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The Unintentional Cost of a Free Public Sex Offender Registry

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Abstract

This literature review analyzes the efficacy of modern legislation guiding public access to sex offender registries and draws on research utilizing surveys, interviews, and statistical observations of convicted sex offenders to determine sources of ineffective practices at the legislative level. By utilizing Braithwaite's reintegrative shaming theory (1989), in which stigmatizing shame is significantly less efficient in criminal contexts, current legislation and its impact on common issues experienced by sex offenders (including sexually addictive behaviors and childhood sexual abuse) are examined. The discerned prevalence of stigmatizing shame in modern legislation, which focuses on the individual rather than the undesirable behavior, indicates that contemporary legislation allowing public access to sex offender registries is ineffective at facilitating the rehabilitation of sex offenders, creating an unintentional cost for both the sex offender and the general public. Because of the limits imposed by the relatively few studies performed since sex offender registries were made public, further research should be conducted to evaluate more effective and reintegrative policies, which should then advise expedient legislative changes that will better benefit both the general population and those listed on the sex offender registry.

It was John's twenty-first birthday, and some of his college friends took him out for drinks at a bar to celebrate the milestone. Several hours later, after succumbing to peer pressure, John became intoxicated and could barely walk a straight line home. While being thus impaired, he decided to relieve himself next to a wall, only to realize that a child and the child's mother were nearby. Because of a subsequent conviction of indecent exposure in the presence of a child, John is now listed on the public sex offender registry; along with Paul, a 23-year-old band member who was convicted for relations with a minor after she lied about her age; and Henry, who was accused and convicted of inappropriate relations by his high school girlfriend's wealthy parents as soon as he turned eighteen. All three people, from adapted true stories, are now required to live determinable distances from child-prominent areas. According to state laws, one or two of them may be required to report in at night at decided curfews, but none of them will be able to avoid the complexity of obtaining employment as registered sex offenders. While the actions of John, Paul, and Henry are not condonable, it is often surprising to the general population that instances of relatively minor sexual crimes are included in the results of a local sex offender search. This is due to an upheld belief that local search results will be primarily saturated with serial rapists and pedophiles; thus, it tends to be inconceivable that such a search could contain results of family or friends who made unintentional mistakes.

Several factors guide the presence and legislation of a sex offender registry (SOR). The foundational idea of an SOR is a requirement of the sex offender to notify local law enforcement of any changes to address or other identifying information (Thomas, 2013). This has been believed to help reduce recidivism as it should allow the local police to better protect citizens by being more aware of the sexual criminal's location in the community, though this has not empirically been verified (Thomas, 2013). Despite a lack of evidence supporting the supposed benefits of SORs, countries around the world are progressively adopting legislation that requires documentation of sex offenders and, in some places, requires public disclosure of this documentation. The United States currently allows the most public

access to sex offender information, with the United Kingdom trailing in second place (Thomas, 2013). Public access to SORs in the United States began with two prominent acts of federal legislation: (a) the Wetterling Act and (b) Megan's Law. The Wetterling Act, named after an 11-year-old boy kidnapped in 1994, is the first federal legislation requiring every state to maintain an SOR. Two years following, in 1996, this legislation was intensified by the adoption of a law known as Megan's Law, requiring public access to SORs nationwide (Thomas, 2013; Vandiver et al., 2008). Beyond this rigorous federal legislation, many states and local communities opt for additional legislation, including community notification systems, which further impacts rehabilitation efforts of sex offenders (Swensen et al., 2014; Thomas, 2013). This expanding amount of legislation demanded by the general population indicates a misplaced trust and expectation that public knowledge of local sex offenders serves a protective function. However, relatively few studies in the twenty years since SORs were made public have analyzed the actual impact of a SOR, and even fewer have supported any believed benefit.

