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Does a Community's "Right to Know" Outweigh the Sex Offender's "Right to a Fresh Start"?

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In recent decades, sex offender laws and treatment have become controversial topics among both law officials and the general public. This essay outlines the development of sex offender registration laws and discusses both their effectiveness and validity. Research indicates that while registration laws give the public a degree of psychological security, they do not prevent the incidence of new sex crimes or the recidivism of previous sex offenders. In reality, sex offender registration laws may actually lead to more crime in the form of vigilante attacks on the offenders. In addition, the constitutional merit of the registration laws are discussed.

In recent years there has been a rapid growth of laws surrounding the crime of sexual offense, including sexual psychopath and chemical castration statutes, sexual predator laws, state registration, and community notification laws. The main focus of this essay is the community notification laws and the laws leading up to them (i.e., state registration). The first major registration law was passed under the 1994 Jacob Wetterling Act in Washington State following the disappearance of 11-year-old Jacob Wetterling in Tacoma (Sabin, 2003). The next major addition to state registration was Megan's Law, which "enables law enforcement officials to notify communities of convicted sex offenders' presence" (Relic, 2001, p. 92). This law was formed in the wake of the rape and murder of 7-year-old Megan Kanka by her neighbor, a twice-convicted sex offender. Megan's Law required sex offenders in the state of New Jersey not only to register with the police, but also to allow the police to notify the community of the sex offender who will be their new resident. Today, most states have some form of special penalties for sex offenders.

Existing Laws

The earliest law specifically designed to punish sex offenders, particularly rapists, was passed in the late 1970s. The first registration law was passed in 1989 after a released sex offender, Earl Shriener, sexually assaulted a 7-year-old boy in Tacoma, Washington (Prentky, 1996). The Community Protection Act, as it was named, defined some of the requirements of sex offenders. With the completion of the Jacob Wetterling Act, the state registration laws were more clearly defined, and, by this time, many states had adopted some form of state registration or notification. Though they are similar, key differences between state registration and community notification exist.

State registration requires sex offenders to register with the local police department whenever the offender moves. Palermo and Farkas (2001) state that "[r]egistration varies from state to state, but most commonly, sex offenders must provide their address, photograph, fingerprints, and vehicle license number" (p. 163). Most states have some kind of penalty for those sex offenders who do not register, even to the point of

revoking their parole. Interestingly enough, local police departments were also under threat of punishment by the federal government if they didn't establish sex offender registries. "Under the Jacob Wetterling Act III of the Violent Crime Control Act of 1994 all the states were required to create sex offender registries or risk losing 10 percent of their federal funding for law enforcement" (Palermo & Farkas, 2001, p. 162). Two years later, after the act became official, the FBI created a national database of sex offenders.

The community notification laws are more of a supplement to the state registry laws than a new set of laws. Established with the passing of Megan's Law, the provisions of the community notification are twofold. First, a three-level system was established to assess the risk that sex offenders present to the community. Second, a matching three-level notification system was created to determine the extent of notification. The levels were active notification, limited disclosure, and passive notification (Presser & Gunnison, 1999). A sex offender who is under the supervision of a probation officer, receiving correctional treatment, working, or attending school and for whom there is no evidence of drug or alcohol abuse will be placed in Tier 1. Tier 2 includes sex offenders who fail to seek treatment, find a job or attend a school, or abstain from drugs or alcohol or who have a history of threatening children or strangers. Those placed in Tier 3 are sex offenders who generally are compulsive or obsessive in their behavior, violent, show no remorse, have offended a child who was a stranger, or expressed the desire to continue their criminal activities (Winick, 2003, p. 215).

After psychologists have assigned the sex offender to one of the tiers, the level of notification is applied. A sex offender placed in Tier 1 is subject to passive notification, which requires the members of the community to locate the information themselves. Tier 2 offenders are subjected to limited disclosure, in which schools and other organizations in the community are notified of their presence in the community. Lastly, the Tier 3 offender is subjected to active notification, which means that the police will notify the public through various means, from simple neighborhood pamphlets to measures as extreme as making offenders wear clothing labeling them as sex offenders. Today, a majority of states have adopted the three-tier system.

Effects of Notification on the Community

According to Finn (1997, p. 1), a "perception that registration alone is inadequate to protect the public against released sex offenders" drove legislators to support community notification. Palermo and Farkas (2001) state that "the real impetus to enact laws and control strategies has typically followed a 'sex panic,'" (p. 154), which supports Berliner's (1996) claim that "arguments based on science or outcome data do not necessarily drive legislative efforts" (p. 294). Whether these laws can be seen as placing the importance of the community over the rights of a sex offender, the pros and cons of community notification are emotionally charged.

In her 2001 study of community notification, Redlich argues that the main goal of community notification is to prevent sexual abuse. In *Protecting Society from Sexually Dangerous Offenders: LAW, JUSTICE, and THERAPY*, Winick and La Fond (2003) focus on the psychological aspects of the community and the sex offender as a result of Megan's Law. According to Winick and La Fond (2003), the benefits of Megan's Law are purely psychological for the community because "the information provided by registration and community notification statutes thus can give members of the community a sense of control over a salient and frightening hazard in their environment" (p. 217), namely, the new neighbor who is a sex offender.

