge 113% increase. This is when offenders begin to stop participating in societal institutions that provide public safety. The argument could be made that a sex offender is much more likely to get charged with a traffic violation if pulled over than someone not on the registry.

The limitations in this study are that we are only looking at charges that occurred in Idaho. The exception would be is that if someone was to commit a further sexual offense in a state other than Idaho it would still show up on the sex offender registry data. There is also limitation connecting the type of offender to the later crime as all offenders in Idaho are placed on the registry as a non-distinct sex offender. The data speak to that somewhat as their sexual charges are listed, but those often cover a broad degree of offending.

Results

Treating the large variety of sexual offenders as habitual violent criminals actually has a negative overall impact on public safety. This directly contradicts the stated intentions of the sex offender legislation. Reinforcing other work in this field, my data identified a major “collateral consequence” of the SOR. The largest percentage of offenses were in the area of traffic offenses. The results of this study has shown us several things one is that many sexual offenders in Idaho have charges against them for Driving Without Privileges (DWP), driving an unregistered vehicle or driving without insurance. Sixty percent of post-SOR violations were for one of these non-violent traffic-related offenses. These are acts that have little bearing on protecting the public from sexual predators. These institutional practices are put in place for public safety; however the obvious danger is less significant than the more insidious reasons for not participating in them. According to Idaho State Police data, the general population that does not participate in registering their vehicles, not renewing their licenses, or obtaining insurance is between twenty-five and thirty percent. Among registered sexual offenders the rate that does not participate in these practices is around 53%.

Reinforcing other work in this field, my data identified a major “collateral consequence” of the SOR. Registration has created a massive increase, over 113%, of non-moving and moving traffic violations. This means many things. The inability of registrants to engage in these institutionalized norms greatly increases the general public’s risk of being victimized by an unlicensed driver without insurance. This is the obvious danger. The more subtle and more dangerous consequence is that society is forcing sex offenders into the fringes and underground where they are harder to monitor. Furthermore, the purpose of the registry is it to protect the public. Instead it is designed more to shame and blame the offender for the rest of his life and such shaming and blaming prevents them from participating in the institutions that perpetuate public safety.

Many states are reporting similar trends. In 2003 Georgia changed its sexual offender’s legislation because of unintended consequences in residency restrictions. They were finding that due to residency restrictions sex

offenders were living in clusters and being forced to the outskirts of cities that have the least amount of resources to monitor them. They also found that many were forced to live a life underground where they not only did not apply for new driver's licenses they did not register or insure their vehicles. States around the country have reported that sex offenders are failing to register, not renewing drivers' licenses. Some states have implemented drivers' licenses that have registered sex offender stamped in red prominently on the front of the license. Nevada requires require sex offenders to renew license every year and if they are not in compliance with the registry they will not renew the license. Often part of that compliance is having an appropriate place to live and a job. To complicate this many states are considering having a red registered sex offender stamp on sex offender's drivers' licenses.

Marginalized populations often find themselves in the legal system where getting their lives back begins to look like an insurmountable task to accomplish. This happens in disorganized neighborhoods with the fewest resources to monitor sex offenders. These areas are also less likely to report criminal behaviors. Tewksbury states "prior to this study it was debated whether sex offenders are relegated to socially disorganized areas, or if they reside in these communities by choice in hopes of anonymity (and perhaps greater opportunities for re-offending). Our results strongly show that registered sex offenders are likely to live in socially disorganized and undesirable locations. (Mustaine, Tewksbury, & Stengel, 2006).

"Research has shown that residency restrictions have no relationship to recidivism and that some negative consequences may result. Research has also found that sex offenses are usually not the sensational type that has caused legislators to pass residency restriction laws," (Walker, 2007). This fact however does not deter legislators from passing more restrictive laws. Nor does it prevent the public outcry for stricter and harsher penalties. "Responding to all sexual offenders as though they are predatory molesters and killers of unknown victims misdirects scarce criminal justice resources, ignores the realities of known offenders in favor of stranger-danger, and may in fact increase the victimization risk to the public rather than reduce the potential harms," (Meloy, Miller, & Curtis, 2008). A common reason for the need of a sexual offender registry is to protect children in our communities by making parents aware of where they reside. Craun looks at this issue in a recent study and "One should note that having children in the home was not a significant predictor of awareness of a sex offender" (Craun, 2010) which shows that the registry often is ineffective as a public safety tool. "Residence restrictions exemplify a moral panic over 'stranger-danger' and a widespread fear of 'sexual predators' that are based on a plethora of faulty assumptions. The public needs better access to accurate information about the realities of sexual violence," (Meloy, Miller, & Curtis, 2008).

Other collateral consequences that occur are a "large representation of transient sex offender parolees who recidivate suggests a strong correlation between transiency and recidivism. As such, an unintended consequence of residency restrictions could be a decrease in community safety due to the rise of transient sex offenders," (Loving, 2009). The problem with this is that some of these "transient" offenders tend to be more dangerous than the offender who is maintaining a residence and has an address and can be more easily monitored. "What we have now is a system of law that condemns the extremely harmful and completely harmless sex offenders alike but fails to capture many of the most harmful offenders, confusing the public and failing to protect children and other potential victims. This system ensnares harmful and harmless sex offenders because it is designed to ensnare all alternate sexualities," (Morris, 2007).