Increasingly, some argue that when viewing SORs through well-established criminology theories (primarily Braithwaite's reintegrative shaming theory), the legislation and publicity of SORs could be potentially detrimental to the rehabilitation of sex offenders. When reviewing ineffective stigmatizing shaming of the individual in comparison to effective reintegrative shaming of the behavior, as well as their application in legal settings with other crimes, there is significant evidence that stigmatizing shame plays a role in higher recidivism rates in the majority of criminal behaviors, including common crimes and white-collar crimes (Murphy & Harris, 2007; Ray et al., 2011). The personally identifying information of individuals listed on public SORs and other consequences of current legislation often facilitates stigmatizing shame through an exclusive focus on the individual. This indicates a likely relationship between public SORs and the rehabilitation (and consequent recidivism rates) of sex offenders—but perhaps not the positive relationship that the legislation intends. While published SORs are ideally intended to serve a protective function in the communities

where convicted individuals reside, public access to unfavorable, personally identifying information of those convicted of various degrees of sexual misconduct should be re-evaluated to avoid potentially harmful effects, because such registries (a) typically facilitate stigmatizing shame, which may negatively impact effective reintegration, and (b) often worsen progress overcoming persistent issues (including addictive sexual behaviors and effects of childhood sexual abuse), which can potentially increase recidivism rates and put neighborhoods at even greater risk.

Stigmatizing Shame and Its Impact on Reintegration

To understand stigmatizing and reintegrative shame and their relationship to public SORs, it is imperative to understand their origins. In his book *Crime, Shame, and Reintegration*, Braithwaite first observed these contrasting patterns of shame and recognized shame as independent of punishment despite the societal norm to interchange the two ideas (Braithwaite, 1989; Hay, 2001). Punishment, then, is defined as either the loss of desirable conditions or gain of undesirable conditions; whereas, shame is primarily a social-communication device that communicates what is wrong and to what degree (Braithwaite, 1989; Hay, 2001; Steinberg, 2000). Braithwaite (1989) argued that shame requires consideration separate of punishment because shame is nonuniform in its application and implication. With two modes of possible shaming within the same punishment, it is necessary to understand and recognize stigmatizing shame and reintegrative shame especially within criminal contexts.

A Comparison of Stigmatizing and Reintegrative Shaming

By observing stigmatizing and reintegrative shame in normal communication, the pattern of functionality for both can begin to be analyzed. Ray et al. (2011) disclosed recorded conversations from mental health courts (MHC) that illustrate the difference of the two forms of shame as observed by Braithwaite (1989). In these detailed conversations, reintegrative shaming compares to the way a mother punishes a child, a boss encourages a coworker, or a spouse voices concern. In stark contrast, stigmatizing shaming compares to

polarized political confrontations, bad management, and emotional abuse. The differences between stigmatizing and reintegrative shame extend into their effectivity (Braithwaite, 1989). Although both are equally possible within the same punishment, it is essential to clearly recognize stigmatizing and reintegrative shame as distinctly different in how they communicate to comprehend the difference in yield of both patterns of shaming.

Stigmatizing shame, with an exclusive focus on the individual, communicates that the individual is bad but does not allow room for the individual to remediate. This type of shame works against reintegration by creating a situation where the individual is labeled and ostracized (Ray et al., 2011). Such shame in criminal contexts is observed more in traditional criminal courts and can be measured by factors including respect, forgiveness, or disapproval towards the offender (Ray et al., 2011). With lower respect and forgiveness, but higher disapproval for the offender, this mode of communication often leads to feelings of hopelessness and helplessness (Vandiver et al., 2008). Studies analyzing the impact of hopelessness and helplessness created by stigmatizing shame have consistently found a positive correlation between stigmatization and rates of reoffending (Makkai & Braithwaite, 1994; Murphy & Harris, 2007; Ray et al., 2011). With this correlation, stigmatizing shame is shown to be a potential primary contributor to increased rates of recidivism. This correlation, therefore, emphasizes the low effectivity of stigmatizing shame as a social communication device in the criminal sect.