Of course, Megan's Law may also be considered to have negative consequences. The most obvious concern about the law is that it will create enhanced anxiety in the community, which can erupt into conflict. Neighbors of sex offenders may shun them. They may be refused jobs. Vigilantism also becomes a concern if people in a community try to "take matters into their own hands" and dispense what they deem to be just punishment. These punishments can range from the sex offender's being "picketed, leafleted, stoned, pummeled with eggs, threatened, or [having] signs posted outside their residence" (Presser & Gunnison, 1999, p. 305) to one reported case of

arson, in which the sex offender's future residence was destroyed.

Such vigilantism is an extreme expression of the effects of information that is released to a community. Sex offenders may find themselves in harm's way even as they are attempting to reintegrate into society. When innocent people are involved in the community response, it can be argued that registration and notification may have been made too quickly and without proper planning. This is the case when illegal acts of vigilantism aren't confined to the offender alone but, in some cases, include their family, friends, and other innocent people who become the targets. In a shocking case in Warren County, New Jersey, "a father and son broke into a house, looking for a convicted child molester whose address was made public, and beat an innocent man who happened to be staying there" (Steinbock, 1995, p. 5).

Unfortunately, only limited research has been done on the effects of community notification on the prevention of sex offenses, and the results have not been positive. According to Lieb (1996), an independent evaluation of Megan's Law produced the following results:

1. When the notification group (of sex offenders) was matched with a comparison group (non-sex offenders), and their respective re-arrest rates were examined, the overall rates for the two groups were similar. The notification group had a slightly lower estimated rate of sexual recidivism (19 percent compared with 22 percent), but the difference was not statistically significant.

2. Most offenders who reoffended did so in the same jurisdiction where the notification had occurred.

According to Lieb, the chance that a sex offense will occur in a community notified of a sex offender is the same as in a community where no notification occurs. So although the community may feel better psychologically for knowing that a certain resident is a sex offender, it may well be only a false sense of security. In the case of community notification, knowledge is not always power.

The Effects of Notification on the Offender

Although it is difficult to be sympathetic to the negative effects of notification laws on sex offenders, especially if their crimes are exceptionally horrendous, there are some recognized positive effects. Winick (2003) studied the psychological effects of Megan's Law on sex offenders. One is that sex offenders may be more likely to assume responsibility for the crimes they committed. Megan's Law may help to "break down the denial from which many sex offenders suffer and that tends to perpetuate their criminal behavior" (Winick, 2003, p. 219). However, this recognition can be a double-edged sword.

The sex offenders requirement to recount the crime and accept responsibility for it can sometimes increase their focus on the crime. According to Presser and Gunnison (1999), the community notification process "pares the identity of the sex offender down to offending alone" (p. 303), meaning that many other "behaviors and identities of those persons labeled sex offender are obscured" (p. 303). When this happens, the chances of recidivism are increased greatly, which is opposite to the effect the notification laws are supposed to have. This is very similar to what Schopf (1995) calls branding. He argues that branding sexual offenders with community notification can do more harm than good because it could deter other sexual predators from attempting to get help. Similarly, it could prevent the continued growth of released sex offenders who have served their time and are truly trying to control their behavior.

Another common argument against community notification laws is that they are in violation of the sex offender's constitutional rights. The argument is that community notification constitutes double jeopardy for the sex offenders because they are punished again after serving their sentence in prison. Other criticisms focus on the ex post facto nature of the laws because they are retroactively applied to people convicted of sex offenses before the statute was enacted. The violation of the offender's right to privacy has also been argued, based on the fact that private information about that person becomes public in relation to the crime, identity, and other personal information (Palermo & Farkas, 2001).

Conclusion

Megan's Law may seem like a good solution to a difficult problem, but when looked at more closely, its flaws become obvious. As mentioned earlier, the purpose of any law, in particular Megan's Law, is to deter some unlawful behavior. Simply put, Megan's Law does nothing to prevent new sex offenders from offending or former offenders from reoffending. In fact, most critics speculate that it actually does more harm than good.

Research shows that community notification has no other real effect than to relieve the anxiety of some of the people in the community. But if that knowledge can lead (and, in some cases, has led) the community to put other laws by the wayside and engage in acts of vigilantism, it doesn't prevent the crime that it was created to stop. In that case, support of community notification can mean only that the Megan's Law was created for a "retributive and vengeful purpose instead of a purely protective one" (Redlich, 2001, p. 112). Does a community's "right to know" outweigh the sex offender's "right to a fresh start"? As Benjamin Franklin once said, "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety." The words of Prentky (1996) provide a good conclusion here: "Rather than responding emotionally and reflexively, I would far rather address, head on, what we can do that will reduce risk and increase the safety of our communities" (p. 296).

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