Shaming and blaming sexual offenders instead of creating the public safety that is the stated purpose of the sex offender registry does not work. This has been supported not only by the research done here, but also by the numerous other studies mentioned in this article. We can see that the continual heaping of consequences only increase the danger of driving more sex offenders into an underground lifestyle that prevents them from participating in social institutions put into place for the safety of the public.

Discussion

States have the right within certain guidelines to legislate the laws regarding the sexual offender registry. The main guideline is that the registry has to be made public for anyone to access; but they can decide what level offender will be placed on the registry if they are not considered dangerous. There are states that have three tier systems where the least dangerous offenders are not accessible to the general public, and has less stringent residency restrictions. This creates a criminal subculture that pushes some sex offenders into criminal behavior they may not otherwise engage in. There has been much research done on the sex offender population and registries, but there needs to be more research on collateral consequences as well as how this affects society in general. More research needs to investigate the multiple causal processes behind the huge increase in traffic violations. This could be due to discrimination by the officer once the person is shown to be a sex offender. A qualitative study looking at what law officials say about that, as well as sex offenders themselves would say and then do a comparison. In Georgia they

have one of the strictest sex offender registry laws. The goal is to drive all sex offenders out of the state and regardless of the fact that sex offenders are already very limited in choices of where they are living. This law drove many offenders underground and into not participating in normative institutionalized practices. Georgia like Idaho puts all offenders in a single tier registry. Further evidence that more restrictions do not make the public safer but drive more offenders into a criminal underground through more restrictions.

There is a need for more research in this field as we have found the reasons for this happening is not clarified conclusively. The data shows that the restrictions placed on offenders is not making the public safer, but instead placing them in more danger. The dangers of not participating in the societal institutions is the more obvious danger, but the more dangerous is that underground communities that are created. There are thousands of sex offenders that are not accounted for in our country that can be anywhere. In Idaho alone there are 157 non-compliant sex offenders that are unaccounted for. That is five percent of the Idaho registry is unaccounted for. There is a need for qualitative research to be done to address why this is happening and what measures would improve the situation. A qualitative study that looked at both reactions of sexual offenders and police officers to assess treatment at traffic stops.

Table 1. Offenders

Compliant 3,129 (95.5%)	Non-Compliant 138 (4.5%)	VSP 52 (1.6%)
Mean Age 33	Mode Age 21	

Table 2. Charges Before and After Placement on SOR

OFFENSES	AFTER	BEFORE	CHANGE	CHARGES AFTER SOR
DUI	199	160	24.38%	2.66%
SEALED CASES	594			7.95%
FAILURE TO REGISTER	325			4.35%
FURTHER SEXUAL OFFENSES	157			2.10%
DOMESTIC VIOLENCE	184	122	50.82%	2.46%
DL/LP/INS VIOLATIONS	1738	898	93.54%	23.25%
ASSAULT/BATTERY	236	198	19.19%	3.16%
TRAFFIC VIOLATIONS	2742	1285	113.39%	36.69%
PROBATION VIOLATIONS	158	126	25.4%	2.11%
DRUG/ALCOHOL VIOLATIONS	505	628	-19.59%	6.76%
RESIST/OBSTRUCT OFFICERS FLEE/EVADE	92	96	-4.16%	1.23%
BURGLARY/THEFT/FRAUD	160	254	-37.01%	2.14%
TRESPASS/PROPERTY VIOLATIONS	65	77	-15.59%	0.87%
FAILURE TO APPEAR CONTEMPT OF COURT	129	243	-46.91%	1.73%
FISH/GAME/ANIMAL VIOLATIONS	75	63	19.04%	1.00%
MISCELLANEOUS	115	186	-38.17%	1.54%
TOTAL	7474	4336	72.37%	
DL + TRAFFIC = ~60% of after violations!!!				
Conflated categories	4480	2183	105.22%	59.94%

Table 3: Sexual Offenses

OFFENSE	NUMBER	OFFENSE	NUMBER
18-1508 -- lewd conduct with a minor child	1716 (41.67%)	18-6608 -- forcible sexual penetration by use of a foreign object	31 (0.75%)
18-1506 -- sexual abuse of a child under sixteen years of age	993 (24.11%)	18-1509A -- enticing a child over the internet	30 (0.73%)
18-6101 -- rape	604 (14.67%)	18-1507 -- sexual exploitation of a child	23 (0.56%)
18-1508A -- sexual battery of a minor child sixteen or seventeen years of age	204 (4.95%)	18-4503 -- second degree kidnapping where the victim is an unrelated minor child	15 (0.36%)
18-1507A -- possession of sexually exploitative material for other than a commercial purpose	150 (3.64%)	18-6602 -- incest	15 (0.36%)
18-911 -- battery with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor	100 (2.42%)	18-4502 -- first degree kidnapping committed for the purpose of rape	11 (0.27%)
18-6605 -- crime against nature	85 (2.06%)	18-6110 -- sexual contact with a prisoner	9 (0.22%)
18-909 -- assault with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor	61 (1.48%)	18-1505B -- sex abuse 2 nd degree	2 (0.05%)
18-4116 -- indecent exposure, but excluding a misdemeanor conviction	36 (0.87%)	18-4001 -- attempted murder	1 (0.02%)
18-6108 -- male rape	31 (0.75%)	18-4501 -- kidnapping	1 (0.02%)

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