In contrast, the observable success of reintegrative shame in social communication affirms the trend observed with stigmatizing shame as a less effective social communication device. Reintegrative shame, which focuses on the undesired behavior, is a shaming pattern identified by the amount of support, approval, and respect offered to the offender (Murphy & Harris, 2007; Ray et al., 2011). Currently, these traits associated with reintegrative shaming are primarily observed in MHCs dealing with criminal activity of mentally disabled persons (Ray et al., 2011). As reintegrative shame communicates feelings of hope of overcoming negative behaviors, the socio-judicial effort in MHCs to encourage and recognize success of the individual

results in significantly lower rates of recidivism when compared to traditional criminal courts (Ray et al., 2011). This pattern is echoed by observations of reintegrative shaming in other contexts, including white-collar crime (Murphy & Harris, 2007). The relationship between reintegrative shaming and recidivism supports this mode of communication as a more effective communication device in criminal court. This further supports the more positive shaming pattern of reintegration as a preferable and beneficial mode of communication when compared to stigmatizing shame.

Application of Stigmatizing and Reintegrative Shame in Public SORs

Due to the difference of success and impact on recidivism with both patterns of shame in criminal contexts, it is imperative to analyze public SORs to determine the current mode of shaming predominately practiced within contemporary legislation. Despite the increased understanding of the success of reintegrative shame, it is found through analysis that sex offenders experience stigmatization more than reintegrative shaming in three different facets of current public SOR legislation (Thomas, 2013). These attributes include risk assessments, legislation, and public knowledge, as these are the leading facilitators of stigmatizing shame in contemporary legislation and its negative impact on effective reintegration of sex offenders.

Risk assessment on reintegration.

Stigmatizing shame is first noticed in SOR legislation through the utilized risk assessments that evaluate the likelihood of sex offenders to reoffend. Risk assessments are used to judge the duration of time that a convicted sex offender should be required to register on a public SOR. Lanterman et al. (2014) found, in states using risk assessments, that the measures were often manipulated to suit the discretion, personal beliefs, and priorities of juries, judges, and law enforcement. Because the measures of risk assessments are utilized to determine length of conviction, the biased manipulation of these measures was found to allow stigmatizing shame to be amplified in the application of current SOR legislation as the length of sentencing was longer than when risk assessments were used appropriately to

inform SOR legislation application (Lanterman et al., 2014). The result of this is that those evaluating the level of risk for recidivism of sex offenders allowed personal discretions and biases to influence judgments that foster long-term, negative ramifications for the sex offender. Consequently, these judgments communicate to sex offenders—even if incidentally—that they are defined by who they are perceived as because of what they did, rather than focusing solely on correcting the negative behavior. By this it can be concluded that the primary communication device in the context of risk assessments is the less effective pattern of stigmatizing shame.

Legislation on reintegration.

Stigmatizing shame is also found in current legislation itself. Swensen et al. (2014) studied effective methods to help those with criminal records assimilate back into society and find effective employment. They noted that cases of sexual offenses warrant special consideration due to strict legislation that includes additional public notification systems and strict residence and workplace laws (Swensen et al., 2014; Thomas, 2013). While many of these regulations make sexual offenses a difficult case of consideration in employment, compared to other criminal records, these regulations are generally deemed necessary for public protection at the expense of the sex offender. However, the regulation is not behavior dependent. For example, an abstinence from deviant sexual behavior does not grant the offender the right to be expunged from public SOR results. Rather, the duration of registration is determined at the time of conviction regardless of future improvement (Swensen et al., 2014). Because the focus of shame is on the individual, it inherently shows a pattern of stigmatizing shame, where sex offenders face punishment regardless of future actions towards rehabilitation. This severely inhibits and discourages necessary motivation to overcome previous negative patterns of behavior.

Public knowledge on reintegration.

In addition to stigmatization from legislation, the public access to SORs allows for stigmatization to be expressed by the general population, potentially leading to increased harassment. When

community members in Florida were interviewed on the effectiveness of the public SOR, many replied that they believed sex offenders would invariably reoffend, necessitating public access to these records to identify local sex offenders (Levenson et al., 2007). But the results of the existing empirical studies contradict this common belief when the statistical variance in recidivism of offenders before and after the publicity of SORs is compared, as no statistically significant reduction in rates of recidivism has been measured since public access was permitted (Levenson et al., 2007). As increases in recidivism in other criminal contexts have been attributed to stigmatizing shame, it is possible that the stigmatizing shame inherent in public access to SORs is either counteracting improved rehabilitation efforts of sex offenders or it is potentially preventing reduction in overall rates of recidivism. Either way, this firm, incorrectly-based belief in public access has instead led to possibilities for harassment of those listed on the SOR. Vandiver et al. (2008) found that in a survey of 183 male sex offenders, one in ten reported being harassed, threatened, assaulted, or had suffered property damage while nearly twenty-eight percent had lost a close friend due to the public nature of the SOR. The ability of the public to harass individuals because of public access to past offenses and critically identifying information is another example of stigmatizing shame in current SOR legislation. This harassment does not allow individuals to rehabilitate or improve behavior by stripping away necessary motivation because of the negative communication between the public and listed sex offenders. The effect of this harassment consequently impacts sex offenders' ability to reintegrate and rehabilitate and essentially not only harms the sex offender but also the general population.

Overcoming Persistent Issues and Increased Risk

With consideration of the stigmatizing shame resulting from public SORs, it may not be enough to simply recognize the correlation between stigmatizing shame and higher rates of recidivism. It may be equally essential to consider the impact of expressed stigmatizing shame on common issues that face sex offenders as they seek rehabilitation. These common issues include sexually addictive behaviors (also identified as hypersexuality) and childhood sexual

abuse. Studies consistently find that both are disproportionately represented in sex offender populations (Jespersen et al., 2009; Kingston & Bradford, 2013). The correlation between sexual offenses and these issues requires an examination on the impact of stigmatizing shame expressed by public SOR on both sexual addictions and childhood sexual abuse.

Sex Addiction and Stigmatization

Sex addictions, also known as hypersexuality, are a common issue for registered sex offenders. Hypersexuality is identified by excessive urges, fantasies, or other related sexual behaviors and is typically defined as a common issue experienced by sex offenders (Kingston & Bradford, 2013). Hypersexuality is often manifested in impersonal behaviors, including masturbation and usage of pornography, and in relational behaviors, including multiple partners in a short amount of time (Kingston & Bradford, 2013). It is difficult to determine at what point hypersexuality becomes an addiction by traditional measures, including compulsivity and a disregard of negative consequences. Because of this difficulty, neither sexual addictions nor hypersexuality are recognized as diagnosable disorders by the DSM-V, despite being associated with a list of psychiatric conditions (Kingston & Bradford, 2013). Accordingly, the prevalence of hypersexuality is difficult to determine with the shifting definitions and diagnostic parameters of sexual addictions and hypersexuality; however, many studies still choose to study hypersexuality in view of the addiction model (Kingston & Bradford, 2013). With an understanding of the difficulty to accurately measure hypersexuality as an addiction, studies have generally found the prevalence of sex addictions among sex offenders to be as high as fifty percent with implicit variance (Carnes, 1989; Kingston & Bradford, 2013; Marshall & Marshall, 2006). Therefore, hypersexuality, as understood by sexual addiction models, is considered a serious issue facing a large portion of sex offenders. As a significant issue, it is necessary to consider the impact of stigmatizing shame on hypersexuality.

Addictions have an extensive relationship with shame, as shame both influences and defines addiction experiences. Flanagan (2013) noted that addiction has two points of failure: (a) failure to use

agency rationally and with self-control, and (b) shame because of this failure. Flanagan emphasized that while shame is important in addiction recovery, “there can be shame without blame” (Flanagan, 2013, p. 1). By promoting shame but not blame, Flanagan supported reintegrative shaming as an effective way to shame addictive behaviors without painting the individual as a failure through blame. Matthews et al. (2017) expounded on the importance of public shame and beliefs in addictions by defining self-stigmatization as the result of an internalization of societal constructs of addiction, where societal constructs are primarily communicated through patterns of public shaming. If self-stigmatization is primarily inherited from public-stigmatization patterns, it is possible that stigmatizing shame from the public and from current legislation may play a central role in the self-stigmatization created internally by sex offenders. As the current shaming pattern by legislation communicates a message that the individual is bad, rather than that the behavior is bad, a negative self-stigmatization can be internalized by the sex offender, which would destroy hope and motivation for recovery.

The negative connotation of sexual addictions internalized by sex offenders who experience these issues has a strong relationship to a higher risk of recidivism. Clarke et al. (2017) found that feelings of isolation and loneliness are linked to higher rates of both recidivism and addictive behaviors as explained by addiction models. With more stigmatizing shame expressed, there is a higher amount of loneliness, isolation, and perceived risk, and as addiction models link higher perceived risk to more frequent addictive behaviors, it can be concluded that stigmatizing shame is linked to increased addictive behaviors along with higher recidivism (Alamani, 2007; Bilevicius et al., 2018). The assimilation of this information indicates that higher amounts of stigmatizing shame may lead not only to feelings of isolation, loneliness, and depression, but also that these negative moods may lead to more perceived risk, which further encourages addictive behaviors; each factor creates a strong correlation of increased rates of reoffending due to stigmatizing shame and its negative impact on overcoming sexually addictive behaviors (Alamani, 2007; Bilevicius et al., 2018; Clarke et al., 2017). By this, the stigmatizing nature of

public SORs appears to play a role in recidivism of sex offenders struggling with sexual addictions by stigmatizing shame's impact on negative emotional states and perceived risk. Because of this effect of stigmatizing shame on hypersexuality, and with the prevalence of hypersexuality in sex offender populations, it inherently disqualifies stigmatizing aspects of public SOR legislation, and instead identifies these aspects as increasingly ineffective and unnecessary for both sex offenders and the public.

Childhood Sexual Abuse and Stigmatization

Childhood sexual abuse (CSA) is equally essential to consider with the impact of stigmatization expressed by public SORs, as CSA often stands as an obstacle in the recovery of abusers. CSA is a prevalent issue faced by sex offenders due to the tendency of the abused to become the abuser (Jespersen et al., 2009). CSA results in a distortion on the view of the self as well as feeling a general lack of control over situations or the victim's own actions (Karr et al., 2012). Likewise, there are common feelings of fear, shame, guilt, and mistrust experienced by victims (Thomas et al., 1994). Jespersen et al. (2009) found that SORs had disproportionate amounts of individuals coping with CSA when compared to general populations, recommending that negative, distorted views of the self and a feeling of a lack of control, along with shame and fear, are consequently experienced more often by sex offenders than the average population. Additionally, these victims of CSA listed on public SORs are overwhelmingly male (Jespersen et al., 2009). When comparing male to female recovery patterns, it is important to note that males tend to be less disclosive on CSA and are less likely to seek help (Thomas et al., 1994). Due to the prevalence of these feelings and issues that arise from coping with CSA, it is important to evaluate the relationship of stigmatizing shame to the process of healing CSA demands, especially in the male context.

The common forms of long-term healing from CSA are often reliant on supportive relationships. The most popular form of therapy is group therapy, especially as this form of therapy promotes supportive relationships, education on CSA symptoms for both the victim and loved ones of the victim, and compassionate and positive internal dialogue (Arias & Johnson, 2013). In a study specifically

focused on males experiencing effects of CSA, the effectiveness of group therapy was highlighted as it addressed specific healing issues more commonly experienced by males. These issues included a fear of diminished self-reliance, culturally biased reactions, and assumptions of males to become abusers themselves (Thomas et al., 1994). Group therapy is often effective in dealing with these issues as it provides an opportunity to test new beliefs of one's self, reduce isolation, and access support from individuals with similar struggles (Arias & Johnson, 2013; Thomas et al., 1994). Consequently, group therapy (and the necessary support and compassion associated) is especially effective in cases of males who have experienced CSA. In the context of the public SOR being primarily male, with many of its members coping with the consequences of CSA, it becomes apparent that both legislated and unlegislated treatment need to incorporate principles found in group therapy. As group therapy focuses on the behavior while embracing the individual into the social system, principles of group therapy are more closely mimicked by reintegrative shame. Because public SORs are currently stigmatizing in their shaming pattern, this creates a lack of these positive interactions that are necessary for sex offenders struggling with CSA, potentially acting as an obstacle in their recovery from both CSA and previous sexual offenses while also potentially acting as a primary contributor to increased rates of recidivism.

Conclusion

Braithwaite's (1989) reintegrative shaming theory explained stigmatizing shame as being a less beneficial social communication device than reintegrative shame. SORs primarily exhibit stigmatizing shame through manipulation of risk assessment, individual-focused legislation, and potentially harassing public access (Lantermann et al., 2014; Levenson et al., 2007; Swensen et al., 2014; Vandiver et al., 2008). The result of primarily utilizing stigmatizing shame is that current legislation is employing a less effective social communication device and points to the possibility of improvement if focus was instead shifted onto behaviors rather than individuals. This would allow sex offenders to experience the more effective reintegrative

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shaming while still receiving the same necessary punishments and consequences. Moreover, in other criminal contexts where reintegrative shame is compared against stigmatizing shame, practices of reintegrative shaming appear to directly influence rates of recidivism (Ray et al., 2011). This means that a shift to reintegrative shaming, while positively impacting recidivism rates of sex offenders, would also positively impact society.

Additionally, a shift to reintegrative shaming would better address common issues faced by sex offenders, including sexual addictions and CSA. Sex offenders struggling with sexually addictive behaviors would likely be more successful with positive social constructs of addiction that are behavior-centered and communicative of hope for recovery (Matthews et al., 2017). Likewise, sex offenders coping with CSA could also improve faster through reintegrative shaming, as this shaming pattern closely follows the success markers of group therapy and other related healing tools (Arias & Johnson, 2013; Thomas et al., 1994). Addressing both issues through a reintegrative approach could potentially lower recidivism rates further, as both issues are likely strongly correlated with rates of future sexual offenses. As reintegrative shaming could lower rates of sexual reoffending, changes to legislation are not only in the interest of sex offenders but also in the interest of the general population for increased safety and health for all.

Returning to the adapted true stories of John, Paul, and Henry, if reintegrative shaming became their experience, John would be encouraged to strive towards more responsible drinking, Paul would be motivated to be more thorough before future sexual relations, and Henry would be able to overcome his past and return as a functioning and contributing member of society for the rest of his life. However, these are not their stories because of the stigmatizing shame they currently experience and because the encouragement, motivation, and ability to move above and beyond previous sexual offenses are not offered to them in contemporary legislation. Instead, they face the negative effects of stigmatizing shame, isolating them and possibly encouraging them to be more careless with avoiding future sexual offenses.

For the sake of those like John, Paul, and Henry, as well as for the good of the general population, it is in the best interest of both groups to change the pattern of shame communicated by current legislation. To effectively change the current pattern of shame, further research should be performed to analyze the degree of stigmatizing shame expressed by all aspects of current sex offender legislation. After identifying all areas where stigmatizing shame is predominantly communicated, research should then be directed to identify the most effective ways of communicating reintegrative shame in the context of sexual crimes. Once best practices are identified, along with the legislative areas needing the most improvement, the research should inform a policy change, with an intent to continuously evaluate proposed changes to ensure maximum benefit for both sex offenders and the general population. The extensive nature of this research and policy process suggest a more reintegrative society is some time away, so for now, the first step to an effective change is to recognize that all of society is paying the unintentional cost for what is supposed to be a free public SOR.

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